

**PROTOCOLS AND THERETO RELATED**  
**DECLARATIONS**

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*Protocols are legally binding like treaties - declarations are not*

**PROTOCOLS AND THERETO RELATED**  
**DECLARATIONS**

**A. PROTOCOLS**

**ANNEXED TO THE TREATY**

**ESTABLISHING A CONSTITUTION FOR EUROPE**

**1. PROTOCOL**

**ON THE ROLE OF THE NATIONAL PARLIAMENTS**

**IN THE EUROPEAN UNION**

*National Parliaments*

THE HIGH CONTRACTING PARTIES,

*The organisation of Parliaments is a purely national matter...*

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

*... but the Union would like to encourage them to participate in the activities of the EU*

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

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

**TITLE 1**

**Information for national Parliaments**

Article 1

*National Parliaments shall have all the strategic documents from the Commission at the same time as the EP*

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

*and the Council*

the European Parliament and the Council.

Article 2

*Also legislative proposals*

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

*Definition of proposals*

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

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

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

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

Article 3

***National Parliaments can send a reasoned opinion regarding subsidiarity and proportionality***

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

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

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

Article 4

*6 weeks must pass before a proposal can be put to the Council's agenda*

*At least 10 days more before it can be decided upon*

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

Article 5

*Minutes from the legislative Council's meetings at the same time as governments*

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

Article 6

*Changes in voting procedures and of changes from unanimity to qualified majority*

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

Article 7

*Court of Auditors' annual report also forwarded*

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

Article 8

*Both chambers of bicameral systems*

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

## TITLE II

### Interparliamentary cooperation

#### Article 9

*The EP and national  
Parliaments decide on  
how to cooperate*

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

#### Article 10

*Conference of  
European Affairs  
Committees (COSAC)*

*...may send any  
contribution to the EP,  
the Council or the  
Commission if they see  
it appropriate*

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



## 2. PROTOCOL

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

*Subsidiarity*

*Proportionality*

THE HIGH CONTRACTING PARTIES,

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

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article I-11 of the Constitution, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### Article 1

*All institutions shall respect subsidiarity and proportionality*

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-11 of the Constitution.

#### Article 2

*The Commission shall consult widely before proposing legislation*

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

#### Article 3

*Definition of proposal*

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

#### Article 4

*EP, the Council and Commission shall send*

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

*legislative documents to national Parliaments*

legislator.

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

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

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

#### Article 5

*Commission shall justify any proposal with regard to subsidiarity and proportionality*

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

*Reasons shall contain:  
- assessment of financial impact  
- why an objective is "better achieved at Union level"  
- account of any burden*

#### Article 6

*A national Parliament, or any of its chambers, can send reasoned opinion if there is infringement of the principle of subsidiarity*

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

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

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

Article 7

**Alarm bell**

*National Parliament can give opinion on all proposals*

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

*Unicameral parliaments - two votes; bicameral parliaments, one for each chamber*

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

*If 1/3 of the opinions see non-compliance, the draft is reviewed. Only ¼ in Home and Justice affairs*

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

*No obligation to react to national parliaments' opinion, only need to explain decision*

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

Article 8

*Member States can bring infringement of the principle of subsidiarity before the EU Court, regional parliaments cannot*

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

*The Committee of Regions can do the same when consulted*

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

Article 9

*The Commission shall submit an annual report on the application of subsidiarity*

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

*Statute of the ECJ*

*The EC Court is changed to "The Court of Justice of the European Union"*

*Functions in accordance with the Constitution*

*Oath to perform duties impartially*

*Immunity*

**3. PROTOCOL**  
**ON THE STATUTE OF THE COURT OF JUSTICE OF**  
**THE EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES

DESIRING to lay down the Statute of the Court of Justice of the European Union provided for in Article III-381 of the Constitution,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community:

ARTICLE 1

The Court of Justice of the European Union shall be constituted and shall function in accordance with the Constitution, with the Treaty establishing the European Atomic Energy Community (EAEC Treaty) and with this Statute.

TITLE I

**JUDGES AND ADVOCATES-GENERAL**

ARTICLE 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

ARTICLE 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court of Justice, sitting as a full Court, may waive the immunity. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Articles 11 to 14 and Article 17 of the Protocol on the privileges and immunities of the Union shall apply to the Judges, Advocates-General, Registrars and Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the first, second and third paragraphs of this Article.

#### ARTICLE 4

The Judges may not hold any political or administrative office.

*No other occupation;  
Exemptions need simple  
majority in the Council*

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by a European decision of the Council, acting by a simple majority.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

#### ARTICLE 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

*Resignation*

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court of Justice for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

#### ARTICLE 6

*Dismissal demands  
unanimity in the Court*

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court of Justice, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations. If the person concerned is a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

The Registrar of the Court of Justice shall communicate the decision of the Court of Justice to the President of the European Parliament and to the

President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

#### ARTICLE 7

A Judge who is to replace a member of the Court of Justice whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

#### ARTICLE 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

### TITLE II

## ORGANISATION OF THE COURT OF JUSTICE

#### ARTICLE 9

*Partial changes every 3 years*

When, every three years, the Judges are partially replaced, thirteen and twelve Judges shall be replaced alternately.

When, every three years, the Advocates-General are partially replaced, four Advocates-General shall be replaced on each occasion.

#### ARTICLE 10

*Registrar*

The Registrar shall take an oath before the Court of Justice to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

#### ARTICLE 11

The Court of Justice shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court of Justice.

#### ARTICLE 12

Officials and other servants shall be attached to the Court of Justice to enable it to function. They shall be responsible to the Registrar under the authority of the President.

#### ARTICLE 13

*Assistant Rapporteurs*

A European law may provide for the appointment of Assistant Rapporteurs

and lay down the rules governing their service. It shall be adopted at the request of the Court of Justice. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court of Justice and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by a European decision of the Council, acting by a simple majority. They shall take an oath before the Court of Justice to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

#### ARTICLE 14

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court of Justice has its seat.

#### ARTICLE 15

*Permanently in session*

The Court of Justice shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court of Justice with due regard to the needs of its business.

#### ARTICLE 16

*Chambers*

The Court of Justice shall form chambers consisting of three and five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

*Grand Chamber  
13 judges*

The Grand Chamber shall consist of thirteen Judges. It shall be presided over by the President of the Court of Justice. The Presidents of the chambers of five Judges and other Judges appointed in accordance with the conditions laid down in the Rules of Procedure shall also form part of the Grand Chamber.

*Full Court*

The Court of Justice shall sit in a Grand Chamber when a Member State or an institution of the Union that is party to the proceedings so requests.

The Court of Justice shall sit as a full Court where cases are brought before it pursuant to Article III-335(2), the second paragraph of Article III-347, Article III-349 or Article III-385 (6) of the Constitution.

Moreover, where it considers that a case before it is of exceptional importance, the Court of Justice may decide, after hearing the Advocate-General, to refer the case to the full Court.

ARTICLE 17

*Decisions by uneven number of judges*

Decisions of the Court of Justice shall be valid only when an uneven number of its members is sitting in the deliberations.

*Chamber: at least 3 judges*

Decisions of the chambers consisting of either three or five Judges shall be valid only if they are taken by three Judges.

*Grand Chamber: at least 9*

Decisions of the Grand Chamber shall be valid only if nine Judges are sitting.

*Full Court: at least 15*

Decisions of the full Court shall be valid only if fifteen Judges are sitting.

In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

ARTICLE 18

*Competence to act*

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court of Justice.

A party may not apply for a change in the composition of the Court of Justice or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

**TITLE III**

**PROCEDURE BEFORE THE COURT OF JUSTICE**

ARTICLE 19

*Representation before the Court*  
*- agents*

The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case. The agent may be assisted by an adviser or by a lawyer.



- advisers  
- lawyers

The States, other than the Member States, which are parties to the Agreement on the European Economic Area and also the European Free Trade Association (EFTA) Surveillance Authority referred to in that Agreement shall be represented in same manner.

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court of Justice.

Such agents, advisers and lawyers shall, when they appear before the Court of Justice, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court of Justice shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

*Right of audience of  
university teachers*

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court of Justice as are accorded by this Article to lawyers.

## ARTICLE 20

*Written and oral  
procedures*

The procedure before the Court of Justice shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions, bodies, offices or agencies of the Union whose acts are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a Judge acting as Rapporteur, the hearing by the Court of Justice of agents, advisers and lawyers and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Where it considers that the case raises no new point of law, the Court of Justice may decide, after hearing the Advocate-General, that the case shall be determined without a submission from the Advocate-General.

*Case starts with a written application to the Registrar*

## ARTICLE 21

A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article III-367 of the Constitution, by documentary evidence of the date on which an institution was, in accordance with that Article, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time-limit for bringing proceedings.

## ARTICLE 22

*Cases governed by Article 18 of EAEC Treaty*

A case governed by Article 18 of the EAEC Treaty shall be brought before the Court of Justice by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

If the Court annuls the decision of the Arbitration Committee, the matter may be re-opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

## ARTICLE 23

In the cases governed by Article III-369 of the Constitution, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court of Justice by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court of Justice to the parties, to the Member States and to the Commission, and to the institution, body, office or agency which adopted the act the validity or interpretation of which is

in dispute.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court of Justice.

The decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court of Justice to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court of Justice. This paragraph shall not apply to questions falling within the scope of the EAEC Treaty.

Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member countries, provides that those countries are to be entitled to submit statements of case or written observations where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling on a question falling within the scope of the agreement, the decision of the national court or tribunal containing that question shall also be notified to the non-member countries concerned. Within two months from such notification, those countries may lodge at the Court of Justice statements of case or written observations.

#### ARTICLE 24

*May require all information*

The Court of Justice may require the parties to produce all documents and to supply all information which the Court of Justice considers desirable. Formal note shall be taken of any refusal.

The Court of Justice may also require the Member States and institutions, bodies, offices and agencies of the Union not being parties to the case to supply all information which the Court of Justice considers necessary for the proceedings.

#### ARTICLE 25

*Expert opinion*

The Court of Justice may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

#### ARTICLE 26

*Witnesses*

Witnesses may be heard under conditions laid down in the Rules of

Procedure.

ARTICLE 27

*Penalties*

With respect to defaulting witnesses the Court of Justice shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

ARTICLE 28

*Oath*

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

ARTICLE 29

The Court of Justice may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court of Justice under the same conditions.

*Expenses*

The Court of Justice shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

ARTICLE 30

*Violation of oath*

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court of Justice, the Member State concerned shall prosecute the offender before its competent court.

ARTICLE 31

*Public hearing*

The hearing in court shall be public, unless the Court of Justice, of its own motion or on application by the parties, decides otherwise for serious reasons.

ARTICLE 32

During the hearings the Court of Justice may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court of Justice only through their representatives.

ARTICLE 33

*Minutes*

Minutes shall be made of each hearing and signed by the President and the Registrar.

ARTICLE 34

The case list shall be established by the President.

ARTICLE 35

***Deliberations shall be kept secret***

The deliberations of the Court of Justice shall be and shall remain secret.

ARTICLE 36

*Judgments shall state the reasons*

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

ARTICLE 37

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

ARTICLE 38

The Court of Justice shall adjudicate upon costs.

ARTICLE 39

The President of the Court of Justice may, by way of summary procedure, which may, insofar as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article III-379(1) of the Constitution and Article 157 of the EAEC Treaty, or to prescribe interim measures in pursuance of Article III-379(2) of the Constitution, or to suspend enforcement in accordance with the fourth paragraph of Article III-401 of the Constitution or the third paragraph of Article 164 of the EAEC Treaty.

Should the President be prevented from attending, his place shall be taken by another Judge under conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court of Justice on the substance of the case.

ARTICLE 40

*Member States and*

Member States and institutions of the Union may intervene in cases before

*institutions may intervene* the Court of Justice.

The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest in the result of a case submitted to the Court of Justice. Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union.

Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court of Justice where one of the fields of application of that Agreement is concerned.

An application to intervene shall be limited to supporting the form of order sought by one of the parties.

#### ARTICLE 41

*Judgment by default*

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court of Justice decides otherwise.

#### ARTICLE 42

Member States, institutions, bodies, offices and agencies of the Union and any other natural or legal persons may, in cases and under conditions laid down in the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

#### ARTICLE 43

If the meaning or scope of a judgment is in doubt, the Court of Justice shall construe it on application by any party or any institution of the Union establishing an interest therein.

#### ARTICLE 44

*Revision of a judgment with new decisive facts*

An application for revision of a judgment may be made to the Court of Justice only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a

character as to lay the case open to revision and declaring the application admissible on this ground.

*Not after 10 years*

No application for revision may be made after the lapse of ten years from the date of the judgment.

#### ARTICLE 45

Periods of grace based on considerations of distance shall be laid down in the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

#### ARTICLE 46

Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article III-365 of the Constitution. The second paragraph of Article III-367 of the Constitution shall apply.

This Article shall also apply to proceedings against the European Central Bank regarding non-contractual liability.

### TITLE IV

*The General Court*

### THE GENERAL COURT

#### ARTICLE 47

The first paragraph of Article 9, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the General Court and its members.

Articles 10, 11 and 14 shall apply to the Registrar of the General Court *mutatis mutandis*.

#### ARTICLE 48

*25 judges*

The General Court shall consist of twenty-five Judges.

ARTICLE 49

The members of the General Court may be called upon to perform the task of an Advocate-General.

*Reasoned submissions by the Advocate-General*

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the General Court in order to assist that Court in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates-General, shall be laid down in the Rules of Procedure of the General Court.

A member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

ARTICLE 50

*Chambers with 3 or 5 judges*

The General Court shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

*Composition of the Chambers:  
Full Court  
Single Judge*

The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure, the General Court may sit as a full court or be constituted by a single Judge.

*Grand Chamber*

The Rules of Procedure may also provide that the General Court may sit in a Grand Chamber in cases and under the conditions specified therein.

ARTICLE 51

*Jurisdiction reserved to the Court of Justice in cases:*

By way of derogation from the rule laid down in Article III-358(1) of the Constitution, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles III-365 and III-367 of the Constitution when they are brought by a Member State against:

*- against an act or failure to act by the EP*

- (a) an act of or failure to act by the European Parliament or the Council, or both those institutions acting jointly, except for:
  - European decisions adopted by the Council under the third subparagraph of Article III-168(2) of the Constitution;
  - acts of the Council adopted pursuant to a Council act concerning measures to protect trade within the meaning of Article III-315 of the Constitution;



Article III-315 of the Constitution;

- acts of the Council by which the Council exercises implementing powers in accordance with Article I-37(2) of the Constitution;

*- against an act or failure to act by the Commission*

(b) against an act of or failure to act by the Commission under Article III-420(1) of the Constitution.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the Union against an act of or failure to act by the European Parliament or the Council or both of those institutions acting jointly or the Commission, or brought by an institution against an act of or failure to act by the European Central Bank.

#### ARTICLE 52

The President of the Court of Justice and the President of the General Court shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the General Court to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the General Court under the authority of the President of the General Court.

#### ARTICLE 53

The procedure before the General Court shall be governed by Title III.

Such further and more detailed provisions as may be necessary shall be laid down in its Rules of Procedure. The Rules of Procedure may derogate from the fourth paragraph of Article 40 and from Article 41 in order to take account of the specific features of litigation in the field of intellectual property.

Notwithstanding the fourth paragraph of Article 20, the Advocate-General may make his reasoned submissions in writing.

#### ARTICLE 54

Where an application or other procedural document addressed to the General Court is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the General Court. Likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

immediately by that Registrar to the Registrar of the Court of Justice.

Where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice. Likewise, where the Court of Justice finds that an action falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the General Court may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment, or, where the action is one brought pursuant to Article III-365 of the Constitution or pursuant to Article 146 of the EAEC Treaty, may decline jurisdiction so as to allow the Court of Justice to rule on such actions. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it. In that event, the proceedings before the General Court shall continue.

Where a Member State and an institution are challenging the same act, the General Court shall decline jurisdiction so that the Court of Justice may rule on those applications.

#### ARTICLE 55

*Notification*

Final decisions of the General Court, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the General Court to all parties as well as all Member States and the institutions of the Union even if they did not intervene in the case before the General Court.

#### ARTICLE 56

*Appeal*

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the General Court directly affects them.

With the exception of cases relating to disputes between the Union and its servants, an appeal may also be brought by Member States and institutions of the Union which did not intervene in the proceedings before the General

Court. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

#### ARTICLE 57

*Appeals to the Court of Justice*

Any person whose application to intervene has been dismissed by the General Court may appeal to the Court of Justice within two weeks from the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the General Court made pursuant to Article III-379(1) or (2) or the fourth paragraph of Article III-401 of the Constitution, or Article 157 or the third paragraph of Article 164 of the EAEC Treaty, within two months from their notification.

The appeal referred to in the first two paragraphs shall be heard and determined under the procedure referred to in Article 39.

#### ARTICLE 58

*Appeals shall be limited to points of law*

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the General Court, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Union law by the General Court.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

#### ARTICLE 59

*Appeals shall consist of a written and an oral part*

Where an appeal is brought against a decision of the General Court, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure, the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

#### ARTICLE 60

*Appeals have no suspensory effect*

Without prejudice to Article III-379(1) and (2) of the Constitution or Article 157 of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article III-380 of the Constitution, decisions of the General Court declaring a European law or European regulation binding in its entirety and directly applicable in all Member States to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 56 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Article III-379(1) and (2) of the Constitution,

and Article 157 of the EAEC Treaty for the suspension of the effects of the European law or European regulation which has been declared void or for the prescription of any other interim measure.

#### ARTICLE 61

If the appeal is well founded, the Court of Justice shall quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

Where a case is referred back to the General Court, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or an institution of the Union, which did not intervene in the proceedings before the General Court, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the General Court which has been quashed shall be considered as definitive in respect of the parties to the litigation.

#### ARTICLE 62

*When the consistency of Union law is being affected, First Advocate-General may appeal*

In the cases provided for in Article III-358(2) and (3) of the Constitution, where the First Advocate-General considers that there is a serious risk of the unity or consistency of Union law being affected, he may propose that the Court of Justice review the decision of the General Court.

The proposal must be made within one month of delivery of the decision by the General Court. Within one month of receiving the proposal made by the First Advocate-General, the Court of Justice shall decide whether or not the decision should be reviewed.

### TITLE V

#### FINAL PROVISIONS

#### ARTICLE 63

The Rules of Procedure of the Court of Justice and of the General Court shall contain any provisions necessary for applying and, where required, supplementing this Statute.

#### ARTICLE 64

*Council decides by unanimity rules of language applicable at Court*

The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a European regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the

Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament.

Until those rules have been adopted, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the General Court governing language arrangements shall apply. By way of derogation from Articles III-355 and III-356 of the Constitution, those provisions may only be amended or repealed with the unanimous consent of the Council.

#### ARTICLE 65

1. By way of derogation from Article IV-437 of the Constitution, any amendment to the Protocol on the Statute of the Court of Justice, annexed to the Treaty on European Union, to the Treaty establishing the European Community and to the EAEC Treaty, which is adopted between the signing and the entry into force of the Treaty establishing a Constitution for Europe, shall remain in force.

2. In order to incorporate them into the enacting terms of this Statute, the amendments referred to in paragraph 1 shall be subject to official codification by a European law of the Council, adopted at the request of the Court of Justice. When such codifying European law enters into force, this Article shall be repealed.

*European Central Bank*

**4. PROTOCOL**  
**ON THE STATUTE OF THE EUROPEAN SYSTEM**  
**OF CENTRAL BANKS AND**  
**OF THE EUROPEAN CENTRAL BANK**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in Articles I-30 and III-187(2) of the Constitution,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

*CHAPTER I*

*THE EUROPEAN SYSTEM  
OF CENTRAL BANKS*

ARTICLE 1

The European System of Central Banks

*ESCB = ECB + national  
central banks*

1. In accordance with Article I-30(1) of the Constitution, the European Central Bank and the national central banks shall constitute the European System of Central Banks. The European Central Bank and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

2. The European System of Central Banks and the European Central Bank shall perform their tasks and carry on their activities in accordance with the Constitution and this Statute.

*CHAPTER II*

*OBJECTIVES AND TASKS OF THE EUROPEAN SYSTEM OF CENTRAL  
BANKS*

ARTICLE 2

Objectives

*Objective:  
Maintain price stability*

In accordance with Articles I-30(2) and III-185(1) of the Constitution, the primary objective of the European System of Central Banks shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute

to the achievement of the latter's objectives as laid down in Article I-3 of the Constitution. The European System of Central Banks 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 III-177 of the Constitution.

### ARTICLE 3

#### Tasks

*Basic tasks:*

- *monetary policy*

- *exchange rates*

- *foreign reserves*

- *upkeeping of payment system*

1. In accordance with Article III-185(2) of the Constitution, the basic tasks to be carried out through the European System of Central Banks shall be:

(a) to define and implement the Union's monetary policy;

(b) to conduct foreign-exchange operations consistent with Article III-326 of the Constitution;

(c) to hold and manage the official foreign reserves of the Member States;

(d) to promote the smooth operation of payment systems.

2. In accordance with Article III-185(3) of the Constitution, paragraph 1(c) of this Article shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3. In accordance with Article III-185(5) of the Constitution, the European System of Central Banks 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.

### ARTICLE 4

#### Advisory functions

*Shall be consulted in cases affecting its competence*

In accordance with Article III-185(4) of the Constitution, the European Central Bank shall be consulted:

(a) on any proposed Union act in areas within its powers;

(b) 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 41;

*May submit opinions*

The European Central Bank may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters within its powers.

## ARTICLE 5

### Collection of statistical information

*Collect statistical information*

1. In order to undertake the tasks of the European System of Central Banks, the European Central Bank, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.

2. The national central banks shall carry out, to the extent possible, the tasks referred to in paragraph 1.

3. The European Central Bank shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its powers.

4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

## ARTICLE 6

### International cooperation

*International representation is decided by the Central Bank*

1. In the field of international cooperation involving the tasks entrusted to the European System of Central Banks, the European Central Bank shall decide how the European System of Central Banks shall be represented.

2. The European Central Bank and, subject to its approval, the national central banks may participate in international monetary institutions.

3. Paragraphs 1 and 2 shall be without prejudice to Article III-196 of the Constitution.



CHAPTER III

ORGANISATION OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 7

Independence

*Complete independence*

In accordance with Article III-188 of the Constitution, when exercising the powers and carrying out the tasks and duties conferred upon them by the Constitution and this Statute, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices and agencies 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 European Central Bank or of the national central banks in the performance of their tasks.

ARTICLE 8

General principle

*Decision-making*

The European System of Central Banks shall be governed by the decision-making bodies of the European Central Bank.

ARTICLE 9

The European Central Bank

*Legal personality*

1. The European Central Bank, which, in accordance with Article I-30(3) of the Constitution, has legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law. It may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

2. The European Central Bank shall ensure that the tasks conferred upon the European System of Central Banks under Article III-185(2), (3) and (5) of the Constitution are implemented either by itself pursuant to this Statute or through the national central banks pursuant to Article 12(1) and Article 14.

3. In accordance with Article III-187(1) of the Constitution, the decision-making bodies of the European Central Bank shall be the Governing Council and the Executive Board.

ARTICLE 10

The Governing Council

*Governing Council =  
Members of the Executive  
Board and Governors of  
the national central banks*

1. In accordance with Article III-382(1) of the Constitution, the Governing Council shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States without a derogation as referred to in Article III-197 of the Constitution.

*Rotation with voting  
rights*

2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

*Different weights  
according to GDP and  
financial size*

(a) as from the date on which the number of governors exceeds 15 and until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights;

(b) as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the criteria laid down in (a). The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights;

*Equal amounts of time in  
each group*

(c) within each group, the governors shall have their voting rights for equal amounts of time;

(d) for the calculation of the shares in the aggregate gross domestic product at market prices Article 29(2) shall apply. The total

aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation;

- (e) whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29(3), or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the principles laid down in this subparagraph;
- (f) the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the principles laid down in this subparagraph and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12(3) may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These Rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The first and second subparagraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under paragraph 3 and Article 40(2) and (3). Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

*Quorum of 2/3*

In order for the Governing Council to vote, there shall be a quorum of two thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

*Special weighting after shares of capital*

3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 49, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the European Central Bank. The weighting of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the European Central Bank and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

*Half of the shareholders with 2/3 of the capital*

*Confidential proceedings*

4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

*At least 10 meetings*

5. The Governing Council shall meet at least ten times a year.

## ARTICLE 11

### The Executive Board

*Executive Board with 6 members*

1. In accordance with the first subparagraph of Article III-382(2) of the Constitution, the Executive Board shall comprise the President, the Vice-President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

*Appointed by qualified majority by the European Council*

2. In accordance with Article III-382(2) of the Constitution, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council and after consulting the European Parliament and the Governing Council.

*For 8 years*

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.

*Salary*

3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the European Central Bank and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

*Court of Justice may retire a Board member*

4. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Governing Council or the Executive Board, compulsorily retire him.

*Simple majority*

5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12(3).

6. The Executive Board shall be responsible for the current business of the European Central Bank.

7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with paragraph 2.

## ARTICLE 12

### Responsibilities of the decision-making bodies

*Governing Council adopt guidelines*

1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the European System of Central Banks under the Constitution and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the European System of Central Banks, and shall establish the necessary guidelines for their implementation.

*The Board implements*

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks. In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

*Delegation of powers*

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the European Central Bank shall have recourse to the national central banks to carry out operations which form part of the tasks of the European System of Central Banks.

*Prepare meetings of Governing Council*

2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

*Rules of Procedure*

3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the European Central Bank and its decision-making bodies.

*Advise*

4. The Governing Council shall exercise the advisory functions referred to in Article 4.

5. The Governing Council shall take the decisions referred to in Article 6.

## ARTICLE 13

### The President

*ECB-President chairs both Council and Board, and represents ECB abroad*

1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the European Central Bank.

2. Without prejudice to Article 38, the President or his nominee shall

represent the European Central Bank externally.

## ARTICLE 14

### National central banks

1. In accordance with Article III-189 of the Constitution, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with the Constitution and this Statute.

2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of the Constitution or of any rule of law relating to its application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

*National central banks  
may perform other tasks  
unless 2/3 protest*

3. The national central banks are an integral part of the European System of Central Banks and shall act in accordance with the guidelines and instructions of the European Central Bank. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the European Central Bank, and shall require that any necessary information be given to it.

4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the European System of Central Banks. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the European System of Central Banks.

## ARTICLE 15

### Reporting commitments

1. The European Central Bank shall draw up and publish reports on the activities of the European System of Central Banks at least quarterly.

2. A consolidated financial statement of the European System of Central Banks shall be published each week.

3. In accordance with Article III-383(3) of the Constitution, the European Central Bank shall address an annual report on the activities of the European System of Central Banks and on the monetary policy of both the previous and the current year to the European Parliament, the European Council, the Council and the Commission.

4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

#### ARTICLE 16

##### Banknotes

***Only Governing Council  
has the right to issue  
euro banknotes***

In accordance with Article III-186(1) of the Constitution, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The European Central Bank shall respect as far as possible existing practices regarding the issue and design of banknotes.

#### CHAPTER IV

##### MONETARY FUNCTIONS AND OPERATIONS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

#### ARTICLE 17

Accounts with the European Central Bank and the national central banks

In order to conduct their operations, the European Central Bank and the national central banks may open accounts for credit institutions, public entities and other market participants, and accept assets, including book entry securities, as collateral.

#### ARTICLE 18

##### Open market and credit operations

1. In order to achieve the objectives of the European System of Central Banks and to carry out its tasks, the European Central Bank and the national central banks may:

- (a) operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or

borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals;

- (b) conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

2. The European Central Bank shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.

## ARTICLE 19

### Minimum reserves

*Minimum reserves fixed  
by ECB*

1. Subject to Article 2, the European Central Bank may require credit institutions established in Member States to hold minimum reserves on accounts with the European Central Bank and national central banks in pursuance of monetary policy objectives. Detailed rules concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the European Central Bank shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

*Penalty interest  
Other sanctions*

2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

## ARTICLE 20

### Other instruments of monetary control

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article 41, define the scope of such methods if they impose obligations on third parties.

## ARTICLE 21

### Operations with public entities

*All overdrafts prohibited*

1. In accordance with Article III-181 of the Constitution, overdrafts or any other type of credit facility with the European Central Bank or with the national central banks in favour of Union institutions, bodies, offices or



agencies, 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 European Central Bank or national central banks of debt instruments.

2. The European Central Bank and national central banks may act as fiscal agents for the entities referred to in paragraph 1.

3. The provisions of this Article 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 European Central Bank as private credit institutions.

## ARTICLE 22

### Clearing and payment systems

The European Central Bank and national central banks may provide facilities, and the European Central Bank may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

## ARTICLE 23

### External operations

The European Central Bank and national central banks may:

- (a) establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- (b) acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term "foreign exchange asset" shall include securities and all other assets in the currency of any country or units of account and in whatever form held;
- (c) hold and manage the assets referred to in this Article;
- (d) conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

## ARTICLE 24

### Other operations

In addition to operations arising from their tasks, the European Central Bank and national central banks may enter into operations for their

administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION

ARTICLE 25

Prudential supervision

*Prudential supervision of credit institutions*

1. The European Central Bank may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of legally binding acts of the Union relating to the prudential supervision of credit institutions and to the stability of the financial system.
2. In accordance with any European law adopted under Article III-185(6) of the Constitution, the European Central Bank may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE EUROPEAN SYSTEM OF CENTRAL BANKS

ARTICLE 26

Financial accounts

1. The financial year of the European Central Bank and national central banks shall begin on the first day of January and end on the last day of December.
2. The annual accounts of the European Central Bank shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.
3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the European System of Central Banks, comprising those assets and liabilities of the national central banks that fall within the European System of Central Banks.
4. For the application of this Article, the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

ARTICLE 27

Auditing

*Auditing of ECB*

1. The accounts of the European Central Bank and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the European Central Bank and national central banks and obtain full information about their transactions.
2. Article III-384 of the Constitution shall only apply to an examination of the operational efficiency of the management of the European Central Bank.

ARTICLE 28

Capital of the European Central Bank

1. The capital of the European Central Bank, shall be 5 000 million euro. The capital may be increased by such amounts as stipulated by a European decision by the Governing Council acting by the qualified majority provided for in Article 10(3), within the limits and under the conditions set by the Council under the procedure laid down in Article 41.
2. The national central banks shall be the sole subscribers to and holders of the capital of the European Central Bank. The subscription of capital shall be according to the key established in accordance with Article 29.
3. The Governing Council, acting by the qualified majority provided for in Article 10(3), shall determine the extent to which and the form in which the capital shall be paid up.
4. Subject to paragraph 5, the shares of the national central banks in the subscribed capital of the European Central Bank may not be transferred, pledged or attached.
5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

ARTICLE 29

Key for capital subscription

*Member States' share in ECB subscribed capital*

1. The key for subscription of the European Central Bank's capital, fixed for the first time in 1998 when the European System of Central Banks was

established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:

*50 % of population*

– 50% of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the European System of Central Banks;

*50 % of GDP*

– 50% of the share of its respective Member State in the Union's gross domestic product at market prices as recorded in the last five years preceding the penultimate year before the establishment of the European System of Central Banks.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules laid down by the Council under the procedure provided for in Article 41.

3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the European System of Central Banks by analogy with paragraph 1. The adjusted key shall apply with effect from the first day of the following year.

4. The Governing Council shall take all other measures necessary for the application of this Article.

## ARTICLE 30

### Transfer of foreign reserve assets to the European Central Bank

*Foreign reserve assets of ECB*

1. Without prejudice to Article 28, the European Central Bank shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, International Monetary Fund reserve positions and special drawing rights, up to an amount equivalent to 50 000 million euro. The Governing Council shall decide upon the proportion to be called up by the European Central Bank. The European Central Bank shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the European Central Bank.

3. Each national central bank shall be credited by the European Central Bank with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

4. Further calls of foreign reserve assets beyond the limit set in paragraph 1 may be effected by the European Central Bank, in accordance with paragraph 2, within the limits and under the conditions laid down by the Council in accordance with the procedure laid down in Article 41.

5. The European Central Bank may hold and manage International Monetary Fund reserve positions and special drawing rights and provide for the pooling of such assets.

6. The Governing Council shall take all other measures necessary for the application of this Article.

#### ARTICLE 31

##### Foreign reserve assets held by national central banks

1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.

2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of paragraph 3, be subject to approval by the European Central Bank in order to ensure consistency with the exchange rate and monetary policies of the Union.

3. The Governing Council shall issue guidelines with a view to facilitating such operations.

#### ARTICLE 32

##### Allocation of monetary income of national central banks

1. The income accruing to the national central banks in the performance of the monetary policy function of the European System of Central Banks (hereinafter referred to as "monetary income") shall be allocated at the end of each financial year in accordance with the provisions of this Article.

2. The amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

3. If, after the start of the third stage, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of paragraph 2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from paragraph 2, monetary income shall be measured according to an alternative method for a period of not more than five years.

4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the European System of Central Banks. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council. These amounts may be offset against the national central banks' monetary income.

5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid-up shares in the capital of the European Central Bank, subject to any decision taken by the Governing Council pursuant to Article 33(2).

6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the European Central Bank in accordance with guidelines established by the Governing Council.

7. The Governing Council shall take all other measures necessary for the application of this Article.

### ARTICLE 33

#### Allocation of net profits and losses of the European Central Bank

1. The net profit of the European Central Bank shall be transferred in the following order:

- (a) an amount to be determined by the Governing Council, which may not exceed 20% of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100% of the capital;
- (b) the remaining net profit shall be distributed to the shareholders of the European Central Bank in proportion to their paid-up shares.

2. In the event of a loss incurred by the European Central Bank, the shortfall may be offset against the general reserve fund of the European

Central Bank and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32(5).

## CHAPTER VII

### GENERAL PROVISIONS

#### ARTICLE 34

##### Legal acts

##### ***Legal acts of ECB:***

1. In accordance with Article III-190 of the Constitution, the European Central Bank shall adopt:

##### ***Regulations***

(a) European regulations to the extent necessary to implement the tasks defined in Article 3(1)(a), Article 19(1), Article 22 or Article 25(2) of this Statute and in cases which shall be laid down in the European regulations and decisions referred to in Article 41;

##### ***Decisions***

(b) the European decisions necessary for carrying out the tasks entrusted to the European System of Central Banks under the Constitution and this Statute;

##### ***Recommendations Opinions***

(c) recommendations and opinions.

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

##### ***Impose fines or periodic penalty***

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its European regulations and decisions.

#### ARTICLE 35

##### Judicial control and related matters

##### ***Acts of ECB may be controlled by the EU- Court***

1. The acts or omissions of the European Central Bank shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Constitution. The European Central Bank may institute proceedings in the cases and under the conditions laid down in the Constitution.

2. Disputes between the European Central Bank, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the

competent national courts, save where jurisdiction has been conferred upon the Court of Justice of the European Union.

3. The European Central Bank shall be subject to the liability regime provided for in Article III-431 of the Constitution. The national central banks shall be liable according to their respective national laws.

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

5. A decision of the European Central Bank to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

*If a national central bank fails to fulfil an obligation, the ECB:*

*- delivers a reasoned opinion*

*- brings matter before EU Court if national bank does not comply*

6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Constitution and this Statute. If the European Central Bank considers that a national central bank has failed to fulfil an obligation under the Constitution and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the European Central Bank, the latter may bring the matter before the Court of Justice of the European Union.

#### ARTICLE 36

##### Staff

1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the European Central Bank.

*Staff*

2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the European Central Bank and its servants within the limits and under the conditions laid down in the conditions of employment.

#### ARTICLE 37

##### Professional secrecy

1. Members of the governing bodies and the staff of the European Central Bank and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

*Secrecy*

2. Persons having access to data covered by a legally binding Union act



imposing an obligation of secrecy shall be subject to that obligation.

#### ARTICLE 38

##### Signatories

The European Central Bank shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the European Central Bank who have been duly authorised by the President to sign on behalf of the European Central Bank.

#### ARTICLE 39

##### Privileges and immunities

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

### CHAPTER VIII

#### AMENDMENT OF THE STATUTE AND COMPLEMENTARY RULES

#### ARTICLE 40

##### Simplified amendment procedures

*Some Articles may be  
changed by European  
law*

1. In accordance with Article III-187(3) of the Constitution, Articles 5(1), (2) and (3), 17, 18, 19(1), 22, 23, 24, 26, 32(2), (3), (4) and (6), 33(1)(a) and 36 of this Statute may be amended by European laws:

(a) on a proposal from the Commission and after consulting the European Central Bank, or

(b) on a recommendation from the European Central Bank and after consulting the Commission.

2. Article 10(2) may be amended by a European decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

3. A recommendation made by the European Central Bank under this Article shall require a unanimous decision by the Governing Council.

#### ARTICLE 41

##### Complementary rules

In accordance with Article III-187(4) of the Constitution, the Council shall adopt European regulations and decisions establishing the measures referred to in Articles 4, 5(4), 19(2), 20, 28(1), 29(2), 30(4) and 34(3) of this Statute. It shall act after consulting the European Parliament either:

- (a) on a proposal from the Commission and after consulting the European Central Bank or
- (b) on a recommendation from the European Central Bank and after consulting the Commission.

#### CHAPTER IX

##### TRANSITIONAL AND OTHER PROVISIONS FOR THE EUROPEAN SYSTEM OF CENTRAL BANKS

#### ARTICLE 42

##### General provisions

1. A derogation as referred to in Article III-197(1) of the Constitution shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9(2), 12(1), 14(3), 16, 18, 19, 20, 22, 23, 26(2), 27, 30, 31, 32, 33, 34 and 50.

*Non-euro countries retain  
their monetary powers*

2. The central banks of Member States with a derogation as specified in Article III-197(1) of the Constitution shall retain their powers in the field of monetary policy according to national law.

3. In accordance with the second subparagraph of Article III-197(2) of the Constitution, in Articles 3, 11(2) and 19 of this Statute "Member States" shall mean Member States whose currency is the euro.

4. In Articles 9(2), 10(2) and (3), 12(1), 16, 17, 18, 22, 23, 27, 30, 31, 32, 33(2) and 50 of this Statute, "national central banks" shall mean central banks of Member States whose currency is the euro.

5. In Articles 10(3) and 33(1), "shareholders" shall mean national central banks of Member States whose currency is the euro.

6. In Articles 10(3) and 30(2), "subscribed capital" shall mean capital of

the European Central Bank subscribed by the national central banks of Member States whose currency is the euro.

#### ARTICLE 43

##### Transitional tasks of the European Central Bank

The European Central Bank shall take over the former functions of the European Monetary Institute referred to in Article III-199(2) of the Constitution which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The European Central Bank shall give advice in the preparations for the abrogation of the derogations referred to in Article III-198 of the Constitution.

#### ARTICLE 44

##### The General Council of the European Central Bank

1. Without prejudice to Article III-187(1) of the Constitution, the General Council shall be constituted as a third decision-making body of the European Central Bank.
2. The General Council shall comprise the President and Vice-President of the European Central Bank and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.
3. The responsibilities of the General Council are listed in full in Article 46.

#### ARTICLE 45

##### Functioning of the General Council

1. The President or, in his absence, the Vice-President of the European Central Bank shall chair the General Council of the European Central Bank.
2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.
3. The President shall prepare the meetings of the General Council.
4. By way of derogation from Article 12(3), the General Council shall adopt its Rules of Procedure.

5. The Secretariat of the General Council shall be provided by the European Central Bank.

#### ARTICLE 46

##### Responsibilities of the General Council

1. The General Council shall:

- (a) perform the tasks referred to in Article 43;
- (b) contribute to the advisory functions referred to in Articles 4 and 25(1).

2. The General Council shall contribute to:

- (a) the collection of statistical information as referred to in Article 5;
- (b) the reporting activities of the European Central Bank as referred to in Article 15;
- (c) the establishment of the necessary rules for the application of Article 26 as referred to in Article 26(4);
- (d) the taking of all other measures necessary for the application of Article 29 as referred to in Article 29(4);
- (e) the laying down of the conditions of employment of the staff of the European Central Bank as referred to in Article 36.

3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article III-198(3) of the Constitution.

4. The General Council shall be informed by the President of the European Central Bank of decisions of the Governing Council.

#### ARTICLE 47

##### Transitional provisions for the capital of the European Central Bank

In accordance with Article 29, each national central bank shall be assigned a weighting in the key for subscription of the European Central Bank's capital. By way of derogation from Article 28(3), central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the European Central Bank and at least

*Non-euro countries may pay contributions to operational costs*

half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the European Central Bank.

#### ARTICLE 48

##### Deferred payment of capital, reserves and provisions of the European Central Bank

1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the European Central Bank to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the European Central Bank foreign reserve assets in accordance with Article 30(1). The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the European Central Bank in accordance with Article 30(1), by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.
2. In addition to the payment to be made in accordance with paragraph 1, the national central bank concerned shall contribute to the reserves of the European Central Bank, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation. The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the European Central Bank, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.
3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the European System of Central Banks, the subscribed capital of the European Central Bank and the limit on the amount of foreign reserve assets that may be transferred to the European Central Bank shall be automatically increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key, between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the European System of Central Banks. Each national central bank's weighting in the capital key shall be calculated by analogy with Article 29(1) and in compliance with Article 29(2). The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29(3).

#### ARTICLE 49

### Derogation from Article 32

1. If, after the start of the third stage, the Governing Council decides that the application of Article 32 results in significant changes in national central banks' relative income positions, the amount of income to be allocated pursuant to Article 32 shall be reduced by a uniform percentage which shall not exceed 60% in the first financial year after the start of the third stage and which shall decrease by at least 12 percentage points in each subsequent financial year.
2. Paragraph 1 shall be applicable for not more than five financial years after the start of the third stage.

### ARTICLE 50

#### Exchange of banknotes in Member States' currencies

Following the irrevocable fixing of exchange rates in accordance with Article III-198(3) of the Constitution, the Governing Council shall take the necessary measures to ensure that banknotes denominated in the currencies of Member States with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

### ARTICLE 51

#### Applicability of the transitional provisions

If and as long as there are Member States with a derogation Articles 42 to 47 shall be applicable.

*European Investment  
Bank*

**5. PROTOCOL**  
**ON THE STATUTE OF THE**  
**EUROPEAN INVESTMENT BANK**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article III-393 of the Constitution,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

The European Investment Bank referred to in Article III-393 of the Constitution (hereinafter called the "Bank") is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of the Constitution and of this Statute.

ARTICLE 2

The task of the Bank shall be that defined in Article III-394 of the Constitution.

ARTICLE 3

In accordance with Article III-393 of the Constitution, the Bank's members shall be the Member States.

ARTICLE 4

1. The capital of the Bank shall be 163 653 737 000 euro, subscribed by the Member States as follows:

*Capital shares:*

Germany	26 649 532 500
France	26 649 532 500
Italy	26 649 532 500
United Kingdom	26 649 532 500
Spain	15 989 719 500
Belgium	7 387 065 000
Netherlands	7 387 065 000
Sweden	4 900 585 500
Denmark	3 740 283 000
Austria	3 666 973 500
Poland	3 411 263 500
Finland	2 106 816 000
Greece	2 003 725 500

Portugal	1 291 287 000
Czech Republic	1 258 785 500
Hungary	1 190 868 500
Ireland	935 070 000
Slovakia	428 490 500
Slovenia	397 815 000
Lithuania	249 617 500
Luxembourg	187 015 500
Cyprus	183 382 000
Latvia	152 335 000
Estonia	117 640 000
Malta	69 804 000

The Member States shall be liable only up to the amount of their share of the capital subscribed and not paid up.

2. The admission of a new member shall entail an increase in the subscribed capital corresponding to the capital brought in by the new member.

*U*  
*Capital may be raised*  
*unanimously*

3. The Board of Governors may, acting unanimously, decide to increase the subscribed capital.

4. The share of a member in the subscribed capital may not be transferred, pledged or attached.

#### ARTICLE 5

1. The subscribed capital shall be paid in by Member States to the extent of 5% on average of the amounts laid down in Article 4(1).

2. In the event of an increase in the subscribed capital, the Board of Governors, acting unanimously, shall fix the percentage to be paid up and the arrangements for payment. Cash payments shall be made exclusively in euro.

3. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the Bank to meet its obligations.

Each Member State shall make this payment in proportion to its share of the subscribed capital.

#### ARTICLE 6

The Bank shall be directed and managed by a Board of Governors, a Board of Directors and a Management Committee.



*Board of Governors =  
ministers from Member  
States*

## ARTICLE 7

1. The Board of Governors shall consist of the ministers designated by the Member States.

2. The Board of Governors shall lay down general directives for the credit policy of the Bank, in accordance with the Union's objectives.

The Board of Governors shall ensure that these directives are implemented.

3. The Board of Governors shall in addition:

- (a) decide whether to increase the subscribed capital in accordance with Article 4(3) and Article 5(2);
- (b) for the purposes of Article 9(1), determine the principles applicable to financing operations undertaken within the framework of the Bank's task;
- (c) exercise the powers provided in Articles 9 and 11 in respect of the appointment and the compulsory retirement of the members of the Board of Directors and of the Management Committee, and those powers provided for in the second subparagraph of Article 11(1);
- (d) take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article 16(1);
- (e) approve the annual report of the Board of Directors;
- (f) approve the annual balance sheet and profit and loss account;
- (g) approve the Rules of Procedure of the Bank;
- (h) exercise the other powers conferred by this Statute.

4. Within the framework of the Constitution and this Statute, the Board of Governors, acting unanimously, may take any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

## ARTICLE 8

1. Save as otherwise provided in this Statute, decisions of the Board of Governors shall be taken by a majority of its members. This majority must represent at least 50% of the subscribed capital.

*Decision-making:  
Majority of members  
representing 50% of  
capital*

*Qualified majority = 18*

A qualified majority shall require eighteen votes in favour and 68% of the

*votes and 68% of capital*

subscribed capital.

2. Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity.

#### ARTICLE 9

*Board of Directors*

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

The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the Constitution and this Statute and with the general directives laid down by the Board of Governors.

At the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved.

*26 Directors  
16 Alternates*

2. The Board of Directors shall consist of twenty-six directors and sixteen alternate directors.

*One from each state*

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State. One shall also be nominated by the Commission.

The alternate directors shall be appointed by the Board of Governors for five years as shown below:

- two alternates nominated by the Federal Republic of Germany,
- two alternates nominated by the French Republic,
- two alternates nominated by the Italian Republic,
- two alternates nominated by the United Kingdom of Great Britain and Northern Ireland,
- one alternate nominated by common accord between the Kingdom of Spain and the Portuguese Republic,
- one alternate nominated by common accord between the Kingdom of Belgium the Grand Duchy of Luxembourg

Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

- one alternate nominated by common accord between the Kingdom of Denmark, the Hellenic Republic and Ireland,
- one alternate nominated by common accord between the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,
- three alternates nominated by common accord between the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,
- one alternate director nominated by the Commission.

The Board of Directors shall co-opt six non-voting experts: three as members and three as alternates.

The appointments of the directors and the alternates shall be renewable.

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

The President of the Management Committee or, in his absence, one of the Vice-Presidents, shall preside over meetings of the Board of Directors but shall not vote.

Members of the Board of Directors shall be chosen from persons whose independence and competence are beyond doubt. They shall be responsible only to the Bank.

3. A director may be compulsorily retired by the Board of Governors only if he no longer fulfils the conditions required for the performance of his duties; the Board must act by a qualified majority.

If the annual report is not approved, the Board of Directors shall resign.

4. Any vacancy arising as a result of death, voluntary resignation, compulsory retirement or collective resignation shall be filled in accordance with paragraph 2. A member shall be replaced for the remainder of his term of office, save where the entire Board of Directors is being replaced.

5. The Board of Governors shall determine the remuneration of members of the Board of Directors. The Board of Governors shall lay down what activities are incompatible with the duties of a director or an alternate.

#### ARTICLE 10

1. Each director shall have one vote on the Board of Directors. He may delegate his vote in all cases, according to procedures to be laid down in the Rules of Procedure of the Bank.

***Board decides with 1/3 of members representing 50% of Capital; Qualified majority of 18 representing 68% of Capital***

2. Save as otherwise provided in this Statute, decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote, representing at least 50% of the subscribed capital. A qualified majority shall require eighteen votes and 68% of the subscribed capital in favour. The Rules of Procedure of the Bank shall lay down how many members of the Board of Directors constitute the quorum needed for the adoption of decisions.

#### ARTICLE 11

***Management Committee***

1. The Management Committee shall consist of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments shall be renewable.

The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.

2. On a proposal from the Board of Directors adopted by a qualified majority, the Board of Governors may, acting by a qualified majority, compulsorily retire a member of the Management Committee.

3. The Management Committee shall be responsible for the current business of the Bank, under the authority of the President and the supervision of the Board of Directors.

It shall prepare the decisions of the Board of Directors, including decisions on the raising of loans and the granting of finance, in particular in the form of loans and guarantees. It shall ensure that these decisions are implemented.

4. The Management Committee, acting by a majority, shall adopt opinions on proposals for raising loans or granting finance, in particular in the form of loans and guarantees.

5. The Board of Governors shall determine the remuneration of members of the Management Committee and shall lay down what activities are incompatible with their duties.

6. The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters.

7. The staff of the Bank shall be under the authority of the President. They shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States. The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.

8. The Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties.

#### ARTICLE 12

1. A Committee consisting of six members, appointed on the grounds of their competence by the Board of Governors, shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts.

2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.

3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review.

4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity.

#### ARTICLE 13

The Bank shall deal with each Member State through the authority designated by that State. In the conduct of financial operations the Bank shall have recourse to the national central bank of the Member State concerned or to other financial institutions approved by that State.

#### ARTICLE 14

1. The Bank shall cooperate with all international organisations active in fields similar to its own.

2. The Bank shall seek to establish all appropriate contacts in the interests of cooperation with banking and financial institutions in the countries to which its operations extend.

#### ARTICLE 15

At the request of a Member State or of the Commission, or on its own initiative, the Board of Governors shall, in accordance with the same provisions as governed their adoption, interpret or supplement the directives laid down by it under Article 7.

#### ARTICLE 16

1. Within the framework of the task set out in Article III-394 of the Constitution, the Bank shall grant finance, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments to be carried out in the territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

*Qualified majority may grant financing outside EU*

However, by decision of the Board of Governors, acting by a qualified majority on a proposal from the Board of Directors, the Bank may grant financing for investment to be carried out, in whole or in part, outside the territories of Member States.

2. As far as possible, loans shall be granted only on condition that other sources of finance are also used.

*Guarantee*

3. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a guarantee from the Member State in whose territory the investment will be carried out, on adequate guarantees, or on the financial strength of the debtor.

*Qualified majority may take risk*

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

4. The Bank may guarantee loans contracted by public or private undertakings or other bodies for the purpose of carrying out projects provided for in Article III-394 of the Constitution.

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

subscribed (whether or not paid in) for any equity participation of the Bank.

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

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

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

6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

#### ARTICLE 17

*No lower interest rate*

1. Interest rates on loans to be granted by the Bank and commission and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 22.

2. The Bank shall not grant any reduction in interest rates. Where a reduction in the interest rate appears desirable in view of the nature of the investment to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article III-167 of the Constitution.

#### ARTICLE 18

In its financing operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed in the most rational way in the interests of the Union.

It may grant loans or guarantees only:

- (a) where, in the case of investments by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in the case of other investments, either by a commitment entered into by the State in which the investment is made or by some other means; and,
- (b) where the execution of the investment contributes to an increase in economic productivity in general and promotes the establishment or

functioning of the internal market.

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

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

3. It may dispose of its claims on the capital market and may, to this end, require its debtors to issue bonds or other securities.

4. Neither the Bank nor the Member States shall impose conditions requiring funds lent by the Bank to be spent within a specified Member State.

5. The Bank may make its loans conditional on international invitations to tender being arranged.

6. The Bank shall not finance, in whole or in part, any investment opposed by the Member State in whose territory it is to be carried out.

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

ARTICLE 19

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

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission.

The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the investment in question.



3. The Board of Directors shall rule on financing operations submitted to it by the Management Committee.
4. The Management Committee shall examine whether financing operations submitted to it comply with the provisions of this Statute, in particular with Articles 16 and 18. Where the Management Committee is in favour of the financing operation, it shall submit the corresponding proposal to the Board of Directors. The Committee may make its favourable opinion subject to such conditions as it considers essential. Where the Management Committee is against granting the finance, it shall submit the relevant documents together with its opinion to the Board of Directors.
5. Where the Management Committee delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous.
6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous, the director nominated by the Commission abstaining.
7. Where both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the finance.
8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors.

#### ARTICLE 20

1. The Bank shall borrow on the capital markets the funds necessary for the performance of its tasks.
2. The Bank may borrow on the capital markets of the Member States in accordance with the legal provisions applying to those markets.

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

#### ARTICLE 21

1. The Bank may employ any available funds which it does not immediately require to meet its obligations in the following ways:

- (a) it may invest on the money markets;
  - (b) it may, subject to the provisions of Article 18(2), buy and sell securities;
  - (c) it may carry out any other financial operation linked with its objectives.
2. Without prejudice to the provisions of Article 23, the Bank shall not, in managing its investments, engage in any currency arbitrage not directly required to carry out its lending operations or fulfil commitments arising out of loans raised or guarantees granted by it.
3. The Bank shall, in the fields covered by this Article, act in agreement with the competent authorities or with the national central bank of the Member State concerned.

#### ARTICLE 22

1. A reserve fund of up to 10% of the subscribed capital shall be built up progressively. If the state of the liabilities of the Bank should so justify, the Board of Directors may decide to set aside additional reserves. Until such time as the reserve fund has been fully built up, it shall be fed by:
- (a) interest received on loans granted by the Bank out of sums to be paid up by the Member States pursuant to Article 5;
  - (b) interest received on loans granted by the Bank out of funds derived from repayment of the loans referred to in (a);
- to the extent that this income is not required to meet the obligations of the Bank or to cover its expenses.
2. The resources of the reserve fund shall be so invested as to be available at any time to meet the purpose of the fund.

#### ARTICLE 23

1. The Bank shall at all times be entitled to transfer its assets into the currency of a Member State whose currency is not the euro in order to carry out financial operations corresponding to the task set out in Article III-394 of the Constitution, taking into account the provisions of Article 21 of this Statute. The Bank shall, as far as possible, avoid making such transfers if it has cash or liquid assets in the currency required.
2. The Bank may not convert its assets in the currency of a Member State whose currency is not the euro into the currency of a third country without the agreement of the Member State concerned.

3. The Bank may freely dispose of that part of its capital which is paid up and of any currency borrowed on markets outside the Union.
4. The Member States undertake to make available to the debtors of the Bank the currency needed to repay the capital and pay the interest on loans or commission on guarantees granted by the Bank for investment to be carried out in their territory.

#### ARTICLE 24

If a Member State fails to meet the obligations of membership arising from this Statute, in particular the obligation to pay its share of the subscribed capital or to service its borrowings, the granting of loans or guarantees to that Member State or its nationals may be suspended by a decision of the Board of Governors, acting by a qualified majority.

Such decision shall not release either the Member State or its nationals from their obligations towards the Bank.

#### ARTICLE 25

1. If the Board of Governors decides to suspend the operations of the Bank, all its activities shall cease forthwith, except those required to ensure the due realisation, protection and preservation of its assets and the settlement of its liabilities.
2. In the event of liquidation, the Board of Governors shall appoint the liquidators and give them instructions for carrying out the liquidation. It shall ensure that the rights of the members of staff are safeguarded.

#### ARTICLE 26

1. In each of the Member States, the Bank shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.
2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

#### ARTICLE 27

1. Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.
2. The Bank shall have an address for service in each Member State. It

may, however, in any contract, specify a particular address for service.

3. The property and assets of the Bank shall not be liable to attachment or to seizure by way of execution except by decision of a court.

#### ARTICLE 28

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

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

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

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

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

5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, hear disputes concerning measures adopted by organs of a body incorporated under Union law. Proceedings against such measures may be instituted by any member of such a body in its capacity as such or by Member States under the conditions laid down in Article III-365 of the Constitution.

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

*Location of seats*

*The seats can only be changed by a new Constitution*

*European Parliament*

*The Council*

*The Commission*

*The Court*

*The Central Bank*

*The Court of Auditors*

*Committee of Regions*

*EcoSoc*

*Investment Bank*

**6. PROTOCOL**  
**ON THE LOCATION OF THE SEATS OF THE**  
**INSTITUTIONS AND OF CERTAIN BODIES,**  
**OFFICES, AGENCIES AND DEPARTMENTS**  
**OF THE EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to Article III-432 of the Constitution,

RECALLING AND CONFIRMING the Decision of 8 April 1965, and without prejudice to the decisions concerning the seat of future institutions, bodies, offices, agencies and departments,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

SOLE ARTICLE

1. The European Parliament shall have its seat in Strasbourg, where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.
2. The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.
3. The Commission shall have its seat in Brussels. The departments listed in Articles 7, 8 and 9 of the Decision of 8 April 1965 shall be established in Luxembourg.
4. The Court of Justice of the European Union shall have its seat in Luxembourg.
5. The European Central Bank shall have its seat in Frankfurt.
6. The Court of Auditors shall have its seat in Luxembourg.
7. The Committee of the Regions shall have its seat in Brussels.
8. The Economic and Social Committee shall have its seat in Brussels.
9. The European Investment Bank shall have its seat in Luxembourg.

*Europol*

10. Europol shall have its seat in The Hague.

*Privileges and immunities*

**7. PROTOCOL**  
**ON THE PRIVILEGES AND IMMUNITIES OF THE**  
**EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article III-434 of the Constitution, the Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

*CHAPTER I*

*PROPERTY, FUNDS, ASSETS AND OPERATIONS  
OF THE UNION*

ARTICLE 1

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

ARTICLE 2

The archives of the Union shall be inviolable.

ARTICLE 3

*No direct taxes*

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

*Indirect taxes are refunded*

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied,

however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

#### ARTICLE 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use. Articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the State into which they have been imported, except under conditions approved by the government of that State.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

#### CHAPTER II

#### COMMUNICATIONS AND LAISSEZ-PASSER

#### ARTICLE 5

*As diplomatic missions*

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

*No censorship*

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

#### ARTICLE 6

*Special pass*

1. Laissez-passer in a form to be prescribed by a European regulation of the Council acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third States.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

ARTICLE 7

*Immunities of MEP's*

No administrative or other restriction shall be imposed on the free movement of members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

- (a) by their own governments, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;
- (b) by the governments of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

ARTICLE 8

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

ARTICLE 9

During the sessions of the European Parliament, its members shall enjoy:

- (a) in the territory of their own State, the immunities accorded to members of their Parliament;
- (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES  
TAKING PART IN THE WORK OF THE  
INSTITUTIONS OF THE UNION



ARTICLE 10

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE UNION

ARTICLE 11

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

*Immunity of officials*

*Immunity*

*Free immigration*

*Free import of furniture*

*Free re-export*

*Duty-free cars*

- (a) subject to the provisions of the Constitution relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;
- (b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;
- (c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the State concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that State, subject in either case to the conditions considered to be necessary by the government of the State in which this right is exercised;
- (e) have the right to import free of duty a motor car for their personal use, acquired either in the State of their last residence or in the State of which they are nationals on the terms ruling in the home market in that State, and to re-export it free of duty, subject in either case to the

conditions considered to be necessary by the government of the State concerned.

ARTICLE 12

***EU tax***

Officials and other servants of the Union shall be liable to a tax, for the benefit of the Union, on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by a European law. That law shall be adopted after consultation of the institutions concerned.

***No national taxation***

Officials and other servants of the Union shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

ARTICLE 13

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their State of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the State of their actual residence and in the State of domicile for tax purposes, as having maintained their domicile in the latter State provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the first paragraph and situated in the territory of the State where they are staying shall be exempt from death duties in that State. Such property shall, for the assessment of such duty, be considered as being in the State of domicile for tax purposes, subject to the rights of third States and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

ARTICLE 14 (*ex Article 283 TEC*)

***X\*\*  
Social security by  
European law***

The scheme of social security benefits for officials and other servants of the Union shall be laid down by a European law. That law shall be adopted after consultation of the institutions concerned.

ARTICLE 15

The categories of officials and other servants of the Union to whom Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part, shall be determined by a European law. That law shall be adopted after consultation of the institutions concerned.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

## *CHAPTER VI*

### *PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD STATES ACCREDITED TO THE UNION*

#### *ARTICLE 16*

The Member State in whose territory the Union has its seat shall accord the customary diplomatic privileges and immunities to missions of third States accredited to the Union.

## *CHAPTER VII*

### *GENERAL PROVISIONS*

#### *ARTICLE 17*

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

#### *ARTICLE 18*

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

#### *ARTICLE 19*

Articles 11 to 14 and Article 17 shall apply to members of the Commission.

#### *ARTICLE 20*

Articles 11 to 14 and Article 17 shall apply to the Judges, the

Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union concerning immunity from legal proceedings of Judges and Advocates-General.

Articles 11 to 14 and Article 17 shall also apply to the members of the Court of Auditors.

#### ARTICLE 21

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the Protocol on the Statute of the European System of Central Banks and of the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

#### ARTICLE 22

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

*Accession of The UK,  
Denmark, Ireland,  
Greece, Spain, Portugal,  
Austria, Finland and  
Sweden*

**8. PROTOCOL**  
**ON THE TREATIES AND ACTS OF ACCESSION OF**  
**THE KINGDOM OF DENMARK, IRELAND AND THE**  
**UNITED KINGDOM OF GREAT BRITAIN AND**  
**NORTHERN IRELAND, OF THE HELLENIC**  
**REPUBLIC, OF THE KINGDOM OF SPAIN AND THE**  
**PORTUGUESE REPUBLIC, AND OF THE REPUBLIC**  
**OF AUSTRIA, THE REPUBLIC OF FINLAND**  
**AND THE KINGDOM OF SWEDEN**

THE HIGH CONTRACTING PARTIES,

RECALLING that the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland acceded to the European Communities on 1 January 1973; that the Hellenic Republic acceded to the European Communities on 1 January 1981; that the Kingdom of Spain and the Portuguese Republic acceded to the European Communities on 1 January 1986; that the Republic of Austria, the Republic of Finland and the Kingdom of Sweden acceded to the European Communities and to the European Union established by the Treaty on European Union on 1 January 1995;

CONSIDERING THAT Article IV-437(2) of the Constitution provides that the Treaties concerning the accessions referred to above shall be repealed;

*Certain articles from the  
enlargement treaties  
remain relevant*

CONSIDERING THAT certain provisions appearing in those Accession Treaties and in the Acts annexed thereto remain relevant; and that Article IV-437(2) of the Constitution provides that such provisions must be set out or referred to in a Protocol, so that they remain in force and that their legal effects are preserved;

WHEREAS the provisions in question require the technical adjustments necessary to bring them into line with the Constitution without altering their legal effect,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community:

**TITLE I**

**Common provisions**

**ARTICLE 1**

The rights and obligations resulting from the Accession Treaties referred

to in Article IV-437(2)(a) to (d) of the Constitution took effect, under the conditions laid down in those Treaties, on the following dates:

- (a) 1 January 1973, for the Treaty concerning the accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland;
- (b) 1 January 1981, for the Treaty concerning the accession of the Hellenic Republic;
- (c) 1 January 1986, for the Treaty concerning the accession of the Kingdom of Spain and the Portuguese Republic;
- (d) 1 January 1995, for the Treaty concerning the accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

## ARTICLE 2

*New Member States shall accede to agreements the EU has made earlier*

1. The acceding States referred to in Article 1 shall be required to accede to the following agreements or conventions concluded before their respective accessions, insofar as such agreements or conventions are still in force:

- (a) agreements or conventions concluded between the other Member States which are based on the Treaty establishing the European Community, the Treaty establishing the European Atomic Energy Community or the Treaty on European Union, or which are inseparable from the attainment of the objectives of those Treaties, or which relate to the functioning of the Communities or of the Union or which are connected with the activities thereof;
- (b) agreements or conventions concluded by the other Member States, acting jointly with the European Communities, with one or more third States or with an international organisation, and the agreements which are related to those agreements or conventions. The Union and the other Member States shall assist the acceding States referred to in Article 1 in this respect.

2. The acceding States referred to in Article 1 shall take appropriate measures, where necessary, to adjust their position in relation to international organisations, and in relation to those international agreements to which the Union or the European Atomic Energy Community or other Member States are also parties, to the rights and obligations arising from their accession.

## ARTICLE 3

Provisions of the Acts of Accession, as interpreted by the Court of Justice

of the European Communities and the Court of First Instance, the purpose or effect of which is to repeal or amend, otherwise than as a transitional measure, acts adopted by the institutions, bodies, offices or agencies of the European Communities or of the European Union established by the Treaty on European Union shall remain in force subject to the second paragraph.

The provisions referred to in the first paragraph shall have the same status in law as the acts which they repeal or amend and shall be subject to the same rules as those acts.

#### ARTICLE 4

The texts of the acts of the institutions, bodies, offices and agencies of the European Communities or of the European Union established by the Treaty on European Union which were adopted before the accessions referred to in Article 1 and which were subsequently drawn up successively in the English and Danish languages, in the Greek language, in the Spanish and Portuguese languages, and in the Finnish and Swedish languages, shall be authentic from the date of the respective accessions referred to in Article 1, under the same conditions as the texts drawn up and authentic in the other languages.

#### ARTICLE 5

A European law of the Council may repeal the transitional provisions set out in this Protocol, when they are no longer applicable. The Council shall act unanimously after consulting the European Parliament.

### U

*Transitional provisions  
may be repealed  
unanimously*

### TITLE II

#### PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE KINGDOM OF DENMARK, IRELAND AND THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

##### Section 1 Provisions on Gibraltar

### *Gibraltar*

#### ARTICLE 6

1. Acts of the institutions relating to the products in Annex I to the Constitution and the products subject, on importation into the Union, to specific rules as a result of the implementation of the common agricultural policy, as well as the acts on the harmonisation of legislation of Member States concerning turnover taxes, shall not apply to Gibraltar unless the Council adopts a European decision which provides otherwise. The

Council shall act unanimously on a proposal from the Commission.

2. The situation of Gibraltar defined in point VI of Annex II <sup>1</sup> to the Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland shall be maintained.

<sup>1</sup> OJ L 73, 27.3.1972, p. 47.

*Faeroe Islands*

**Section 2  
Provisions on the Faeroe Islands**

ARTICLE 7

*Danish nationals in the  
Faeroe Islands not EU  
citizens*

Danish nationals resident in the Faeroe Islands shall be considered to be nationals of a Member State within the meaning of the Constitution only from the date on which the Constitution becomes applicable to those islands.

*Channel Islands  
and Isle of Man*

**Section 3  
Provisions on the Channel Islands and the Isle of Man**

ARTICLE 8

1. The Union rules on customs matters and quantitative restrictions, in particular customs duties, charges having equivalent effect and the Common Customs Tariff, shall apply to the Channel Islands and the Isle of Man under the same conditions as they apply to the United Kingdom.

2. In respect of agricultural products and products processed therefrom which are the subject of a special trade regime, the levies and other import measures laid down in Union rules and applicable by the United Kingdom shall be applied to third countries.

Such provisions of Union rules as are necessary to allow free movement and observance of normal conditions of competition in trade in these products shall also be applicable.

The Council, on a proposal from the Commission, shall adopt the European regulations or decisions establishing the conditions under which the provisions referred to in the first and second subparagraphs shall be applicable to these territories.

ARTICLE 9

The rights enjoyed by Channel Islanders or Manxmen in the United Kingdom shall not be affected by Union law. However, such persons shall not benefit from provisions of Union law relating to the free movement of persons and services.



ARTICLE 10

The provisions of the Treaty establishing the European Atomic Energy Community applicable to persons or undertakings within the meaning of Article 196 of that Treaty shall apply to those persons or undertakings when they are established in the territories referred to in Article 8 of this Protocol.

ARTICLE 11

The authorities of the territories referred to in Article 8 shall apply the same treatment to all natural and legal persons of the Union.

ARTICLE 12

If, during the application of the arrangements defined in this Section, difficulties appear on either side in relations between the Union and the territories referred to in Article 8, the Commission shall without delay propose to the Council such safeguard measures as it believes necessary, specifying their terms and conditions of application.

The Council shall adopt the appropriate European regulations or decisions within one month.

ARTICLE 13

In this Section, Channel Islander or Manxman shall mean any British citizen who holds that citizenship by virtue of the fact that he, a parent or grandparent was born, adopted, naturalised or registered in the island in question; but such a person shall not for this purpose be regarded as a Channel Islander or Manxman if he, a parent or a grandparent was born, adopted, naturalised or registered in the United Kingdom. Nor shall he be so regarded if he has at any time been ordinarily resident in the United Kingdom for five years.

The administrative arrangements necessary to identify these persons will be notified to the Commission.

**Section 4**

**Provisions on the implementation of the policy of industrialisation and economic development in Ireland**

ARTICLE 14

The Member States take note of the fact that the Government of Ireland has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standards of living in Ireland with those of the other Member States and to eliminate under-employment

*Ireland*

while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be so attained and agree to recommend to this end that the institutions implement all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles III-167 and III-168 of the Constitution, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

*Denmark*  
*Nuclear energy*

**Section 5**  
**Provisions on the exchange of information with Denmark**  
**in the field of nuclear energy**

ARTICLE 15

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of Denmark, which shall give it limited distribution within its territory under the conditions laid down in that Article.
2. From 1 January 1973, Denmark shall place at the disposal of the European Atomic Energy Community an equivalent volume of information in the sectors specified in paragraph 3. This information shall be set forth in detail in a document transmitted to the Commission. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.
3. The sectors in which Denmark shall make information available to the European Atomic Energy Community are as follows:
  - (a) DOR heavy water moderated organic cooled reactor;
  - (b) DT-350, DK-400 heavy water pressure vessel reactors;
  - (c) high temperature gas loop;
  - (d) instrumentation systems and special electronic equipment;
  - (e) reliability;
  - (f) reactor physics, reactor dynamics and heat exchange;

Risö

(g) in-pile testing of materials and equipment.

4. Denmark shall undertake to supply the European Atomic Energy Community with any information complementary to the reports which it shall communicate, in particular during visits by European Atomic Energy Community personnel or personnel from the Member States to the Risö Centre, under conditions to be determined by mutual agreement in each case.

#### ARTICLE 16

1. In those sectors in which Denmark places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, Denmark shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

Ireland  
Nuclear energy

#### **Section 6** **Provisions on the exchange of information with Ireland in the field of nuclear energy**

#### ARTICLE 17

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of Ireland, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1973, Ireland shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Ireland, which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern

studies for the development of a power reactor and work on radioisotopes and their application in medicine, including the problems of radiation protection.

#### ARTICLE 18

1. In those sectors in which Ireland places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, Ireland shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

#### Section 7

#### **Provisions on the exchange of information with the United Kingdom in the field of nuclear energy**

#### ARTICLE 19

1. From 1 January 1973, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the United Kingdom, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1973, the United Kingdom shall place at the disposal of the European Atomic Energy Community an equivalent volume of information in the sectors set out in the list contained in the Annex <sup>2</sup> to Protocol No 28 to the Act concerning the conditions of accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland. This information shall be set forth in detail in a document transmitted to the Commission. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

<sup>2</sup> OJ L 73, 27.3.1972, p. 84.

**UK**  
*Nuclear energy*

3. In view of the European Atomic Energy Community's greater interest in certain sectors, the United Kingdom shall lay special emphasis on the transmission of information in the following sectors:

- (a) fast reactor research and development (including safety);
- (b) fundamental research (applicable to reactor types);
- (c) reactor safety (other than fast reactors);
- (d) metallurgy, steel, zirconium alloys and concrete;
- (e) compatibility of structural materials;
- (f) experimental fuel fabrication;
- (g) thermohydrodynamics;
- (h) instrumentation.

#### ARTICLE 20

1. In those fields in which the United Kingdom places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in the Member States of the Community and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the United Kingdom shall encourage and facilitate the granting of sublicences on commercial terms to the Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

#### TITLE III

### PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE HELLENIC REPUBLIC

#### Section 1

**Provisions on the granting by Greece of exemption  
from customs duties on the import of certain goods**

*Exemptions for Greece*

ARTICLE 21

*Exemption of customs duties*

Article III-151 of the Constitution shall not prevent the Hellenic Republic from maintaining measures of exemption granted before 1 January 1979 pursuant to:

- (a) Law No 4171/61 (General measures to aid development of the country's economy),
- (b) Decree Law No 2687/53 (Investment and protection of foreign capital),
- (c) Law No 289/76 (Incentives with a view to promoting the development of frontier regions and governing all pertinent questions),

until the expiry of the agreements concluded by the Hellenic Government with those persons benefiting from these measures.

**Section 2  
Provisions on taxation**

*Taxation*

ARTICLE 22

The acts listed in point II.2 of Annex VIII<sup>3</sup> to the Act concerning the conditions of accession of the Hellenic Republic shall apply in respect of the Hellenic Republic under the conditions laid down in that Annex, with the exception of the references to points 9 and 18(b) thereof.

<sup>3</sup> OJ L 291, 19.11.1979, p. 163.

**Section 3  
Provisions on cotton**

*Provisions on Cotton*

ARTICLE 23

1. This Section concerns cotton, not carded or combed, falling within subheading No 520 100 of the Combined Nomenclature.
2. A system shall be introduced in the Union particularly to:
  - (a) support the production of cotton in regions of the Union where it is important for the agricultural economy,
  - (b) permit the producers concerned to earn a fair income,
  - (c) stabilise the market by structural improvements at the level of supply and marketing.

3. The system referred to in paragraph 2 shall include the grant of an aid to production.

4. In order to allow cotton producers to concentrate supply and to adapt production to market requirements, a system shall be introduced to encourage the formation of producer groups and federations of such groups.

This system shall provide for the grant of aids with a view to providing incentives for the formation and facilitating the functioning of producer groups.

The only groups that may benefit from this system must:

- (a) be formed on the initiative of the producers themselves,
- (b) offer a sufficient guarantee for the duration and effectiveness of their action,
- (c) be recognised by the Member State concerned.

5. The Union trading system with third countries shall not be affected. In this respect, in particular, no measure restricting imports may be laid down.

6. A European law of the Council shall establish the adjustments necessary to the system introduced pursuant to this Section.

The Council, on a proposal from the Commission, shall adopt the European regulations and decisions establishing the general rules necessary for implementing the provisions of this Section.

The Council shall act after consulting the European Parliament.

#### **Section 4 Provisions on the economic and industrial development of Greece**

##### ARTICLE 24

The Member States take note of the fact that the Hellenic Government has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standards of living in Greece with those of the other Member States and to eliminate underemployment while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be so attained. To this end, the institutions shall implement all the

means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

In particular, in the application of Articles III-167 and III-168 of the Constitution, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

*Nuclear energy*

### **Section 5**

#### **Provisions on the exchange of information with Greece in the field of nuclear energy**

#### **ARTICLE 25**

1. From 1 January 1981, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Hellenic Republic, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1981, the Hellenic Republic shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Greece which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern:

- (a) studies on the application of radioisotopes in the following fields: medicine, agriculture, entomology and environmental protection,
- (b) the application of nuclear technology to archeometry,
- (c) the development of electronic medical apparatus,
- (d) the development of methods of radioactive ore prospecting.

#### **ARTICLE 26**

1. In those sectors in which the Hellenic Republic places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States of the



Community and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Hellenic Republic shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the European Atomic Energy Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

#### **TITLE IV**

### **PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC**

#### **Section 1 Financial provisions**

##### **ARTICLE 27**

The own resources accruing from value added tax shall be calculated and checked as if the Canary Islands and Ceuta and Melilla were included in the territorial field of application of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

#### **Section 2 Provisions on patents**

##### **ARTICLE 28**

The provisions of Spanish national law relating to the burden of proof, which were adopted under paragraph 2 of Protocol No 8 to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic, shall not apply if the infringement proceedings are brought against the holder of another process patent for the manufacture of a product identical to that obtained as the result of the patented process of the plaintiff, if that other patent was issued before 1 January 1986.

In cases where shifting the burden of proof does not apply, the Kingdom of Spain shall continue to require the patent holder to adduce proof of infringement. In all these cases the Kingdom of Spain shall apply a judicial procedure known as "distrainment-description".

*Spain and Portugal*

*Canary Islands and  
Ceuta & Melilla*

*Patents*

"Distrain-description" means a procedure forming part of the system referred to in the first and second paragraphs by which any person entitled to bring an action for infringement may, after obtaining a court order, granted on his application, cause a detailed description to be made, at the premises of the alleged infringer, by a bailiff assisted by experts, of the processes in question, in particular by photocopying technical documents, with or without actual distraint. This court order may order the payment of a security, intended to grant damages to the alleged infringer in case of injury caused by the "distrain-description".

#### ARTICLE 29

The provisions of Portuguese national law relating to the burden of proof, which were adopted under paragraph 2 of Protocol No 19 to the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic, shall not apply if the infringement proceedings are brought against the holder of another process patent for the manufacture of a product identical to that obtained as the result of the patented process of the plaintiff, if that other patent was issued before 1 January 1986.

In cases where shifting the burden of proof does not apply, the Portuguese Republic shall continue to require the patent holder to adduce proof of infringement. In all these cases, the Portuguese Republic shall apply a judicial procedure known as "distrain-description".

"Distrain-description" means a procedure forming part of the system referred to in the first and second paragraphs by which any person entitled to bring an action for infringement may, after obtaining a court order, granted on his application, cause a detailed description to be made, at the premises of the alleged infringer, by a bailiff assisted by experts, of the processes in question, in particular by photocopying technical documents, with or without actual distraint. This court order may order the payment of a security, intended to grant damages to the alleged infringer in case of injury caused by the "distrain-description".

#### Section 3

#### **Provisions on the mechanism for additional responsibilities within the framework of fisheries agreements concluded by the Union with third countries**

#### ARTICLE 30

1. A specific system is hereby established for the execution of operations carried out as a complement to fishing activities undertaken by vessels flying the flag of a Member State in waters falling under the sovereignty or within the jurisdiction of a third country within the framework of responsibilities created under fisheries agreements concluded by the Union with the third countries in question.

*Fisheries*

2. Operations considered likely to occur by way of addition to fishing activities subject to the conditions and within the limits referred to in paragraphs 3 and 4 relate to:

- (a) the processing, in the territory of the third country concerned, of fishery products caught by vessels flying the flag of a Member State in the waters of that third country in the course of fishing activities carried out by virtue of a fisheries agreement, with a view to those products being put on the Union market under tariff headings falling within Chapter 3 of the Common Customs Tariff,
- (b) the loading or transhipment aboard a vessel flying the flag of a Member State occurring within the framework of activities provided for under such a fisheries agreement, of fishery products falling within Chapter 3 of the Common Customs Tariff with a view to their transport and any processing for the purpose of being put on the Union market.

3. The import into the Union of products having been the subject of the operations referred to in paragraph 2 shall be carried out subject to suspension, in part or in whole, of the Common Customs Tariff duties or subject to a special system of charges, under the conditions and within the limits of additionality fixed annually in relation to the volume of fishing possibilities deriving from the agreements in question and from their accompanying detailed rules.

4. European laws or framework laws shall lay down the general rules of application of this system and in particular the criteria for fixing and apportioning the quantities concerned.

The detailed implementing rules of this system and the quantities concerned shall be adopted in accordance with the procedure laid down in Article 37 of Regulation (EC) No 104/2000.

*Ceuta and Melilla*

**Section 4  
Provisions on Ceuta and Melilla**

**Subsection 1  
General provisions**

**ARTICLE 31**

1. The Constitution and the acts of the institutions shall apply to Ceuta and to Melilla, subject to the derogations referred to in paragraphs 2 and 3 and to the other provisions of this Section.

2. The conditions under which the provisions of the Constitution concerning the free movement of goods, and the acts of the institutions

concerning customs legislation and commercial policy, shall apply to Ceuta and to Melilla are set out in Subsection 3 of this Section.

3. Without prejudice to the specific provisions of Article 32, the acts of the institutions concerning the common agricultural policy and the common fisheries policy shall not apply to Ceuta or to Melilla.

4. At the request of the Kingdom of Spain, a European law or framework law of the Council may:

- (a) include Ceuta and Melilla in the customs territory of the Union;
- (b) define the appropriate measures aimed at extending to Ceuta and to Melilla the provisions of Union law in force.

On a proposal from the Commission acting on its own initiative or at the request of a Member State, the Council may adopt a European law or framework law adjusting the arrangements applicable to Ceuta and to Melilla if necessary.

The Council shall act unanimously after consulting the European Parliament.

*Fisheries*

## **Subsection 2 Provisions relating to the Common Fisheries Policy**

### ARTICLE 32

1. Subject to paragraph 2 and without prejudice to Subsection 3, the common fisheries policy shall not apply to Ceuta or to Melilla.

2. The Council, on a proposal from the Commission, shall adopt the European laws, framework laws, regulations or decisions which:

- (a) determine the structural measures which may be adopted in favour of Ceuta and Melilla;
- (b) determine the procedures appropriate to take into consideration all or part of the interests of Ceuta and Melilla when it adopts acts, case by case, with a view to the negotiations by the Union aimed at the resumption or conclusion of fisheries agreements with third countries and to the specific interests of Ceuta and Melilla within international conventions concerning fisheries, to which the Union is a contracting party.

3. The Council, on a proposal from the Commission, shall adopt the European laws, framework laws, regulations or decisions which determine, where appropriate, the possibilities and conditions of mutual access to respective fishing zones and to the resources thereof. It shall act

unanimously.

4. The European laws and framework laws referred to in paragraphs 2 and 3 shall be adopted after consultation of the European Parliament.

*Free movement of goods*

**Subsection 3**  
**Provisions on free movement of goods,  
customs legislation and commercial policy**

ARTICLE 33

1. Products originating in Ceuta or in Melilla and products coming from third countries imported into Ceuta or into Melilla under the arrangements which are applicable there to them shall not be deemed, when released for free circulation in the customs territory of the Union, to be goods fulfilling the conditions of paragraphs 1 to 3 of Article III-151 of the Constitution.

2. The customs territory of the Union shall not include Ceuta and Melilla.

3. Except where otherwise provided for in this Subsection, the acts of the institutions regarding customs legislation for foreign trade shall apply under the same conditions to trade between the customs territory of the Union, on the one hand, and Ceuta and Melilla, on the other.

4. Except where otherwise provided for in this Subsection, the acts of the institutions regarding the common commercial policy, be they autonomous or enacted by agreement, directly linked to the import or export of goods, shall not be applicable to Ceuta or to Melilla.

5. Except where otherwise provided for in this Title, the Union shall apply in its trade with Ceuta and Melilla, for products falling within Annex I to the Constitution, the general arrangements which it applies in its foreign trade.

ARTICLE 34

*Free import*

1. Subject to Article 35, customs duties on the import into the customs territory of the Union of products originating in Ceuta or in Melilla shall be abolished.

ARTICLE 35

1. Fishery products falling within heading Nos 03.01, 03.02, 03.03, 16.04, 16.05 and subheadings 05.11.91 and 23.01.20 of the Common Customs Tariff and originating in Ceuta or in Melilla, shall, within the limit of tariff quotas calculated by product and on the average quantities actually disposed of during 1982, 1983 and 1984, qualify for exemption from customs duties throughout the customs territory of the Union.

The release for free circulation of products imported into the customs territory of the Union, under these tariff quotas, shall be subject to compliance with the rules laid down by the common organisation of markets and in particular with respect to reference prices.

2. The Council, on a proposal from the Commission, shall each year adopt European regulations or decisions opening and allocating tariff quotas in accordance with the detailed rules laid down in paragraph 1.

#### ARTICLE 36

1. Where application of Article 34 could lead to a substantial increase in the import of certain products originating in Ceuta or in Melilla such as might prejudice Union producers, the Council, on a proposal from the Commission, may adopt European regulations or decisions to subject the access of these products to the customs territory of the Union to special conditions.

2. Where, because the common commercial policy and the Common Customs Tariff are not applied to the import of raw materials or intermediate products into Ceuta or into Melilla, imports of a product originating in Ceuta or in Melilla cause, or may cause, serious injury to a producer activity exercised in one or more Member States, the Commission, at the request of a Member State or on its own initiative, may take the appropriate measures.

#### ARTICLE 37

The customs duties on import into Ceuta and into Melilla of products originating in the customs territory of the Union, and charges having equivalent effect, shall be abolished.

#### ARTICLE 38

The customs duties and charges having an effect equivalent to such duties and the trade arrangements applied on the import into Ceuta and into Melilla of goods coming from a third country may not be less favourable than those applicable by the Union in accordance with its international commitments or its preferential arrangements with regard to such third country, providing that the same third country grants, to imports from Ceuta and from Melilla, the same treatment as that which it grants to the Union. However, the arrangements applied to imports into Ceuta and into Melilla with regard to goods coming from such third country may not be more favourable than those applied with regard to the imports of products originating in the customs territory of the Union.

#### ARTICLE 39

The Council, on a proposal from the Commission, shall adopt European

regulations or decisions laying down the rules for the application of this Subsection and in particular the rules of origin applicable to trade, as referred to in Articles 34, 35 and 37, including the provisions concerning the identification of originating products and the control of origin.

The rules will include, in particular, provisions on marking and/or labelling of products, on the conditions of registration of vessels, on the application of the rule on mixed origin for fishery products, and also provisions enabling the origin of products to be determined.

***Regional development  
of Spain***

**Section 5  
Provisions on the regional development of Spain**

ARTICLE 40

The Member States take note of the fact that the Spanish Government has embarked upon the implementation of a policy of regional development designed in particular to stimulate economic growth in the less-developed regions and areas of Spain.

They recognise it to be in their common interest that the objectives of this policy be attained.

They agree, in order to help the Spanish Government to accomplish this task, to recommend that the institutions use all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles III-167 and III-168 of the Constitution, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population of the less-developed regions and areas of Spain.

***Regional development  
of Portugal***

**Section 6  
Provisions on the economic and industrial development of Portugal**

ARTICLE 41

The Member States take note of the fact that the Portuguese Government has embarked upon the implementation of a policy of industrialisation and economic development designed to align the standard of living in Portugal with that of the other Member States and to eliminate underemployment while progressively evening out regional differences in levels of development.

They recognise it to be in their common interest that the objectives of this policy be attained.

They agree to recommend to this end that the institutions use all the means and procedures laid down by the Constitution, particularly by making adequate use of the Union resources intended for the realisation of its objectives.

The Member States recognise in particular that, in the application of Articles III-167 and III-168 of the Constitution, it will be necessary to take into account the objectives of economic expansion and the raising of the standard of living of the population.

*Spain*  
*Nuclear energy*

**Section 7**  
**Provisions on the exchange of information with the Kingdom of Spain  
in the field of nuclear energy**

ARTICLE 42

1. From 1 January 1986, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Kingdom of Spain, which shall give it limited distribution within its territory under the conditions laid down in that Article.
2. From 1 January 1986, the Kingdom of Spain shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Spain which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.
3. The information referred to in paragraphs 1 and 2 shall mainly concern:
  - (a) nuclear physics (low and high-energy);
  - (b) radiation protection;
  - (c) isotope applications, in particular those of stable isotopes;
  - (d) research reactors and relevant fuels;
  - (e) research into the field of the fuel cycle (more especially the mining and processing of low-grade uranium ore; optimisation of fuel elements for power reactors).

ARTICLE 43

1. In those sectors in which the Kingdom of Spain places information at the disposal of the European Atomic Energy Community, the competent



authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Kingdom of Spain shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

*Portugal*  
*Nuclear energy*

**Section 8**  
**Provisions on the exchange of information with the**  
**Portuguese Republic in the field of nuclear energy**

ARTICLE 44

1. From 1 January 1986, such information as has been communicated to Member States, persons and undertakings, in accordance with Article 13 of the Treaty establishing the European Atomic Energy Community, shall be placed at the disposal of the Portuguese Republic, which shall give it limited distribution within its territory under the conditions laid down in that Article.

2. From 1 January 1986, the Portuguese Republic shall place at the disposal of the European Atomic Energy Community information obtained in the nuclear field in Portugal which is given limited distribution, insofar as strictly commercial applications are not involved. The Commission shall communicate this information to Community undertakings under the conditions laid down in Article 13 of the Treaty establishing the European Atomic Energy Community.

3. The information referred to in paragraphs 1 and 2 shall mainly concern:

- (a) reactor dynamics;
- (b) radiation protection;
- (c) application of nuclear measuring techniques (in the industrial, agricultural, archaeological and geological fields);
- (d) atomic physics (effective measuring of cross sections, pipeline techniques);

(e) extractive metallurgy of uranium.

#### ARTICLE 45

1. In those sectors in which the Portuguese Republic places information at the disposal of the European Atomic Energy Community, the competent authorities shall grant upon request licences on commercial terms to Member States, persons and undertakings of the Community where they possess exclusive rights to patents filed in Member States and insofar as they have no obligation or commitment in respect of third parties to grant or offer to grant an exclusive or partially exclusive licence to the rights in these patents.

2. Where an exclusive or partially exclusive licence has been granted, the Portuguese Republic shall encourage and facilitate the granting of sublicences on commercial terms to Member States, persons and undertakings of the Community by the holders of such licences.

Such exclusive or partially exclusive licences shall be granted on a normal commercial basis.

#### TITLE V

### PROVISIONS TAKEN FROM THE ACT CONCERNING THE CONDITIONS OF ACCESSION OF THE REPUBLIC OF AUSTRIA, THE REPUBLIC OF FINLAND AND THE KINGDOM OF SWEDEN

#### Section 1 Financial provisions

#### ARTICLE 46

Own resources accruing from value added tax shall be calculated and checked as though the Åland Islands were included in the territorial scope of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment.

#### Section 2 Provisions on agriculture

#### ARTICLE 47

Where there are serious difficulties resulting from accession which remain after full utilisation of Article 48 and of the other measures resulting from the rules existing in the Union, the Commission may adopt a European decision authorising Finland to grant national aids to producers so as to

*Austria, Finland and  
Sweden*

*Åland Islands*

*Finnish agricultural aid*

facilitate their full integration into the common agricultural policy.

#### ARTICLE 48

#### *Northern derogation*

1. The Commission shall adopt European decisions authorising Finland and Sweden to grant long-term national aids with a view to ensuring that agricultural activity is maintained in specific regions. These regions should cover the agricultural areas situated to the north of the 62nd Parallel and some adjacent areas south of that parallel affected by comparable climatic conditions rendering agricultural activity particularly difficult.

2. The regions referred to in paragraph 1 shall be determined by the Commission, taking into consideration in particular:

- (a) the low population density;
- (b) the portion of agricultural land in the overall surface area;
- (c) the portion of agricultural land devoted to arable crops intended for human consumption, in the agricultural surface area used.

3. The national aids provided for in paragraph 1 may be related to physical factors of production, such as hectares of agricultural land or heads of animal taking account of the relevant limits laid down in the common organisations of the market, as well as the historical production patterns of each farm, but must not:

- (a) be linked to future production;
- (b) or lead to an increase in production or in the level of overall support recorded during a reference period preceding 1 January 1995, to be determined by the Commission.

These aids may be differentiated by region.

These aids must be granted in particular in order to:

- (a) maintain traditional primary production and processing naturally suited to the climatic conditions of the regions concerned;
- (b) improve the structures for the production, marketing and processing of agricultural products;
- (c) facilitate the disposal of the said products;
- (d) ensure that the environment is protected and the countryside preserved.

ARTICLE 49

1. The aids provided for in Articles 47 and 48 and any other national aid subject to Commission authorisation under this Title shall be notified to the Commission. They may not be applied until such authorisation has been given.

2. As regards the aids provided for in Article 48, the Commission shall submit to the Council every five years as from 1 January 1996 a report on:

- (a) the authorisations granted;
- (b) the results of the aid granted under such authorisations.

In preparation for drawing up such reports, Member States in receipt of such authorisations shall supply the Commission in good time with information on the effects of the aids granted, illustrating the development noted in the agricultural economy of the regions in question.

ARTICLE 50

In the field of the aids provided for in Articles III-167 and III-168 of the Constitution:

- (a) among the aids applied in Austria, Finland and Sweden prior to 1 January 1995, only those notified to the Commission by 30 April 1995 will be deemed to be existing aids within the meaning of Article III-168(1) of the Constitution;
- (b) existing aids and plans intended to grant or alter aids which were notified to the Commission prior to 1 January 1995 shall be deemed to have been notified on that date.

ARTICLE 51

1. Unless otherwise stipulated in specific cases, the Council, on a proposal from the Commission, shall adopt the necessary European regulations or decisions to implement this Section.

2. A European law of the Council may make the adaptations to the provisions appearing in this Section which may prove necessary as a result of a modification in Union law. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 52

1. If transitional measures are necessary to facilitate the transition from the existing regime in Austria, Finland and Sweden to that resulting from application of the common organisation of the markets under the

conditions set out in the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, such measures shall be adopted in accordance with the procedure laid down in Article 38 of Regulation No 136/66/EEC or, as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets. These measures may be taken during a period expiring on 31 December 1997 and their application shall be limited to that date.

2. A European law of the Council may extend the period referred to in paragraph 1. The Council shall act unanimously after consulting the European Parliament.

#### ARTICLE 53

*Fisheries*

Articles 51 and 52 shall be applicable to fishery products.

*Transitional measures*

### **Section 3 Provisions on transitional measures**

#### ARTICLE 54

The Acts listed in points VII.B.I, VII.D.1, VII.D.2.c, IX.2.b, c, f, g, h, i, j, l, m, n, x, y, z and aa, and X.a, b and c of Annex XV<sup>4</sup> to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall apply in respect of Austria, Finland and Sweden under the conditions laid down in that Annex.

<sup>5</sup> OJ C 241, 29.8.1994, p. 322.

With regard to point IX.2.x of Annex XV referred to in the first paragraph, the reference to the provisions of the Treaty establishing the European Community, in particular to Articles 90 and 91 thereof, must be understood as referring to the provisions of the Constitution, in particular to Article III-170(1) and (2) thereof.

### **Section 4 Provisions on the applicability of certain acts**

#### ARTICLE 55

1. Any individual exemption decisions taken and negative clearance decisions taken before 1 January 1995 under Article 53 of the Agreement on the European Economic Area (EEA) or Article 1 of Protocol 25 to that Agreement, whether by the Surveillance Authority of the European Free Trade Association (EFTA) or the Commission, and which concern cases which fall under Article 81 of the Treaty establishing the European Community as a result of accession shall remain valid for the purposes of

Article III-161 of the Constitution until the time limit specified therein expires or until the Commission adopts a duly motivated European decision to the contrary, in accordance with Union law.

*EFTA rulings valid...*

2. All decisions taken by the EFTA Surveillance Authority before 1 January 1995 pursuant to Article 61 of the EEA Agreement and which fall under Article 87 of the Treaty establishing the European Community as a result of accession shall remain valid with respect to Article III-167 of the Constitution unless the Commission adopts a European decision to the contrary pursuant to Article III-168 of the Constitution. This paragraph shall not apply to decisions subject to the proceedings provided for in Article 64 of the EEA Agreement.

*...unless Commission decides otherwise*

3. Without prejudice to paragraphs 1 and 2, the decisions taken by the EFTA Surveillance Authority remain valid after 1 January 1995 unless the Commission takes a duly motivated decision to the contrary in accordance with Union law.

## Section 5

### Provisions on the Åland Islands

#### ARTICLE 56

*Derogations for Åland islands*

The provisions of the Constitution shall not preclude the application of the existing provisions in force on 1 January 1994 on the Åland islands on:

*Regional citizenship*

(a) restrictions, on a non-discriminatory basis, on the right of natural persons who do not enjoy hembygdsrätt/kotiseutuokeus (regional citizenship) in Åland, and for legal persons, to acquire and hold real property on the Åland islands without permission by the competent authorities of the Åland islands;

*Property*

*Right of establishment*

(b) restrictions, on a non-discriminatory basis, on the right of establishment and the right to provide services by natural persons who do not enjoy hembygdsrätt/kotiseutuokeus (regional citizenship) in Åland, or by legal persons without permission by the competent authorities of the Åland islands.

#### ARTICLE 57

*Indirect taxation*

1. The territory of the Åland Islands – being considered as a third territory, as defined in the third indent of Article 3(1) of Council Directive 77/388/EEC, and as a national territory falling outside the field of application of the excise harmonisation directives as defined in Article 2 of Council Directive 92/12/EEC – shall be excluded from the territorial application of Union law in the fields of harmonisation of the laws of the Member States on turnover taxes and on excise duties and other forms of indirect taxation.

*Derogations may be altered by the Council after proposals from the Commission*

This paragraph shall not apply to the provisions of Council Directive 69/335/EEC relating to capital duty.

2. The derogation provided for in paragraph 1 is aimed at maintaining a viable local economy in the islands and shall not have any negative effects on the interests of the Union nor on its common policies. If the Commission considers that the provisions in paragraph 1 are no longer justified, particularly in terms of fair competition or own resources, it shall submit appropriate proposals to the Council, which shall adopt the necessary acts in accordance with the pertinent articles of the Constitution.

#### ARTICLE 58

The Republic of Finland shall ensure that the same treatment applies to all natural and legal persons of the Member States in the Åland islands.

#### ARTICLE 59

The provisions of this Section shall apply in the light of the Declaration on the Åland Islands, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

*Sami people*

### **Section 6 Provisions on the Sami people**

#### ARTICLE 60

*Reindeer*

Notwithstanding the provisions of the Constitution, exclusive rights to reindeer husbandry within traditional Sami areas may be granted to the Sami people.

#### ARTICLE 61

*U\**

*Exclusive rights*

This Section may be extended to take account of any further development of exclusive Sami rights linked to their traditional means of livelihood. A European law of the Council may make the necessary amendments to this Section. The Council shall act unanimously after consulting the European Parliament and the Committee of the Regions.

#### ARTICLE 62

The provisions of this Section shall apply in the light of the Declaration on the Sami people, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 3 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

*Structural funds in  
Finland and Sweden*

**Section 7  
Special provisions in the framework of the Structural Funds in  
Finland and Sweden**

ARTICLE 63

Areas covered by the objective of promoting the development and structural adjustment of regions with an extremely low population density shall in principle represent or belong to regions at NUTS level II with a population density of 8 persons per km<sup>2</sup> or less. Union assistance may, subject to the requirement of concentration, also extend to adjacent and contiguous smaller areas fulfilling the same population density criterion. The regions and areas referred to in this Article, are listed in Annex 1<sup>5</sup> to Protocol No 6 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

<sup>5</sup> OJ C 241, 29.8.1994, p. 355.

*Austria  
Transport*

**Section 8  
Provisions on rail and combined transport in Austria**

ARTICLE 64

1. For the purposes of this Section, the following definitions shall apply:

- (a) "heavy goods vehicle" shall mean any motor vehicle with a maximum authorised weight of over 7,5 tonnes registered in a Member State designed to carry goods or haul trailers, including semi-trailer tractor units, and trailers with a maximum authorised weight of over 7,5 tonnes and hauled by a motor vehicle registered in a Member State with a maximum authorised weight of 7,5 tonnes or less;
- (b) "combined transport" shall mean the carriage of goods by heavy goods vehicles or loading units which complete part of their journey by rail and either begin or end the journey by road, whereby transit traffic may under no circumstances cross Austrian territory on its way to or from a rail terminal by road alone.

2. Articles 65 to 71 shall apply to measures relating to the provision of rail and combined transport crossing the territory of Austria.

ARTICLE 65

The Union and the Member States concerned shall, within the framework of their respective competences, adopt and closely coordinate measures for the development and promotion of rail and combined transport for the trans-Alpine carriage of goods.



ARTICLE 66

When establishing the guidelines provided for in Article III-247 of the Constitution, the Union shall ensure that the axes defined in Annex 1<sup>7</sup> to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden form part of the trans-European networks for rail and combined transport and are furthermore identified as projects of common interest.

<sup>7</sup> OJ C 241, 29.8.1994, p. 364.

ARTICLE 67

The Union and the Member States concerned shall, within the framework of their respective competences, implement the measures listed in Annex 2<sup>8</sup> to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

<sup>8</sup> OJ C 241, 29.8.1994, p. 365.

ARTICLE 68

The Union and the Member States concerned shall use their best endeavours to develop and utilise the additional railway capacity referred to in Annex 3<sup>9</sup> to Protocol No 9 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

<sup>9</sup> OJ C 241, 29.8.1994, p. 367.

ARTICLE 69

The Union and the Member States concerned shall take measures to enhance the provision of rail and combined transport. Where appropriate, and subject to the provisions of the Constitution, such measures shall be established in close consultation with railway companies and other railway service providers. Priority should be given to those measures set out in the provisions of Union law on railways and combined transport. In implementing any measures, particular attention shall be attached to the competitiveness, effectiveness and cost transparency of rail and combined transport. In particular, the Member States concerned shall endeavour to take such measures so as to ensure that prices for combined transport are competitive with those for other modes of transport. Any aid granted to these ends shall comply with Union law.

ARTICLE 70

The Union and the Member States concerned shall, in the event of a

serious disturbance in rail transit, such as a natural disaster, take all possible concerted action to maintain the flow of traffic. Priority shall be given to sensitive loads, such as perishable foods.

#### ARTICLE 71

The Commission, acting in accordance with the procedure laid down in Article 73(2), shall review the operation of this Section.

#### ARTICLE 72

1. This Article shall apply to the carriage of goods by road on journeys carried out within the territory of the Community.
2. For journeys which involve transit of goods by road through Austria, the regime established for journeys on own account and for journeys for hire or reward under the First Council Directive of 23 July 1962 and Council Regulation (EEC) No 881/92 shall apply subject to the provisions of this Article.
3. Until 1 January 1998, the following provisions shall apply:
  - (a) The total of NOx emissions from heavy goods vehicles crossing Austria in transit shall be reduced by 60% in the period between 1 January 1992 and 31 December 2003, according to the table in Annex 4.
  - (b) The reductions in total NOx emissions from heavy goods vehicles shall be administered according to an ecopoints system. Under that system any heavy goods vehicle crossing-Austria in transit shall require a number of ecopoints equivalent to its NOx emissions (authorised under the Conformity of Production (COP) value or type-approval value). The method of calculation and administration of such points is described in Annex 5.
  - (c) If the number of transit journeys in any year exceeds the reference figure established for 1991 by more than 8%, the Commission, acting in accordance with the procedure laid down in Article 16, shall adopt appropriate measures in accordance with paragraph 3 of Annex 5.
  - (d) Austria shall issue and make available in good time the ecopoints cards required for the administration of the ecopoints system, pursuant to Annex 5, for heavy goods vehicles crossing Austria in transit.
  - (e) The ecopoints shall be distributed by the Commission among Member States in accordance with provisions to be established in accordance with paragraph 7.

4. Before 1 January 1998, the Council, on the basis of a report by the Commission, shall review the operation of provisions concerning transit of goods by road through Austria. The review shall take place in conformity with basic principles of Community law, such as the proper functioning of the internal market, in particular the free movement of goods and freedom to provide services, protection of the environment in the interest of the Community as a whole, and traffic safety. Unless the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, decides otherwise, the transitional period shall be extended to 1 January 2001, during which the provisions of paragraph 3 shall apply.

5. Before 1 January 2001, the Commission, in cooperation with the European Environment Agency, shall make a scientific study of the degree to which the objective concerning reduction of pollution set out in paragraph 3(a) has been achieved. If the Commission concludes that this objective has been achieved on a sustainable basis, the provisions of paragraph 3 shall cease to apply on 1 January 2001. If the Commission concludes that this objective has not been achieved on a sustainable basis, the Council, acting in accordance with Article 75 of the EC Treaty, may adopt measures, within a Community framework, which ensure equivalent protection of the environment, in particular a 60% reduction of pollution. If the Council does not adopt such measures, the transitional period shall be automatically extended for a final period of three years, during which the provisions of paragraph 3 shall apply.

6. At the end of the transitional period, the Community *acquis* in its entirety shall be applied.

7. The Commission, acting in accordance with the procedure laid down in Article 16, shall adopt detailed measures concerning the procedures relating to the ecopoints system, the distribution of ecopoints and technical questions concerning the application of this Article, which shall enter into force on the date of accession of Austria.

The measures referred to in the first subparagraph shall ensure that the factual situation for the present Member States resulting from the application of Council Regulation (EEC) No 3637/92 and of the Administrative Arrangement, signed on 23 December 1992, setting the date of entry into force and the procedures for the introduction of the ecopoints system referred to in the Transit Agreement, is maintained. All necessary efforts shall be made to ensure that the share of ecopoints allocated to Greece takes sufficient account of Greek needs in this context.

#### ARTICLE 73

1. The Commission shall be assisted by a Committee.

2. In cases where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply.
3. The Committee shall adopt its Rules of Procedure.

*German language,  
Austrian terms*

**Section 9**  
**Provisions on the use of specific Austrian terms of the German  
language in the framework of the European Union**

ARTICLE 74

*Same validity*

1. The specific Austrian terms of the German language contained in the Austrian legal order and listed in the Annex <sup>10</sup> to Protocol No 10 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall have the same status and may be used with the same legal effect as the corresponding terms used in Germany listed in that Annex.

<sup>10</sup> OJ C 241, 29.8.1994, p. 370.

2. In the German language version of new legal acts the specific Austrian terms referred to in the Annex to Protocol No 10 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden shall be added in appropriate form to the corresponding terms used in Germany.

*Enlargement with 10  
countries,  
1 May 2004*

**9. PROTOCOL**  
**ON THE TREATY AND THE ACT OF ACCESSION OF**  
**THE CZECH REPUBLIC,**  
**THE REPUBLIC OF ESTONIA,**  
**THE REPUBLIC OF CYPRUS,**  
**THE REPUBLIC OF LATVIA,**  
**THE REPUBLIC OF LITHUANIA,**  
**THE REPUBLIC OF HUNGARY,**  
**THE REPUBLIC OF MALTA,**  
**THE REPUBLIC OF POLAND,**  
**THE REPUBLIC OF SLOVENIA AND**  
**THE SLOVAK REPUBLIC**

THE HIGH CONTRACTING PARTIES,

RECALLING that the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic acceded to the European Communities and to the European Union established by the Treaty on European Union on 1 May 2004;

CONSIDERING that Article IV-437(2)(e) of the Constitution provides that the Treaty of 16 April 2003 concerning the accessions referred to above shall be repealed;

CONSIDERING that many of the provisions of the Act annexed to that Treaty of Accession remain relevant; that Article IV-437(2) of the Constitution provides that those provisions must be set out or referred to in a Protocol, so that they remain in force and their legal effects are preserved;

CONSIDERING that some of those provisions require the technical adjustments necessary to bring them into line with the Constitution without altering their legal effect,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

**PART ONE**

**PROVISIONS RELATING TO THE ACT OF ACCESSION OF**  
**16 APRIL 2003**

**TITLE I**

**PRINCIPLES**

**ARTICLE 1**

For the purposes of this Protocol:

- (a) the expression "Act of Accession of 16 April 2003" means the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded;
- (b) the expressions "Treaty establishing the European Community" ("EC Treaty") and "Treaty establishing the European Atomic Energy Community" ("EAEC Treaty") mean those Treaties as supplemented or amended by treaties or other acts which entered into force before 1 May 2004;
- (c) the expression "Treaty on European Union" ("EU Treaty") means that Treaty as supplemented or amended by treaties or other acts which entered into force before 1 May 2004;
- (d) the expression "the Community" means one or both of the Communities referred to in (b) as the case may be;
- (e) the expression "present Member States" means the following Member States: the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland;
- (f) the expression "new Member States" means the following Member States: the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic.

**ARTICLE 2**

The rights and obligations resulting from the Treaty on the Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus,

the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, referred to in Article IV-437(2)(e) of the Constitution, took effect, under the conditions laid down in that Treaty, as from 1 May 2004.

### ARTICLE 3

#### *Schengen acquis*

1. The provisions of the *Schengen acquis* integrated into the framework of the Union by the Protocol annexed to the Treaty establishing a Constitution for Europe (hereinafter referred to as the "Schengen Protocol") and the acts building upon it or otherwise related to it, listed in Annex I to the Act of Accession of 16 April 2003, as well as any further such acts adopted before 1 May 2004, shall be binding on and applicable in the new Member States from 1 May 2004.

2. Those provisions of the *Schengen acquis* as integrated into the framework of the Union and the acts building upon it or otherwise related to it not referred to in paragraph 1, while binding on the new Member States from 1 May 2004, shall apply in a new Member State only pursuant to a European decision of the Council to that effect after verification in accordance with the applicable Schengen evaluation procedures that the necessary conditions for the application of all parts of the *acquis* concerned have been met in that new Member State.

The Council shall take its decision, after consulting the European Parliament, acting with the unanimity of its members representing the Governments of the Member States in respect of which the provisions referred to in the present paragraph have already been put into effect and of the representative of the Government of the Member State in respect of which those provisions are to be put into effect. The members of the Council representing the Governments of Ireland and of the United Kingdom of Great Britain and Northern Ireland shall take part in such a decision insofar as it relates to the provisions of the *Schengen acquis* and the acts building upon it or otherwise related to it in which these Member States participate.

3. The Agreements concluded by the Council under Article 6 of the Schengen Protocol shall be binding on the new Member States from 1 May 2004.

4. The new Member States shall be required in respect of those conventions or instruments in the field of justice and home affairs which are inseparable from the attainment of the objectives of the EU Treaty:

- (a) to accede to those which, by 1 May 2004, have been opened for signature by the present Member States, and to those which have been drawn up by the Council in accordance with Title VI of the EU Treaty and recommended to the Member States for adoption;

- (b) to introduce administrative and other arrangements, such as those adopted by 1 May 2004 by the present Member States or by the Council, to facilitate practical cooperation between the Member States' institutions and organisations working in the field of justice and home affairs.

#### ARTICLE 4

*EMU – all 10 start with a derogation*

Each of the new Member States shall participate in Economic and Monetary Union from 1 May 2004 as a Member State with a derogation within the meaning of Article III-197 of the Constitution.

#### ARTICLE 5

*Accede to all international agreements*

1. The new Member States, which have acceded by the Act of Accession of 16 April 2003 to the decisions and agreements adopted by the Representatives of the Governments of the Member States, meeting within the Council, shall be required to accede to all other agreements concluded by the present Member States relating to the functioning of the Union or connected with the activities thereof.

2. The new Member States shall be required to accede to the conventions provided for in Article 293 of the EC Treaty and to those that are inseparable from the attainment of the objectives of the EC Treaty, insofar as they are still in force, and also to the protocols on the interpretation of those conventions by the Court of Justice of the European Communities, signed by the present Member States, and to this end they shall be required to enter into negotiations with the present Member States in order to make the necessary adjustments thereto.

#### ARTICLE 6

*Nuclear agreements*

1. The new Member States shall be required to accede, under the conditions laid down in this Protocol, to the agreements or conventions concluded or provisionally applied by the present Member States and the Union or the European Atomic Energy Community, acting jointly, and to the agreements concluded by those States which are related to those agreements or conventions.

The accession of the new Member States to the agreements or conventions mentioned in paragraph 4, as well as the agreements with Belarus, China, Chile, Mercosur and Switzerland which have been concluded or signed by the Community and its present Member States jointly shall be agreed by the conclusion of a protocol to such agreements or conventions between the Council, acting unanimously on behalf of the Member States, and the third country or countries or international organisation concerned. This procedure is without prejudice to the Union's and the European Atomic Energy Community's own competences and does not affect the allocation



of powers between the Union and the European Atomic Energy Community and the Member States as regards the conclusion of such agreements in the future or any other amendments not related to accession. The Commission shall negotiate these protocols on behalf of the Member States on the basis of negotiating directives approved by the Council, acting by unanimity, and in consultation with a committee comprised of the representatives of the Member States. It shall submit a draft of the protocols for conclusion to the Council.

*EEA Agreement*

2. Upon acceding to the agreements and conventions referred to in paragraph 1 the new Member States shall acquire the same rights and obligations under those agreements and conventions as the present Member States.

3. The new Member States shall be required to accede, under the conditions laid down in this Protocol, to the Agreement on the European Economic Area<sup>1</sup>, in accordance with Article 128 of that Agreement.

<sup>1</sup> OJ L 1, 3.1.1994, p. 3.

4. As from 1 May 2004, and, where appropriate, pending the conclusion of the necessary protocols referred to in paragraph 1, the new Member States shall apply the provisions of the Agreements concluded by the present Member States and, jointly, the Community, with Algeria, Armenia, Azerbaijan, Bulgaria, Croatia, Egypt, the former Yugoslav Republic of Macedonia, Georgia, Israel, Jordan, Kazakhstan, Kyrgyzstan, Lebanon, Mexico, Moldova, Morocco, Romania, the Russian Federation, San Marino, South Africa, South Korea, Syria, Tunisia, Turkey, Turkmenistan, Ukraine and Uzbekistan as well as the provisions of other agreements concluded jointly by the present Member States and the Community before 1 May 2004.

Any adjustments to these Agreements shall be the subject of protocols concluded with the co-contracting countries in conformity with the provisions of the second subparagraph of paragraph 1. Should the protocols not have been concluded by 1 May 2004, the Union, the European Atomic Energy Community and the Member States shall take, in the framework of their respective competences, the necessary measures to deal with that situation.

*Textile agreements*

5. As from 1 May 2004, the new Member States shall apply the bilateral textile agreements and arrangements concluded by the Community with third countries.

The quantitative restrictions applied by the Union on imports of textile and clothing products shall be adjusted to take account of the accession of the new Member States.

Should the amendments to the bilateral textile agreements and

arrangements not have entered into force by 1 May 2004, the Union shall make the necessary adjustments to its rules for the import of textile and clothing products from third countries to take into account the accession of the new Member States.

*Steel*

6. The quantitative restrictions applied by the Union on imports of steel and steel products shall be adjusted on the basis of imports by new Member States during the years immediately preceding the signing of the Accession Treaty of steel products originating in the supplier countries concerned.

*Fisheries*

7. Fisheries agreements concluded before 1 May 2004 by the new Member States with third countries shall be managed by the Union.

The rights and obligations resulting for the new Member States from those agreements shall not be affected during the period in which the provisions of those agreements are provisionally maintained.

As soon as possible, and in any event before the expiry of the agreements referred to in the first subparagraph, appropriate European decisions for the continuation of fishing activities resulting from those agreements shall be adopted in each case by the Council on a proposal from the Commission, including the possibility of extending certain agreements for periods not exceeding one year.

*Withdraw from any free trade agreements*

8. With effect from 1 May 2004, the new Member States shall withdraw from any free trade agreements with third countries, including the Central European Free Trade Agreement.

To the extent that agreements between one or more of the new Member States on the one hand, and one or more third countries on the other, are not compatible with the obligations arising from the Constitution and in particular from this Protocol, the new Member States shall take all appropriate steps to eliminate the incompatibilities established. If a new Member State encounters difficulties in adjusting an agreement concluded with one or more third countries before accession, it shall, according to the terms of the agreement, withdraw from that agreement.

9. The new Member States shall take appropriate measures, where necessary, to adjust their position in relation to international organisations, and in relation to those international agreements to which the Union or the European Atomic Energy Community or other Member States are also parties, to the rights and obligations arising from their accession to the Union.

*Withdraw from fisheries agreements*

They shall in particular withdraw at 1 May 2004 or the earliest possible date thereafter from international fisheries agreements and organisations to which the Union is also a party, unless their membership relates to matters other than fisheries.

ARTICLE 7

Acts adopted by the institutions to which the transitional provisions laid down in this Protocol relate shall retain their status in law; in particular, the procedures for amending those acts shall continue to apply.

ARTICLE 8

Provisions of the Act of Accession of 16 April 2003, as interpreted by the Court of Justice of the European Communities and the Court of First Instance, the purpose or effect of which is to repeal or amend, otherwise than as a transitional measure, acts adopted by the institutions, bodies, offices or agencies of the Community or of the European Union established by the Treaty on European Union shall remain in force subject to the application of the second paragraph.

These provisions shall have the same status in law as the acts which they repeal or amend and shall be subject to the same rules as those acts.

ARTICLE 9

*Languages*

The texts of the acts of the institutions, bodies, offices and agencies of the Community or of the European Union established by the Treaty on European Union and the texts of acts of the European Central Bank which were adopted before 1 May 2004 and which were drawn up in the Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovenian and Slovak languages shall be authentic from that date, under the same conditions as the texts drawn up and authentic in the other languages.

ARTICLE 10

*Transitions can be repealed by unanimous decision*

A European law of the Council may repeal the transitional provisions set out in this Protocol, when they are no longer applicable. The Council shall act unanimously after consulting the European Parliament.

ARTICLE 11

The application of the Constitution and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in this Protocol.

*Permanent provisions*

**TITLE II  
PERMANENT PROVISIONS**

**ARTICLE 12**

The adaptations to the acts listed in Annex III to the Act of Accession of 16 April 2003 made necessary by accession shall be drawn up in conformity with the guidelines set out in that Annex and in accordance with the procedure and under the conditions laid down in Article 36.

**ARTICLE 13**

The measures listed in Annex IV to the Act of Accession of 16 April 2003 shall be applied under the conditions laid down in that Annex.

**ARTICLE 14**

*U\**  
*Agriculture*

A European law of the Council may make the adaptations to the provisions of this Protocol relating to the common agricultural policy which may prove necessary as a result of a modification of Union law. The Council shall act unanimously after consulting the European Parliament.

*Temporary provisions*

**TITLE III  
TEMPORARY PROVISIONS**

**ARTICLE 15**

The measures listed in Annexes V, VI, VII, VIII, IX, X, XI, XII, XIII and XIV to the Act of Accession of 16 April 2003 shall apply in respect of the new Member States under the conditions laid down in those Annexes.

**ARTICLE 16**

1. The revenue designated as "Common Customs Tariff duties and other duties" referred to in Article 2(1)(b) of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources <sup>2</sup>, or the corresponding provision in any Decision replacing it, shall include the customs duties calculated on the basis of the rates resulting from the Common Customs Tariff and any tariff concession relating thereto applied by the Union in the new Member States' trade with third countries.

<sup>2</sup> OJ L 253, 7.10.2000, p. 42.

2. For the year 2004, the harmonised VAT assessment base and the GNI (gross national income) base of each new Member State, referred to in Article 2(1)(c) and (d) of Council Decision 2000/597/EC, Euratom shall be equal to two thirds of the annual base. The GNI base of each new Member

State to be taken into account for the calculation of the financing of the correction in respect of budgetary imbalances granted to the United Kingdom, referred to in Article 5(1) of Council Decision 2000/597/EC, Euratom shall likewise be equal to two thirds of the annual base.

3. For the purposes of determining the frozen rate for 2004 according to Article 2(4)(b) of Council Decision 2000/597/EC, Euratom the capped VAT bases of the new Member States shall be calculated on the basis of two thirds of their uncapped VAT base and two thirds of their GNI.

ARTICLE 17

1. The budget of the Union for the financial year 2004 shall be adapted to take into account the accession of the new Member States through an amending budget taking effect on 1 May 2004.

*Contribution to the Union's budget*

2. The twelve monthly twelfths of VAT and GNI-based resources to be paid by the new Member States under the amending budget referred to in paragraph 1, as well as the retroactive adjustment of the monthly twelfths for the period January-April 2004 that only apply to the present Member States, shall be converted into eighths to be called during the period May-December 2004. The retroactive adjustments that result from any subsequent amending budget adopted in 2004 shall likewise be converted into equal parts to be called during the remainder of the year.

ARTICLE 18

*Budgetary compensation pool by the Union*

On the first working day of each month the Union shall pay the Czech Republic, Cyprus, Malta and Slovenia, as an item of expenditure under the Union budget, one eighth in 2004, as of 1 May 2004, and one twelfth in 2005 and 2006 of the following amounts of temporary budgetary compensation:

	2004	2005	2006
	(million euro, 1999 prices)		
Czech Republic	125,4	178,0	85,1
Cyprus	68,9	119,2	112,3
Malta	37,8	65,6	62,9
Slovenia	29,5	66,4	35,5

ARTICLE 19

On the first working day of each month the Union shall pay the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia, as an item of expenditure under the Union budget, one eighth in 2004, as of 1 May 2004, and one twelfth in 2005 and 2006 of the following amounts of a special lump-sum cash-flow facility:

	2004	2005	2006
	(million euro, 1999 prices)		
Czech Republic	174,70	91,55	91,55
Estonia	15,80	2,90	2,90
Cyprus	27,70	5,05	5,05
Latvia	19,50	3,40	3,40
Lithuania	34,80	6,30	6,30
Hungary	155,30	27,95	27,95
Malta	12,20	27,15	27,15
Poland	442,80	550,00	450,00
Slovenia	65,40	17,85	17,85
Slovakia	63,20	11,35	11,35

1 thousand million euro for Poland and 100 million euro for the Czech Republic included in the special lump-sum cash-flow facility shall be taken into account for any calculations on the distribution of Structural Funds for the years 2004, 2005 and 2006.

#### ARTICLE 20

1. The new Member States listed below shall pay the following amounts to the Research Fund for Coal and Steel referred to in Decision 2002/234/ECSC of the Representatives of the Governments of the Member States, meeting within the Council, of 27 February 2002 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel <sup>3</sup>:

<sup>3</sup> OJ L 79, 22.3.2002, p. 42.

	(million euro, current prices)
Czech Republic	39,88
Estonia	2,50
Latvia	2,69
Hungary	9,93
Poland	92,46
Slovenia	2,36
Slovakia	20,11

2. The contributions to the Research Fund for Coal and Steel shall be made in four instalments starting in 2006 and paid as follows, in each case on the first working day of the first month of each year:

2006: 15%  
 2007: 20%  
 2008: 30%  
 2009: 35%.

#### ARTICLE 21

*Earlier programmes*

1. Save as otherwise provided for in this Protocol, no financial

*cancelled*

commitments shall be made under the Phare programme <sup>4</sup>, the Phare Cross-Border Cooperation programme <sup>5</sup>, pre-accession funds for Cyprus and Malta <sup>6</sup>, the ISPA programme <sup>7</sup> and the SAPARD programme <sup>8</sup> in favour of the new Member States after 31 December 2003. The new Member States shall receive the same treatment as the present Member States as regards expenditure under the first three Headings of the Financial Perspective, as defined in the Interinstitutional Agreement of 6 May 1999 <sup>9</sup>, as from 1 January 2004, subject to the individual specifications and exceptions below or as otherwise provided for in this Protocol. The maximum additional appropriations for headings 1, 2, 3 and 5 of the Financial Perspective related to enlargement are set out in Annex XV to the Act of Accession of 16 April 2003. However, no financial commitment under the 2004 budget for any programme or agency concerned may be made before the accession of the relevant new Member State has taken place.

<sup>4</sup> Regulation (EEC) No 3906/89 (OJ L 375, 23.12.1989, p. 11).

<sup>5</sup> Regulation (EC) No 2760/98 (OJ L 345, 19.12.1998, p. 49).

<sup>6</sup> Regulation (EC) No 555/2000 (OJ L 68, 16.3.2000, p. 3).

<sup>7</sup> Regulation (EC) No 1267/1999 (OJ L 161, 26.6.1999, p. 73).

<sup>8</sup> Regulation (EC) No 1268/1999 (OJ L 161, 26.6.1999, p. 87).

<sup>9</sup> Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure (OJ C 172, 18.6.1999, p. 1).

2. Paragraph 1 shall not apply to expenditure under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Articles 2(1), 2(2), and 3(3) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy <sup>10</sup>, which will become eligible for Community funding only from 1 May 2004, in accordance with Article 2 of this Protocol.

<sup>10</sup> OJ L 160, 26.6.1999, p. 103.

However, paragraph 1 of this Article shall apply to expenditure for rural development under the European Agricultural Guidance and Guarantee Fund, Guarantee Section, according to Article 47a of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain regulations <sup>11</sup>, subject to the conditions set out in the amendment of that Regulation in Annex II to the Act of Accession of 16 April 2003.

<sup>11</sup> OJ L 160, 26.6.1999, p. 80

3. Subject to the last sentence of paragraph 1, as of 1 January 2004, the new Member States shall participate in Union programmes and agencies according to the same terms and conditions as the present Member States with funding from the general budget of the Union.

4. If any measures are necessary to facilitate the transition from the pre-accession regime to that resulting from the application of this Article, the Commission shall adopt the required measures.

#### ARTICLE 22

1. Tendering, contracting, implementation and payments for pre-accession assistance under the Phare programme, the Phare Cross-Border Cooperation programme and pre-accession funds for Cyprus and Malta shall be managed by implementing agencies in the new Member States as from 1 May 2004.

*Ex-ante control*

The Commission shall adopt European decisions to waive the ex-ante control by the Commission over tendering and contracting following a positively assessed Extended Decentralised Implementation System (EDIS) in accordance with the criteria and conditions laid down in the Annex to Council Regulation (EC) No 1266/1999 of 21 June 1999 on coordinating aid to the applicant countries in the framework of the pre-accession strategy and amending Regulation (EEC) No 3906/89<sup>12</sup>.

<sup>12</sup> OJ L 232, 2.9.1999, p. 34.

If these decisions to waive ex-ante control have not been adopted before 1 May 2004, any contracts signed between 1 May 2004 and the date on which the Commission decisions are taken shall not be eligible for pre-accession assistance.

However, exceptionally, if the Commission decisions to waive ex-ante control are delayed beyond 1 May 2004 for reasons not attributable to the authorities of a new Member State, the Commission may accept, in duly justified cases, eligibility for pre-accession assistance of contracts signed between 1 May 2004 and the date of these decisions, and the continued implementation of pre-accession assistance for a limited period, subject to ex-ante control by the Commission over tendering and contracting.

*Budget commitments*

2. Global budget commitments made before 1 May 2004 under the pre-accession financial instruments referred to in paragraph 1, including the conclusion and registration of subsequent individual legal commitments and payments made after 1 May 2004, shall continue to be governed by the rules and regulations of the pre-accession financing instruments and be charged to the corresponding budget chapters until closure of the programmes and projects concerned. Notwithstanding this, public procurement procedures initiated after 1 May 2004 shall be carried out in accordance with the relevant Union acts.

*Pre-accession assistance*

3. The last programming exercise for the pre-accession assistance referred to in paragraph 1 shall take place in the last full calendar year preceding 1 May 2004. Actions under these programmes will have to be



contracted within the following two years and disbursements made as provided for in the Financing Memorandum <sup>13</sup>, usually by the end of the third year after the commitment. No extensions shall be granted for the contracting period. Exceptionally and in duly justified cases, limited extensions in terms of duration may be granted for disbursement.

<sup>13</sup> As set out in the Phare Guidelines (SEC (1999) 1596, updated on 6.9.2002 by C 3303/2).

4. In order to ensure the necessary phasing out of the pre-accession financial instruments referred to in paragraph 1 as well as the ISPA programme, and a smooth transition from the rules applicable before and after 1 May 2004, the Commission may take all appropriate measures to ensure that the necessary statutory staff is maintained in the new Member States for a maximum of fifteen months following that date. During this period, officials assigned to posts in the new Member States before accession and who are required to remain in service in those States after 1 May 2004 shall benefit, as an exception, from the same financial and material conditions as were applied by the Commission before 1 May 2004 in accordance with Annex X to the Staff Regulations of officials and the conditions of employment of other servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 <sup>14</sup>. The administrative expenditure, including salaries for other staff, necessary for the management of the pre-accession assistance shall be covered, for all of 2004 and until the end of July 2005, under the heading "support expenditure for operations" (former part B of the budget) or equivalent headings for the financial instruments referred to in paragraph 1 as well as the ISPA programme, of the relevant pre-accession budgets.

<sup>14</sup> OJ L 56, 4.3.1968, p. 1.

5. Where projects approved under Regulation (EC) No 1258/1999 can no longer be funded under that instrument, they may be integrated into rural development programming and financed under the European Agricultural Guidance and Guarantee Fund. Should specific transitional measures be necessary in this regard, these shall be adopted by the Commission in accordance with the procedures laid down in Article 50(2) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds <sup>15</sup>.

<sup>15</sup> OJ L 161, 26.6.1999, p. 1.

#### ARTICLE 23

##### *Transition Facility*

1. Between 1 May 2004 and the end of 2006, the Union shall provide temporary financial assistance, hereinafter referred to as the "Transition Facility", to the new Member States to develop and strengthen their administrative capacity to implement and enforce Union and European Atomic Energy Community law and to foster exchange of best practice

among peers.

2. Assistance shall address the continued need for strengthening institutional capacity in certain areas through action which cannot be financed by the Structural Funds, in particular in the following areas:

- (a) justice and home affairs (strengthening of the judicial system, external border controls, anti-corruption strategy, strengthening of law enforcement capacities);
- (b) financial control;
- (c) protection of the financial interests of the Union and of the European Atomic Energy Community and the fight against fraud;
- (d) internal market, including customs union;
- (e) environment;
- (f) veterinary services and administrative capacity-building relating to food safety;
- (g) administrative and control structures for agriculture and rural development, including the Integrated Administration and Control System (IACS);
- (h) nuclear safety (strengthening the effectiveness and competence of nuclear safety authorities and their technical support organisations as well as public radioactive waste management agencies);
- (i) statistics;
- (j) strengthening public administration according to needs identified in the Commission's comprehensive monitoring report which are not covered by the Structural Funds.

3. Assistance under the Transition Facility shall be decided in accordance with the procedure laid down in Article 8 of Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe <sup>16</sup>.

<sup>16</sup> OJ L 375, 23.12.1989, p. 11.

4. The programme shall be implemented in accordance with Article 53(1)(a) and (b) of the Financial Regulation applicable to the general budget of the European Communities <sup>17</sup> or the European law replacing it. For twinning projects between public administrations for the purpose of institution-building, the procedure for call for proposals through the network of contact points in the Member States shall continue

to apply, as established in the Framework Agreements with the present Member States for the purpose of pre-accession assistance.

<sup>17</sup> Regulation (EC, Euratom) No 1605/2002 (OJ L 248, 16.9.2002, p. 1).

The commitment appropriations for the Transition Facility, at 1999 prices, shall be 200 million euro in 2004, 120 million euro in 2005 and 60 million euro in 2006. The annual appropriations shall be authorised by the budgetary authority within the limits of the Financial Perspective as defined by the Interinstitutional Agreement of 6 May 1999.

#### ARTICLE 24

1. A Schengen Facility is hereby created as a temporary instrument to help beneficiary Member States between 1 May 2004 and the end of 2006 to finance actions at the new external borders of the Union for the implementation of the Schengen *acquis* and external border control.

In order to address the shortcomings identified in the preparation for participation in Schengen, the following types of action shall be eligible for financing under the Schengen Facility:

- (a) investment in construction, renovation or upgrading of border-crossing infrastructure and related buildings;
- (b) investments in any kind of operating equipment (e.g. laboratory equipment, detection tools, Schengen Information System – SIS II hardware and software, means of transport);
- (c) training of border guards;
- (d) support to costs for logistics and operations.

2. The following amounts shall be made available under the Schengen Facility in the form of lump-sum grant payments as of 1 May 2004 to the beneficiary Member States listed below:

	2004	2005	2006
	(million euro, 1999 prices)		
Estonia	22,90	22,90	22,90
Latvia	23,70	23,70	23,70
Lithuania	44,78	61,07	29,85
Hungary	49,30	49,30	49,30
Poland	93,34	93,33	93,33
Slovenia	35,64	35,63	35,63
Slovakia	15,94	15,93	15,93

3. The beneficiary Member States shall be responsible for selecting and implementing individual operations in compliance with this Article. They shall also be responsible for coordinating use of the Schengen Facility with assistance from other Union instruments, ensuring compatibility with Union policies and measures and compliance with the Financial Regulation applicable to the general budget of the European Communities or with the European law replacing it.

The lump-sum grant payments shall be used within three years from the first payment and any unused or unjustifiably spent funds shall be recovered by the Commission. The beneficiary Member States shall submit, no later than six months after expiry of the three-year deadline, a comprehensive report on the financial execution of the lump-sum grant payments with a statement justifying the expenditure.

The beneficiary State shall exercise this responsibility without prejudice to the Commission's responsibility for the implementation of the Union's budget and in accordance with the provisions applicable to decentralised management in the said Financial Regulation or in the European law replacing it.

4. The Commission retains the right of verification, through the Anti-Fraud Office (OLAF). The Commission and the Court of Auditors may also carry out on-the-spot checks in accordance with the appropriate procedures.

5. The Commission may adopt any technical provisions necessary for the operation of the Schengen Facility.

#### ARTICLE 25

The amounts referred to in Articles 18, 19, 23 and 24 shall be adjusted each year, as part of the technical adjustment provided for in paragraph 15 of the Interinstitutional Agreement of 6 May 1999.

#### ARTICLE 26

*Difficulties before 2007*

1. If, until the end of a period of up to three years after 1 May 2004, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, a new Member State may apply for authorisation to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the internal market.

In the same circumstances, any present Member State may apply for authorisation to take protective measures with regard to one or more of the new Member States.

*Commission decides*

2. Upon request by the State concerned, the Commission shall, by

*protective measures*

emergency procedure, adopt the European regulations or decisions establishing the protective measures which it considers necessary, specifying the conditions and modalities under which they are to be put into effect.

In the event of serious economic difficulties and at the express request of the Member State concerned, the Commission shall act within five working days of the receipt of the request accompanied by the relevant background information. The measures thus decided on shall be applicable forthwith, shall take account of the interests of all parties concerned and shall not entail frontier controls.

3. The measures authorised under paragraph 2 may involve derogations from the rules of the Constitution, and in particular from this Protocol, to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph 1. Priority shall be given to such measures as will least disturb the functioning of the internal market.

#### ARTICLE 27

*Commission decides on serious breach*

If a new Member State has failed to implement commitments undertaken in the context of the accession negotiations, causing a serious breach of the functioning of the internal market, including any commitments in all sectoral policies which concern economic activities with cross-border effect, or an imminent risk of such breach, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative, adopt European regulations or decisions establishing appropriate measures.

Measures shall be proportional and priority shall be given to measures which least disturb the functioning of the internal market and, where appropriate, to the application of the existing sectoral safeguard mechanisms. Such safeguard measures shall not be invoked as a means of arbitrary discrimination or a disguised restriction on trade between Member States. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the relevant commitment is implemented. They may however be applied beyond the period specified in the first paragraph as long as the relevant commitments have not been fulfilled. In response to progress made by the new Member State concerned in fulfilling its commitments, the Commission may adapt the measures as appropriate. The Commission shall inform the Council in good time before revoking the European regulations or decisions establishing the safeguard measures, and it shall take duly into account any observations of the Council in this respect.

#### ARTICLE 28

If there are serious shortcomings or any imminent risks of such shortcomings in a new Member State in the transposition, state of

implementation or the application of the framework decisions or any other relevant commitments, instruments of cooperation and decisions relating to mutual recognition in the area of criminal law under Title VI of the EU Treaty, Directives and Regulations relating to mutual recognition in civil matters under Title IV of the EC Treaty, and European laws and framework laws adopted on the basis of Sections 3 and 4 of Chapter IV of Title III of Part III of the Constitution, the Commission may, until the end of a period of up to three years after 1 May 2004, upon the motivated request of a Member State or on its own initiative and after consulting the Member States, adopt European regulations or decisions establishing appropriate measures and specify the conditions and modalities under which these measures are put into effect.

These measures may take the form of temporary suspension of the application of relevant provisions and decisions in the relations between a new Member State and any other Member State or Member States, without prejudice to the continuation of close judicial cooperation. The measures shall be maintained no longer than strictly necessary, and, in any case, will be lifted when the shortcomings are remedied. They may however be applied beyond the period specified in the first paragraph as long as these shortcomings persist. In response to progress made by the new Member State concerned in rectifying the identified shortcomings, the Commission may adapt the adopted measures as appropriate after consulting the Member States. The Commission shall inform the Council in good time before revoking safeguard measures, and it shall take duly into account any observations of the Council in this respect.

#### ARTICLE 29

In order not to hamper the proper functioning of the internal market, the enforcement of the new Member States' national rules during the transitional periods referred to in Annexes V to XIV to the Act of Accession of 16 April 2003 shall not lead to border controls between Member States.

#### ARTICLE 30

If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the common agricultural policy under the conditions set out in this Protocol, such measures shall be adopted by the Commission in accordance with the procedure referred to in Article 42(2) of Council Regulation (EC) No 1260/2001 of 19 June 2001 on the common organisation of the markets in the sugar sector<sup>18</sup>, or as appropriate, in the corresponding Articles of the other Regulations on the common organisation of agricultural markets or of the European laws replacing them or the relevant procedure as determined in the applicable legislation. The transitional measures referred to in this Article may be adopted during a period of three years after 1 May 2004 and their application shall be

limited to that period. A European law of the Council may extend this period. The Council shall act unanimously after consulting the European Parliament.

<sup>18</sup> OJ L 178, 30.6.2001, p. 1.

#### ARTICLE 31

If transitional measures are necessary to facilitate the transition from the existing regime in the new Member States to that resulting from the application of the Union veterinary and phytosanitary rules, such measures shall be adopted by the Commission in accordance with the relevant procedure as determined in the applicable legislation. These measures shall be taken during a period of three years after 1 May 2004 and their application shall be limited to that period.

#### ARTICLE 32

1. The terms of office of the new members of the Committees, groups and other bodies listed in Annex XVI to the Act of Accession of 16 April 2003 shall expire at the same time as those of the members in office on 1 May 2004.

2. The terms of office of the new members of the Committees and groups set up by the Commission which are listed in Annex XVII to the Act of Accession of 16 April 2003 shall expire at the same time as those of the members in office on 1 May 2004.

### TITLE IV

#### APPLICABILITY OF THE ACTS OF THE INSTITUTIONS

#### ARTICLE 33

As from 1 May 2004, the new Member States shall be considered as being addressees of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the EAEC Treaty, provided that those directives and decisions have been addressed to all the present Member States. Except with regard to directives and decisions which enter into force pursuant to Article 254(1) and (2) of the EC Treaty, the new Member States shall be considered as having received notification of such directives and decisions upon 1 May 2004.

#### ARTICLE 34

The new Member States shall put into effect the measures necessary for them to comply, from 1 May 2004, with the provisions of directives and decisions within the meaning of Article 249 of the EC Treaty and of Article 161 of the EAEC Treaty, unless another time-limit is provided for

in the Annexes referred to in Article 15 or in any other provisions of this Protocol.

#### ARTICLE 35

Unless otherwise stipulated, the Council, on a proposal from the Commission, shall adopt the necessary European regulations and decisions to implement the provisions contained in Annexes III and IV to the Act of Accession of 16 April 2003 referred to in Articles 12 and 13 of this Protocol.

#### ARTICLE 36

1. Where acts of the institutions prior to 1 May 2004 require adaptation by reason of accession, and the necessary adaptations have not been provided for in this Protocol, those adaptations shall be made in accordance with the procedure laid down by paragraph 2. Those adaptations shall enter into force as from 1 May 2004.
2. The Council, on a proposal from the Commission, or the Commission, according to which of these two institutions adopted the original acts, shall to this end adopt the necessary acts.

#### ARTICLE 37

Provisions laid down by law, regulation or administrative action designed to ensure the protection of the health of workers and the general public in the territory of the new Member States against the dangers arising from ionising radiations shall, in accordance with Article 33 of the EAEC Treaty, be communicated by those States to the Commission within three months from 1 May 2004.

### **PART TWO**

## **PROVISIONS ON THE PROTOCOLS ANNEXED TO THE ACT OF ACCESSION OF 16 APRIL 2003**

### **TITLE I**

## **TRANSITIONAL PROVISIONS ON THE EUROPEAN INVESTMENT BANK**

#### ARTICLE 38

The Kingdom of Spain shall pay the amount of 309 686 775 euro as its share of the capital paid in for the subscribed capital increase. This

*Transitional provisions  
on the European  
Investment Bank*



contribution shall be paid in eight equal instalments falling due on 30 September 2004, 30 September 2005, 30 September 2006, 31 March 2007, 30 September 2007, 31 March 2008, 30 September 2008 and 31 March 2009.

The Kingdom of Spain shall contribute, in eight equal instalments falling due on those dates, to the reserves and provisions equivalent to reserves, as well as to the amount still to be appropriated to the reserves and provisions, comprising the balance of the profit and loss account, established at the end of the month of April 2004, as entered on the balance sheet of the Bank, in amounts corresponding to 4,1292% of the reserves and provisions.

#### ARTICLE 39

From 1 May 2004, the new Member States shall pay the following amounts corresponding to their share of the capital paid in for the subscribed capital as defined in Article 4 of the Statute of the European Investment Bank.

Poland	170 563 175 euro
Czech Republic	62 939 275 euro
Hungary	59 543 425 euro
Slovakia	21 424 525 euro
Slovenia	19 890 750 euro
Lithuania	12 480 875 euro
Cyprus	9 169 100 euro
Latvia	7 616 750 euro
Estonia	5 882 000 euro
Malta	3 490 200 euro

These contributions shall be paid in eight equal instalments falling due on 30 September 2004, 30 September 2005, 30 September 2006, 31 March 2007, 30 September 2007, 31 March 2008, 30 September 2008 and 31 March 2009.

#### ARTICLE 40

The new Member States shall contribute, in eight equal instalments falling due on the dates referred to in Article 39, to the reserves and provisions equivalent to reserves, as well as to the amount still to be appropriated to the reserves and provisions, comprising the balance of the profit and loss account, established at the end of the month of April 2004, as entered on the balance sheet of the European Investment Bank, in amounts corresponding to the following percentages of the reserves and provisions:

Poland	2,2742%
Czech Republic	0,8392%
Hungary	0,7939%

Slovakia	0,2857%
Slovenia	0,2652%
Lithuania	0,1664%
Cyprus	0,1223%
Latvia	0,1016%
Estonia	0,0784%
Malta	0,0465%

#### ARTICLE 41

The capital and payments provided for in Articles 38, 39 and 40 shall be paid in by the Kingdom of Spain and the new Member States in cash in euro, save by way of derogation decided unanimously by the Board of Governors.

#### TITLE II

### PROVISIONS ON THE RESTRUCTURING OF THE CZECH STEEL INDUSTRY

#### ARTICLE 42

1. Notwithstanding Articles III-167 and III-168 of the Constitution, State aid granted by the Czech Republic for restructuring purposes to specified parts of the Czech steel industry from 1997 to 2003 shall be deemed to be compatible with the internal market provided that:

- (a) the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part<sup>19</sup>, has been extended until 1 May 2004;

<sup>19</sup> OJ L 360, 31.12.1994, p. 2.

- (b) the terms set out in the restructuring plan on the basis of which the abovementioned Protocol was extended are adhered to throughout the period 2002-2006;
- (c) the conditions set out in this Title are met, and
- (d) no State aid for restructuring is to be paid to the Czech steel industry after 1 May 2004.

2. Restructuring of the Czech steel sector, as described in the individual business plans of the companies listed in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003 (hereinafter referred to as "benefiting companies"), and in line with the conditions set out in this Title, shall be completed no later than 31 December 2006 (hereinafter referred to as "the

*Czech steel*

Conditions for state aid

end of the restructuring period").

3. Only benefiting companies shall be eligible for State aid in the framework of the Czech steel restructuring programme.
4. A benefiting company may not:
  - (a) in the case of a merger with a company not included in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003, pass on the benefit of the aid granted to the benefiting company;
  - (b) take over the assets of any company not included in Annex 1 to Protocol No 2 to the Act of Accession of 16 April 2003 which is declared bankrupt in the period up to 31 December 2006.
5. Any subsequent privatisation of any of the benefiting companies shall respect the conditions and principles regarding viability, State aids and capacity reduction defined in this Title.
6. The total restructuring aid to be granted to the benefiting companies shall be determined by the justifications set out in the approved Czech steel restructuring plan and individual business plans as approved by the Council. But in any case, the aid paid out in the period 1997-2003 is limited to a maximum amount of CZK 14 147 425 201. Of this total figure, Nová Huť receives a maximum of CZK 5 700 075 201, Vítkovice Steel receives a maximum of CZK 8 155 350 000 and Válcovny Plechu Frýdek Místek receives a maximum of CZK 292 000 000 depending on the requirements as set out in the approved restructuring plan. The aid shall only be granted once. No further State aid shall be granted by the Czech Republic for restructuring purposes to the Czech steel industry.
7. The net capacity reduction to be achieved by the Czech Republic for finished products during the period 1997-2006 shall be 590 000 tonnes.

Capacity reduction shall be measured only on the basis of permanent closure of production facilities by physical destruction such that the facilities cannot be restored to service. A declaration of bankruptcy of a steel company shall not qualify as capacity reduction.

The above level of net capacity reduction, together with any other capacity reductions identified as necessary in the restructuring programmes, shall be completed in line with the timetable in Annex 2 to Protocol No 2 to the Act of Accession of 16 April 2003.

8. The Czech Republic shall remove trade barriers in the coal market in accordance with the *acquis* by accession, enabling Czech steel companies to obtain access to coal at international market prices.

9. The business plan for the benefiting company Nová Hut' shall be implemented. In particular:

- (a) the Vysoké Pece Ostrava (VPO) plant shall be brought into the organisational framework of Nová Hut' by acquisition of full ownership. A target date shall be set for this merger, including assignation of responsibility for its implementation;
- (b) restructuring efforts shall concentrate on the following:
  - (i) evolving Nová Hut' from being production-oriented to being marketing-oriented and improving the efficiency and effectiveness of its business management, including greater transparency on costs;
  - (ii) Nová Hut' reviewing its product mix and entry into higher added-value markets;
  - (iii) Nová Hut' making the necessary investments in order to achieve a higher quality of finished products in the short term;
- (c) employment restructuring shall be implemented; levels of productivity comparable to those obtained by the Union's steel industry product groups shall be reached as at 31 December 2006, on the basis of the consolidated figures of the benefiting companies concerned;
- (d) compliance with the relevant Community *acquis* in the field of environmental protection shall be achieved by 1 May 2004 including the necessary investments addressed in the business plan. In accordance with the business plan the necessary future IPPC-related investment shall also be made, in order to ensure compliance with Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control<sup>1</sup> by 1 November 2007.

<sup>20</sup> OJ L 257, 10.10.1996, p. 26.

10. The business plan for the benefiting company Vítkovice Steel shall be implemented. In particular:

- (a) the Duo Mill shall be permanently closed no later than 31 December 2006. In the event of purchase of the company by a strategic investor, the purchase contract shall be made conditional on this closure by this date;
- (b) restructuring efforts shall concentrate on the following:
  - (i) an increase in direct sales and a greater focus on cost reduction, this being essential for more efficient business management,

- (ii) adapting to market demand and shifting towards higher value-added products,
  - (iii) bringing forward the proposed investment in the secondary steel-making process from 2004 to 2003, in order to allow the company to compete on quality rather than on price;
- (c) compliance with the relevant Community *acquis* in the field of environmental protection shall be achieved by 1 May 2004 including the necessary investments addressed in the business plan, which include the need for future IPPC-related investment.

11. The business plan for the benefiting company Válcovny Plechu Frýdek Místek (VPFM) shall be implemented. In particular:

- (a) Hot Rolling Mills Nos 1 and 2 shall be permanently closed at the end of 2004;
- (b) restructuring efforts shall concentrate on the following:
  - (i) making the necessary investment in order to reach a higher quality of finished product in the short term after the signing of the Treaty of Accession,
  - (ii) giving priority to the implementation of key identified profit improvement opportunities (including employment restructuring, cost reductions, yield improvements and distribution reorientation).

12. Any subsequent changes in the overall restructuring plan and the individual plans must be agreed by the Commission and, where appropriate, by the Council.

13. The implementation of the restructuring shall take place under conditions of full transparency and on the basis of sound market economy principles.

14. The Commission and the Council shall closely monitor the implementation of the restructuring and the fulfilment of the conditions set out in this Title concerning viability, State aid and capacity reductions before and after 1 May 2004 until the end of the restructuring period, in accordance with paragraphs 15 to 18. For this purpose the Commission shall report to the Council.

15. The Commission and the Council shall monitor the restructuring benchmarks set out in Annex 3 to Protocol No 2 to the Act of Accession of 16 April 2003. The references in that Annex to paragraph 16 of the said Protocol shall be construed as being made to paragraph 16 of this Article.

16. Monitoring shall include an independent evaluation to be carried out in 2003, 2004, 2005 and 2006. The Commission's viability test shall be an important element in ensuring that viability is achieved.

17. The Czech Republic shall cooperate fully with all the arrangements for monitoring. In particular:

- (a) the Czech Republic shall supply the Commission with six-monthly reports concerning the restructuring of the benefiting companies, no later than 15 March and 15 September of each year, until the end of the restructuring period,
- (b) the first report shall reach the Commission by 15 March 2003 and the last report by 15 March 2007, unless the Commission decides otherwise,
- (c) the reports shall contain all the information necessary to monitor the restructuring process and the reduction and use of capacity and shall provide sufficient financial data to allow an assessment to be made of whether the conditions and requirements contained in this Title have been fulfilled. The reports shall at the least contain the information set out in Annex 4 to Protocol No 2 to the Act of Accession of 16 April 2003, which the Commission reserves the right to modify in line with its experiences during the monitoring process. In addition to the individual business reports of the benefiting companies, there shall also be a report on the overall situation of the Czech steel sector, including recent macroeconomic developments,
- (d) the Czech Republic shall oblige the benefiting companies to disclose all relevant data which might, under other circumstances, be considered as confidential. In its reporting to the Council, the Commission shall ensure that company-specific confidential information is not disclosed.

18. The Commission may at any time decide to mandate an independent consultant to evaluate the monitoring results, undertake any research necessary and report to the Commission and the Council.

19. If the Commission establishes, on the basis of the reports referred to in paragraph 17, that substantial deviations from the financial data on which the viability assessment has been made have occurred, it may require the Czech Republic to take appropriate measures to reinforce the restructuring measures of the benefiting companies concerned.

20. Should the monitoring show that:

- (a) the conditions for the transitional arrangements contained in this

Title have not been fulfilled, or that

- (b) the commitments made in the framework of the extension of the period during which the Czech Republic may exceptionally grant State support for the restructuring of its steel industry under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Czech Republic, of the other part <sup>21</sup> have not been fulfilled, or that

<sup>21</sup> OJ L 360, 31.12.1994, p. 2.

- (c) the Czech Republic in the course of the restructuring period has granted additional incompatible State aid to the steel industry and to the benefiting companies in particular,

the transitional arrangements contained in this Title shall not have effect.

The Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Title.

### **TITLE III**

#### **PROVISIONS ON THE SOVEREIGN BASE AREAS OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND IN CYPRUS**

##### **ARTICLE 43**

*British base in Cyprus*

1. The Sovereign Base Areas shall be included within the customs territory of the Union and, for this purpose, the customs and common commercial policy acts of the Union listed in Part One of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall apply to the Sovereign Base Areas with the amendments set out in that Annex. In that Annex, reference to "this Protocol" shall be construed as being to this Title.

2. The Union acts on turnover taxes, excise duties and other forms of indirect taxation listed in Part Two of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall apply to the Sovereign Base Areas with the amendments set out in that Annex as well as the relevant provisions applying to Cyprus as set out in this Protocol.

3. The Union acts listed in Part Three of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 shall be amended as set out in that Annex to enable the United Kingdom to maintain the reliefs and exemptions from duties and taxes on supplies to its forces and associated personnel which are granted by the Treaty concerning the Establishment of the Republic of Cyprus (hereinafter referred to as the "Treaty of

Establishment").

#### ARTICLE 44

Articles III-225 to III-232 of the Constitution, together with the provisions adopted on that basis, and the provisions adopted in accordance with Article III-278(4)(b) of the Constitution shall apply to the Sovereign Base Areas.

#### ARTICLE 45

Persons resident or employed in the territory of the Sovereign Base Areas who, under arrangements made pursuant to the Treaty of Establishment and the associated Exchange of Notes dated 16 August 1960, are subject to the social security legislation of the Republic of Cyprus shall be treated for the purposes of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community<sup>22</sup> as if they were resident or employed in the territory of the Republic of Cyprus.

<sup>22</sup> OJ L 149, 5.7.1971, p. 2.

#### ARTICLE 46

1. The Republic of Cyprus shall not be required to carry out checks on persons crossing its land and sea boundaries with the Sovereign Base Areas and any Union restrictions on the crossing of external borders shall not apply in relation to such persons.
2. The United Kingdom shall exercise controls on persons crossing the external borders of the Sovereign Base Areas in accordance with the undertakings set out in Part Four of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003.

#### ARTICLE 47

The Council, on a proposal from the Commission, may, in order to ensure effective implementation of the objectives of this Title, adopt a European decision amending Articles 43 to 46, including the Annex to Protocol No 3 to the Act of Accession of 16 April 2003, or applying other provisions of the Constitution and Union acts to the Sovereign Base Areas on such terms and subject to such conditions as it may specify. The Council shall act unanimously. The Commission shall consult the United Kingdom and the Republic of Cyprus before bringing forward a proposal.

#### ARTICLE 48

1. Subject to paragraph 2, the United Kingdom shall be responsible for the implementation of this Title in the Sovereign Base Areas. In



particular:

- (a) the United Kingdom shall be responsible for the application of the Union measures specified in this Title in the fields of customs, indirect taxation and the common commercial policy in relation to goods entering or leaving the island of Cyprus through a port or airport within the Sovereign Base Areas;
- (b) customs controls on goods imported into or exported from the island of Cyprus by the forces of the United Kingdom through a port or airport in the Republic of Cyprus may be carried out within the Sovereign Base Areas;
- (c) the United Kingdom shall be responsible for issuing any licences, authorisations or certificates which may be required under any applicable Union measure in respect of goods imported into or exported from the island of Cyprus by the forces of the United Kingdom.

2. The Republic of Cyprus shall be responsible for the administration and payment of any Union funds to which persons in the Sovereign Base Areas may be entitled pursuant to the application of the common agricultural policy in the Sovereign Base Areas under Article 44, and the Republic of Cyprus shall be accountable to the Commission for such expenditure.

3. Without prejudice to paragraphs 1 and 2, the United Kingdom may delegate to the competent authorities of the Republic of Cyprus, in accordance with arrangements made pursuant to the Treaty of Establishment, the performance of any functions imposed on a Member State by or under any provision referred to in Articles 43 to 46.

4. The United Kingdom and the Republic of Cyprus shall cooperate to ensure the effective implementation of this Title in the Sovereign Base Areas and, where appropriate, shall conclude further arrangements concerning the delegation of the implementation of any of the provisions referred to in Articles 43 to 46. A copy of any such arrangements shall be submitted to the Commission.

#### ARTICLE 49

The arrangements provided for in this Title shall have the sole purpose of regulating the particular situation of the Sovereign Base Areas of the United Kingdom in Cyprus and shall not apply to any other territory of the Union, nor serve as a precedent, in whole or in part, for any other special arrangements which either already exist or which might be set up in another European territory provided for in Article IV-440 of the Constitution.

ARTICLE 50

The Commission shall report to the European Parliament and the Council every five years as from 1 May 2004 on the implementation of the provisions of this Title.

ARTICLE 51

The provisions of this Title shall apply in the light of the Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 3 to the Act of Accession of 16 April 2003.

**TITLE IV**

**PROVISIONS ON THE IGNALINA NUCLEAR POWER PLANT  
IN LITHUANIA**

ARTICLE 52

Acknowledging the readiness of the Union to provide adequate additional assistance to the efforts by Lithuania to decommission the Ignalina Nuclear Power Plant and highlighting this expression of solidarity, Lithuania has undertaken to close Unit 1 of the Ignalina Nuclear Power Plant before 2005 and Unit 2 of this plant by 31 December 2009 at the latest and subsequently decommission these units.

ARTICLE 53

1. During the period 2004-2006, the Union shall provide Lithuania with additional financial assistance in support of its efforts to decommission, and to address the consequences of the closure and decommissioning of, the Ignalina Nuclear Power Plant (hereinafter "the Ignalina Programme").
2. Measures under the Ignalina Programme shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe<sup>23</sup>.

<sup>23</sup> OJ L 375, 23.12.1989, p. 11.

3. The Ignalina Programme shall, inter alia, cover: measures in support of the decommissioning of the Ignalina Nuclear Power Plant; measures for the environmental upgrading in line with the *acquis* and modernisation measures of conventional production capacity to replace the production capacity of the two Ignalina Nuclear Power Plant reactors; and other measures which are consequential to the decision to close and

*Ignalina nuclear power  
plant*

decommission this plant and which contribute to the necessary restructuring, environmental upgrading and modernisation of the energy production, transmission and distribution sectors in Lithuania as well as to enhancing the security of energy supply and improving energy efficiency in Lithuania.

4. The Ignalina Programme shall include measures to support plant personnel in maintaining a high level of operational safety at the Ignalina Nuclear Power Plant in the periods prior to the closure and during the decommissioning of the said reactor units.
5. For the period 2004-2006 the Ignalina Programme shall amount to 285 million euro in commitment appropriations, to be committed in equal annual tranches.
6. The contribution under the Ignalina Programme may, for certain measures, amount to up to 100% of the total expenditure. Every effort should be made to continue the co-financing practice established under the pre-accession assistance for Lithuania's decommissioning effort as well as to attract co-financing from other sources, as appropriate.
7. The assistance under the Ignalina Programme, or parts thereof, may be made available as a Union contribution to the Ignalina International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.
8. Public aid from national, Union and international sources:
  - (a) for the environmental upgrading in line with the *acquis* and modernisation measures of the Lithuanian Thermal Power Plant in Elektrenai as the key replacement for the production capacity of the two Ignalina Nuclear Power Plant reactors; and
  - (b) for the decommissioning of the Ignalina Nuclear Power Plantshall be compatible with the internal market as defined in the Constitution.
9. Public aid from national, Union and international sources in support of Lithuania's efforts to address the consequences of the closure and of the decommissioning of the Ignalina Nuclear Power Plant may, on a case by case basis, be considered to be compatible – under the Constitution – with the internal market, in particular public aid provided for enhancing the security of energy supply.

#### ARTICLE 54

1. Recognising that the decommissioning of the Ignalina Nuclear Power Plant is of a long-term nature and represents for Lithuania an exceptional financial burden not commensurate with its size and economic strength,

the Union shall, in solidarity with Lithuania, provide adequate additional assistance to the decommissioning effort beyond 2006.

2. The Ignalina Programme shall be, for this purpose, seamlessly continued and extended beyond 2006. Implementing provisions for the extended Ignalina Programme shall be adopted in accordance with the procedure laid down in Article 35 of this Protocol and enter into force, at the latest, by the date of expiry of the Financial Perspective as defined in the Interinstitutional Agreement of 6 May 1999.

3. The Ignalina Programme, as extended in accordance with the provisions of paragraph 2, shall be based on the same elements and principles as described in Article 53.

4. For the period of the subsequent Financial Perspective, the overall average appropriations under the extended Ignalina Programme shall be appropriate. Programming of these resources will be based on actual payment needs and absorption capacity.

#### ARTICLE 55

Without prejudice to the provisions of Article 52, the general safeguard clause referred to in Article 26 shall apply until 31 December 2012 if energy supply is disrupted in Lithuania.

#### ARTICLE 56

This Title shall apply in the light of the Declaration on the Ignalina Nuclear Power Plant in Lithuania which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 4 to the Act of Accession of 16 April 2003.

### TITLE V

#### **PROVISIONS ON THE TRANSIT OF PERSONS BY LAND BETWEEN THE REGION OF KALININGRAD AND OTHER PARTS OF THE RUSSIAN FEDERATION**

#### ARTICLE 57

The Union rules and arrangements on transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, and in particular the Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual<sup>24</sup>, shall not in themselves delay or prevent the full participation of Lithuania in the Schengen *acquis*, including the removal of internal border controls.

*Kaliningrad  
Transit to Russia*

*Lithuania*

<sup>24</sup> OJ L 99, 17.4.2003, p. 8.

#### ARTICLE 58

The Union shall assist Lithuania in implementing the rules and arrangements for the transit of persons between the region of Kaliningrad and the other parts of the Russian Federation with a view to Lithuania's full participation in the Schengen area as soon as possible.

The Union shall assist Lithuania in managing the transit of persons between the region of Kaliningrad and the other parts of the Russian Federation and shall, notably, bear any additional costs incurred by implementing the specific provisions of the *acquis* provided for such transit.

#### ARTICLE 59

Without prejudice to the sovereign rights of Lithuania, any further act concerning the transit of persons between the region of Kaliningrad and other parts of the Russian Federation shall be adopted by the Council on a proposal from the Commission. The Council shall act unanimously.

#### ARTICLE 60

This Title shall apply in the light of the Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation, which incorporates, without altering its legal affect, the wording of the preamble to Protocol No 5 to the Act of Accession of 16 April 2003.

### TITLE VI

#### PROVISIONS ON THE ACQUISITION OF SECONDARY RESIDENCES IN MALTA

#### ARTICLE 61

Bearing in mind the very limited number of residences in Malta and the very limited land available for construction purposes, which can only cover the basic needs created by the demographic development of the present residents, Malta may on a non-discriminatory basis maintain in force the rules on the acquisition and holding of immovable property for secondary residence purposes by nationals of the Member States who have not legally resided in Malta for at least five years laid down in the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246).

*Secondary residence in  
Malta*

Malta shall apply authorisation procedures for the acquisition of immovable property for secondary residence purposes in Malta, which shall be based on published, objective, stable and transparent criteria. These criteria shall be applied in a non-discriminatory manner and shall not differentiate between nationals of Malta and of other Member States. Malta shall ensure that in no instance shall a national of a Member State be treated in a more restrictive way than a national of a third country.

In the event that the value of one such property bought by a national of a Member State exceeds the thresholds provided for in Malta's legislation, namely 30 000 Maltese lira for apartments and 50 000 Maltese lira for any type of property other than apartments and property of historical importance, authorisation shall be granted. Malta may revise the thresholds established by such legislation to reflect changes in prices in the property market in Malta.

## TITLE VII

### PROVISIONS ON ABORTION IN MALTA

#### ARTICLE 62

Nothing in the Treaty establishing a Constitution for Europe or in the Treaties and Acts modifying or supplementing it shall affect the application in the territory of Malta of national legislation relating to abortion.

## TITLE VIII

### PROVISIONS ON THE RESTRUCTURING OF THE POLISH STEEL INDUSTRY

#### ARTICLE 63

1. Notwithstanding Articles III-167 and III-168 of the Constitution, State aid granted by Poland for restructuring purposes to specified parts of the Polish steel industry shall be deemed to be compatible with the internal market provided that:

- (a) the period provided for in Article 8(4) of Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part <sup>25</sup>, has been extended until 1 May 2004,

<sup>25</sup> OJ L 348, 31.12.1993, p. 2.

- (b) the terms set out in the restructuring plan, on the basis of which the abovementioned Protocol was extended are adhered to throughout the period 2002-2006,

*Abortion in Malta*

*Polish steel*

- (c) the conditions set out in this Title are met, and
  - (d) no State aid for restructuring is to be paid to the Polish steel industry after 1 May 2004.
2. Restructuring of the Polish steel sector, as described in the individual business plans of the companies listed in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003 (hereinafter referred to as "benefiting companies"), and in line with the conditions set out in this Title, shall be completed no later than 31 December 2006 (hereinafter referred to as "the end of the restructuring period").
3. Only benefiting companies shall be eligible for State aid in the framework of the Polish steel restructuring programme.
4. A benefiting company may not:
- (a) in the case of a merger with a company not included in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003, pass on the benefit of the aid granted to the benefiting company;
  - (b) take over the assets of any company not included in Annex 1 to Protocol No 8 to the Act of Accession of 16 April 2003 which is declared bankrupt in the period up to 31 December 2006.
5. Any subsequent privatisation of any of the benefiting companies shall take place on a basis that respects the need for transparency and shall respect the conditions and principles regarding viability, State aids and capacity reduction defined in this Title. No further State aid shall be granted as part of the sale of any company or individual assets.
6. The restructuring aid granted to the benefiting companies shall be determined by the justifications set out in the approved Polish steel restructuring plan and individual business plans as approved by the Council. But, in any case, the aid paid out in the period of 1997-2003 in its total amount shall not exceed PLN 3 387 070 000.

Of this total figure:

- (a) as regards Polskie Huty Stali (hereinafter referred to as "PHS"), the restructuring aid already granted or to be granted from 1997 until the end of 2003 shall not exceed PLN 3 140 360 000. PHS has already received PLN 62 360 000 of restructuring aid in the period 1997-2001; it shall receive further restructuring aid of no more than PLN 3 078 000 000 in 2002 and 2003 depending on the requirements set out in the approved restructuring plan (to be entirely paid out in 2002 if the extension of the grace period under Protocol 2 of the Europe Agreement establishing an association between the European

Communities and their Member States, of the one part, and Poland, of the other part, is granted by the end of 2002, or otherwise in 2003);

- (b) as regards Huta Andrzej S.A., Huta Bankowa Sp. z o.o., Huta Batory S.A., Huta Buczek S.A., Huta L.W. Sp. z o.o., Huta Łabędy S.A., and Huta Pokój S.A. (hereinafter referred to as "other benefiting companies"), the steel restructuring aid already granted or to be granted from 1997 until the end of 2003 shall not exceed PLN 246 710 000. These firms have already received PLN 37 160 000 of restructuring aid in the period 1997-2001; they shall receive further restructuring aid of no more than PLN 210 210 000 depending on the requirements set out in the approved restructuring plan (of which PLN 182 170 000 in 2002 and PLN 27 380 000 in 2003 if the extension of the grace period under Protocol 2 of the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, is granted by the end of 2002, or otherwise PLN 210 210 000 in 2003).

No further State aid shall be granted by Poland for restructuring purposes to the Polish steel industry.

7. The net capacity reduction to be achieved by Poland for finished products during the period 1997-2006 shall be a minimum of 1 231 000 tonnes. This overall amount includes net capacity reductions of at least 715 000 tpy in hot-rolled products and 716 000 tpy in cold-rolled products, as well as an increase of at most 200 000 tpy of other finished products.

Capacity reduction shall be measured only on the basis of permanent closure of production facilities by physical destruction such that the facilities cannot be restored to service. A declaration of bankruptcy of a steel company shall not qualify as capacity reduction.

The net capacity reductions shown in Annex 2 to Protocol No 8 to the Act of Accession of 16 April 2003 are minima and actual net capacity reductions to be achieved and the time frame for doing so shall be established on the basis of Poland's final restructuring programme and individual business plans under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, taking into account the objective to ensure the viability of benefiting companies as at 31 December 2006.

8. The business plan for the benefiting company PHS shall be implemented. In particular:

- (a) restructuring efforts shall concentrate on the following:



- (i) reorganising PHS production facilities on a product basis and ensuring horizontal organisation by function (purchasing, production, sales),
  - (ii) establishing in PHS a unified management structure enabling full realisation of synergies in the consolidation,
  - (iii) evolving the strategic focus of PHS from being production-oriented to being marketing-oriented,
  - (iv) improving the efficiency and effectiveness of PHS business management and also ensuring better control of direct sales,
  - (v) PHS reviewing, on the basis of sound economic considerations, the strategy of spin-off companies and, where appropriate, reintegrating services into the parent company,
  - (vi) PHS reviewing its product mix, reducing over-capacity on long semi-finished products and generally moving further into the higher value-added product market,
  - (vii) PHS investing in order to achieve a higher quality of finished products; special attention shall be given to attaining by the date set in the timetable for the implementation of the PHS restructuring programme and at the latest by the end of 2006 3-Sigma production quality level at the PHS site in Kraków;
- (b) cost savings shall be maximised in PHS during the restructuring period through energy efficiency gains, improved purchasing and ensuring productivity yields comparable to Union levels;
- (c) employment restructuring shall be implemented; levels of productivity comparable to those obtained by Union steel industry product groups shall be reached as at 31 December 2006, based on consolidated figures including indirect employment in the wholly owned service companies;
- (d) any privatisation shall be on a basis that respects the need for transparency and fully respects the commercial value of PHS. No further State aid shall be granted as part of the sale.
9. The business plan for the other benefiting companies shall be implemented. In particular:
- (a) for all of the other benefiting companies, restructuring efforts shall concentrate on the following:

- (i) evolving the strategic focus from being production-oriented to being marketing-oriented,
  - (ii) improving the efficiency and effectiveness of the companies' business management and also ensuring better control of direct sales,
  - (iii) reviewing, on the basis of sound economic considerations, the strategy of spin-off companies and, where appropriate, reintegrating services into the parent companies;
- (b) for Huta Bankowa, implementing the cost savings programme;
  - (c) for Huta Buczek, obtaining the necessary financial support from creditors and local financial institutions and implementing the cost savings programme, including reducing the investment cost by adapting existing production facilities;
  - (d) for Huta Łabędy, implementing the cost savings programme and reducing reliance on the mining industry;
  - (e) for Huta Pokój, achieving international productivity standards in the subsidiaries, implementing energy consumption savings and cancelling the proposed investment in the processing and construction department;
  - (f) for Huta Batory, reaching agreement with creditors and financial institutions on debt rescheduling and investment loans. The company shall also ensure substantial additional cost savings associated with employment restructuring and improved yields;
  - (g) for Huta Andrzej, securing a stable financial base for its development by negotiating an agreement between the company's current lenders, long-term creditors, trade creditors and financial institutions. Additional investments in the hot tube mill as well as the implementation of the staff reduction programme must take place;
  - (h) for Huta L.W., carrying out investments in relation to the company's hot-rolling mills project, lifting equipment, and environmental standing. This company shall also achieve higher productivity levels, through staff restructuring and reducing the costs of external services.

10. Any subsequent changes in the overall restructuring plan and the individual plans must be agreed by the Commission and, where appropriate, by the Council.

11. The implementation of the restructuring shall take place under

conditions of full transparency and on the basis of sound market economy principles.

12. The Commission and the Council shall closely monitor the implementation of the restructuring and the fulfilment of the conditions set out in this Title concerning viability, State aid and capacity reductions before and after 1 May 2004, until the end of the restructuring period, in accordance with paragraphs 13 to 18. For this purpose the Commission shall report to the Council.

13. In addition to the monitoring of State aid, the Commission and the Council shall monitor the restructuring benchmarks set out in Annex 3 to Protocol No 8 to the Act of Accession of 16 April 2003. References made in that Annex to paragraph 14 of the Protocol shall be construed as being made to paragraph 14 of this Article.

14. Monitoring shall include an independent evaluation to be carried out in 2003, 2004, 2005 and 2006. The Commission's viability test shall be applied and productivity shall be measured as part of the evaluation.

15. Poland shall cooperate fully with all the arrangements for monitoring. In particular:

- (a) Poland shall supply the Commission with six-monthly reports concerning the restructuring of the benefiting companies, no later than 15 March and 15 September of each year, until the end of the restructuring period;
- (b) the first report shall reach the Commission by 15 March 2003 and the last report by 15 March 2007, unless the Commission decides otherwise;
- (c) the reports shall contain all the information necessary to monitor the restructuring process, the State aid and the reduction and use of capacity and shall provide sufficient financial data to allow an assessment to be made of whether the conditions and requirements contained in this Title have been fulfilled. The reports shall at the least contain the information set out in Annex 4 to Protocol No 8 to the Act of Accession of 16 April 2003, which the Commission reserves the right to modify in line with its experiences during the monitoring process. In Annex 4 to Protocol No 8 to the Act of Accession of 16 April 2003, the reference to paragraph 14 of the Protocol shall be construed as being to paragraph 14 of this Article. In addition to the individual business reports of the benefiting companies there shall also be a report on the overall situation of the Polish steel sector, including recent macroeconomic developments;
- (d) all additional information necessary for the independent evaluation provided for in paragraph 14 must, furthermore, be provided by

Poland;

- (e) Poland shall oblige the benefiting companies to disclose all relevant data which might, under other circumstances, be considered as confidential. In its reporting to the Council, the Commission shall ensure that company-specific confidential information is not disclosed.

16. The Commission may at any time decide to mandate an independent consultant to evaluate the monitoring results, undertake any research necessary and report to the Commission and the Council.

17. If the Commission establishes, on the basis of the monitoring, that substantial deviations from the financial data on which the viability assessment has been made have occurred, it may require Poland to take appropriate measures to reinforce or modify the restructuring measures of the benefiting companies concerned.

18. Should the monitoring show that:

- (a) the conditions for the transitional arrangements contained in this Title have not been fulfilled, or that
- (b) the commitments made in the framework of the extension of the period during which Poland may exceptionally grant State support for the restructuring of its steel industry under the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Poland, of the other part, have not been fulfilled, or that
- (c) Poland in the course of the restructuring period has granted additional incompatible State aid to the steel industry and to the benefiting companies in particular,

the transitional arrangements contained in this Title shall not have effect.

The Commission shall take appropriate steps requiring any company concerned to reimburse any aid granted in breach of the conditions laid down in this Title.

## **TITLE IX**

### **PROVISIONS ON UNIT 1 AND UNIT 2 OF THE BOHUNICE V1 NUCLEAR POWER PLANT IN SLOVAKIA**

#### **ARTICLE 64**

Slovakia has undertaken to close Unit 1 of the Bohunice V1 Nuclear Power Plant by 31 December 2006 at the latest and Unit 2 of this plant by

*Nuclear power in  
Slovakia*

31 December 2008 at the latest and subsequently decommission these units.

#### ARTICLE 65

1. During the period 2004-2006, the Union shall provide Slovakia with financial assistance in support of its efforts to decommission, and to address the consequences of the closure and decommissioning of, Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant (hereinafter referred to as "the Assistance").

2. The Assistance shall be decided and implemented in accordance with the provisions laid down in Council Regulation (EEC) No 3906/89 of 18 December 1989 on economic aid to certain countries of Central and Eastern Europe <sup>26</sup>.

<sup>26</sup> OJ L 375, 23.12.1989, p. 11.

3. For the period 2004-2006 the Assistance shall amount to 90 million euro in commitment appropriations, to be committed in equal annual tranches.

4. The Assistance or parts thereof may be made available as a Union contribution to the Bohunice International Decommissioning Support Fund, managed by the European Bank for Reconstruction and Development.

#### ARTICLE 66

The Union acknowledges that the decommissioning of the Bohunice V1 Nuclear Power plant must continue beyond the Financial Perspective as defined in the Interinstitutional Agreement of 6 May 1999, and that this effort represents for Slovakia a significant financial burden. Decisions on the continuation of Union assistance in this field after 2006 will take the situation into account.

#### ARTICLE 67

The provisions of this Title shall apply in the light of the Declaration on Unit 1 and Unit 2 of the Bohunice V1 Nuclear Power Plant in Slovakia which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 9 to the Act of Accession of 16 April 2003.

### TITLE X PROVISIONS ON CYPRUS

#### ARTICLE 68

1. The application of the Community and Union *acquis* shall be

suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

2. The Council, on the basis of a proposal from the Commission, shall decide on the withdrawal of the suspension referred to in paragraph 1. It shall act unanimously.

#### ARTICLE 69

1. The Council, on the basis of a proposal from the Commission, shall define the terms under which the provisions of Union law shall apply to the line between those areas referred to in Article 68 and the areas in which the Government of the Republic of Cyprus exercises effective control. The Council shall act unanimously.

2. The boundary between the Eastern Sovereign Base Area and those areas referred to in Article 68 shall be treated as part of the external borders of the Sovereign Base Areas for the purpose of Part Four of the Annex to Protocol No 3 to the Act of Accession of 16 April 2003 on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus for the duration of the suspension of the application of the Community and Union *acquis* according to Article 68.

#### ARTICLE 70

1. Nothing in this Title shall preclude measures with a view to promoting the economic development of the areas referred to in Article 68.

2. Such measures shall not affect the application of the Community and Union *acquis* under the conditions set out in this Protocol in any other part of the Republic of Cyprus.

#### ARTICLE 71

In the event of settlement of the Cyprus problem, the Council, on the basis of a proposal from the Commission, shall decide on the adaptations to the terms concerning the accession of Cyprus to the Union with regard to the Turkish Cypriot Community. The Council shall act unanimously.

#### ARTICLE 72

This Title shall apply in the light of the declaration on Cyprus which incorporates, without altering its legal effect, the wording of the preamble to Protocol No 10 to the Act of Accession of 16 April 2003.

*Enlargement with  
10 new countries in 2004*

## PART THREE

### PROVISIONS ON THE ANNEXES TO THE ACT OF ACCESSION OF 16 APRIL 2003

#### ARTICLE 73

Annex I and Annexes III to XVII to the Act of Accession of 16 April 2003, their appendices, and the Annexes to Protocols 2, 3 and 8 to the Act of Accession of 16 April 2003<sup>27</sup> form an integral part of this Protocol.

<sup>27</sup> OJ L 236, 23.9.2003, p. 33.

#### ARTICLE 74

1. The references made to the "Treaty of Accession" in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to the Treaty referred to in Article IV-437(2)(e) of the Constitution, those made to the date or time of signing of that Treaty shall be construed as being made to 16 April 2003 and those made to the date of accession shall be construed as being made to 1 May 2004.

2. Without prejudice to the second subparagraph, the references made to "this Act" in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to the Act of Accession of 16 April 2003.

The references made to the provisions of the Act of Accession of 16 April 2003 in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to this Protocol, in accordance with the following table of equivalence.

Act of Accession of 16 April 2003	Protocol
Article 21	Article 12
Article 22	Article 13
Article 24	Article 15
Article 32	Article 21
Article 37	Article 26
Article 52	Article 32

3. The expressions, which appear in the Annexes referred to in Article 73, shall be construed as having the meaning assigned to them in the following table of equivalence, unless they refer exclusively to legal situations preceding the entry into force of the Treaty establishing a Constitution for Europe.

Expressions used in the Annexes:

| Meaning:

Treaty establishing the European Community	Constitution
Treaty on European Union	Constitution
Treaties on which the European Union is founded (European) Community	Constitution Union
Enlarged Community	Union
Community	Union
EU	Union
Enlarged Union or enlarged EU	Union

By way of derogation from the first subparagraph, the meaning of the expression "Community" where it is used to qualify the terms "preference" and "fisheries" shall remain unchanged.

4. The references made to parts or to provisions of the Treaty establishing the European Community in the Annexes referred to in Article 73 of this Protocol shall be construed as being made to parts or to provisions of the Constitution, in accordance with the following table of equivalence.

EC Treaty	Constitution
Part Three, Title I	Part III, Title III, Chapter I, Section 3
Part Three, Title I, Chapter 1	Part III, Title III, Chapter I, Section 3 Sub-Section 1
Part Three, Title II	Part III, Title III, Chapter III, Section 4
Part Three, Title III	Part III, Title III, Chapter I, Sections 2 and 4
Part Three, Title VI, Chapter 1	Part III, Title III, Chapter I, Section 5
Article 31	Article III-155
Article 39	Article III-133
Article 49	Article III-144
Article 58	Article III-158
Article 87	Article III-167
Article 88	Article III-168
Article 226	Article III-360
Annex I	Annex I

5. Where the Annexes referred to in Article 73 of this Protocol provide that the Council or the Commission shall adopt legal acts, those acts shall take the form of European regulations or decisions.



*Excessive deficit procedure*

**10. PROTOCOL ON THE EXCESSIVE DEFICIT PROCEDURE**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the excessive deficit procedure referred to in Article III-184 of the Constitution,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

*Reference values*

The reference values referred to in Article III-184(2) of the Constitution are:

*3% deficit*

(a) 3% for the ratio of the planned or actual government deficit to gross domestic product at market prices;

*60% debt*

(b) 60% for the ratio of government debt to gross domestic product at market prices.

ARTICLE 2

For the purposes of Article III-184 of the Constitution and of this Protocol:

- (a) "government" means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in the European System of Integrated Economic Accounts;
- (b) "deficit" means net borrowing as defined in the European System of Integrated Economic Accounts;
- (c) "investment" means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;
- (d) "debt" means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in point (a).

ARTICLE 3

*Member States shall report deficits*

In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as defined in Article 2(a). The Member States shall ensure that national procedures in the budgetary

area enable them to meet their obligations in this area deriving from the Constitution. The Member States shall report their planned and actual deficits and the levels of their debt promptly and regularly to the Commission.

ARTICLE 4

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

*Convergence criteria*

**11. PROTOCOL  
ON THE CONVERGENCE CRITERIA**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Union in taking decisions referred to in Article III-198 of the Constitution to end the derogations of those Member States with a derogation,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

*Price stability*

***Inflation not to exceed  
1,5% more than average  
of best 3***

The criterion on price stability referred to in Article III-198(1)(a) of the Constitution shall mean that the Member State concerned has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1,5 percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis, taking into account differences in national definitions.

ARTICLE 2

The criterion on the government budgetary position referred to in Article III-198(1)(b) of the Constitution shall mean that at the time of the examination the Member State concerned is not the subject of a European decision of the Council under Article III-184(6) of the Constitution that an excessive deficit exists.

ARTICLE 3

***Normal exchange rate  
for two years***

The criterion on participation in the exchange-rate mechanism of the European Monetary System referred to in Article III-198(1)(c) of the Constitution shall mean that the Member State concerned has respected the

normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against the euro on its own initiative for the same period.

#### ARTICLE 4

***Interest rate not higher than 2% over average for best 3***

The criterion on the convergence of interest rates referred to in Article III-198(1)(d) of the Constitution shall mean that, observed over a period of one year before the examination, the Member State concerned has had an average nominal long-term interest rate that does not exceed by more than 2 percentage points that of, at most, the three best performing Member States in terms of price stability. Interest rates shall be measured on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.

#### ARTICLE 5

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

#### ARTICLE 6

***U\*  
Details by unanimous decision***

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the European Central Bank, and the Economic and Financial Committee referred to in Article III-192 of the Constitution, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article III-198 of the Constitution, which shall then replace this Protocol.

***Euro-zone***

## **12. PROTOCOL ON THE EURO GROUP**

***Special cooperation for the euro countries***

THE HIGH CONTRACTING PARTIES,

***Promote ever-closer coordination of economic policies***

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

***Enhance dialogue between euro-states***

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

HAVE AGREED upon the following provisions, which are annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

*Euro-states meet informally, Commission and ECB participate*

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

***Euro-President***

ARTICLE 2

*- elected by majority of Euro-States for 2½ years*

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

***UK and Northern Ireland membership of the Monetary Union***

**13. PROTOCOL ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AS REGARDS ECONOMIC AND MONETARY UNION**

*UK shall not be obliged to adopt the euro except with its own decision*

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and Parliament;

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union, under the terms of paragraph 1 of the Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland, annexed to the Treaty establishing the European Community;

NOTING the practice of the government of the United Kingdom to fund its borrowing requirement by the sale of debt to the private sector,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

*Not obliged*

Unless the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so.

ARTICLE 2

In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, Articles 3 to 8 and 10 shall apply to the United Kingdom.

ARTICLE 3

*Retain monetary powers*

The United Kingdom shall retain its powers in the field of monetary policy according to national law.

ARTICLE 4

Articles I-30(2), with the exception of the first and last sentences thereof, I-30(5), III-177, second paragraph, III-184(1), (9) and (10), III-185(1) to (5), III-186, III-188, III-189, III-190, III-191, III-196, III-198(3), III-326 and III-382 of the Constitution shall not apply to the United Kingdom. The same applies to Article III-179(2) of the Constitution as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally.

In the provisions referred to in the first paragraph, references to the Union or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

ARTICLE 5

The United Kingdom shall endeavour to avoid an excessive government deficit.

Articles III-192(4) and III-200 of the Constitution shall apply to the United Kingdom as if it had a derogation. Articles III-201 and III-202 of the Constitution shall continue to apply to the United Kingdom.

ARTICLE 6

The voting rights of the United Kingdom shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in Article 4 and in the instances referred to in the first subparagraph of Article III-197(4) of the Constitution. For this purpose the second and third subparagraphs of Article III-197(4) of the Constitution shall apply.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the European Central Bank under the second, third and fourth subparagraphs of Article III-382(2) of the Constitution.

## ARTICLE 7

Articles 3, 4, 6, 7, 9(2), 10(1), (2) and (3), 11(2), 12(1), 14, 16, 18, 19, 20, 22, 23, 26, 27, 30, 31, 32, 33, 34 and 50 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank (the "Statute") shall not apply to the United Kingdom.

In those Articles, references to the Union or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10(3) and 30(2) of the Statute to "subscribed capital of the European Central Bank" shall not include capital subscribed by the Bank of England.

## ARTICLE 8

Article III-199 of the Constitution and Articles 43 to 47 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

- (a) References in Article 43 of the Statute to the tasks of the European Central Bank and the European Monetary Institute shall include those tasks that still need to be performed after the introduction of the euro owing to the decision of the United Kingdom not to adopt the euro.
- (b) In addition to the tasks referred to in Article 46 of the Statute, the European Central Bank shall also give advice in relation to and contribute to the preparation of any European regulation or any European decision of the Council with regard to the United Kingdom taken in accordance with Article 9(a) and (c) of this Protocol.
- (c) The Bank of England shall pay up its subscription to the capital of the European Central Bank as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

## ARTICLE 9

The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:

- (a) The United Kingdom shall have the right to adopt the euro provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article III-198(1) and (2) of the Constitution, shall decide whether

it fulfils the necessary conditions.

- (b) The Bank of England shall pay up its subscribed capital, transfer to the European Central Bank foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.
- (c) The Council, acting under the conditions and in accordance with the procedure laid down in Article III-198(3) of the Constitution, shall take all other necessary decisions to enable the United Kingdom to adopt the euro.

If the United Kingdom adopts the euro pursuant to the provisions of this Article, Articles 3 to 8 shall cease to have effect.

#### ARTICLE 10

Notwithstanding Article III-181 of the Constitution and Article 21(1) of the Statute, the Government of the United Kingdom may maintain its "ways and means" facility with the Bank of England if and so long as the United Kingdom does not adopt the euro.

#### *Monetary Union relation to Denmark*

### **14. PROTOCOL ON CERTAIN PROVISIONS RELATING TO DENMARK AS REGARDS ECONOMIC AND MONETARY UNION**

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Denmark renouncing its exemption;

GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union, under the terms of paragraph 1 of the Protocol on certain provisions relating to Denmark, annexed to the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### ARTICLE 1

In view of the notice given to the Council by the Danish Government on 3 November 1993, Denmark shall have an exemption. The effect of the exemption shall be that all provisions of the Constitution and the Statute of

the European System of Central Banks and the European Central Bank referring to a derogation shall be applicable to Denmark.

ARTICLE 2

*Only Denmark can drop the derogation*

As for the abrogation of the exemption, the procedure referred to in Article III-198 of the Constitution shall only be initiated at the request of Denmark.

ARTICLE 3

In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

*National Bank of Denmark*

**15. PROTOCOL ON CERTAIN TASKS OF THE NATIONAL BANK OF DENMARK**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark;

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

*Danish National Bank can serve Faeroe Islands and Greenland*

Article 14 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank shall not affect the right of the National Bank of Denmark to carry out its existing tasks concerning those parts of Denmark which are not part of the Union.

*The Pacific Financial Community franc system*

**16. PROTOCOL ON THE PACIFIC FINANCIAL COMMUNITY FRANC SYSTEM**

THE HIGH CONTRACTING PARTIES,

DESIRING to take into account a particular point relating to France,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

France may keep the privilege of monetary emission in New Caledonia, French Polynesia and Wallis and Futuna under the terms established by its



national laws and shall be solely entitled to determine the parity of the Pacific Financial Community franc.

*Schengen acquis*

**17. PROTOCOL ON THE SCHENGEN ACQUIS  
INTEGRATED INTO THE FRAMEWORK OF THE  
EUROPEAN UNION**

THE HIGH CONTRACTING PARTIES,

RECALLING that the provisions of the Schengen *acquis* consisting of the Agreements on the gradual abolition of checks at common borders, signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and rules adopted on the basis of these agreements, have been integrated into the framework of the European Union by a Protocol annexed to the Treaty on European Union and to the Treaty establishing the European Community;

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

*Denmark's special  
position*

TAKING INTO ACCOUNT the special position of Denmark;

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland do not participate in all the provisions of the Schengen *acquis*; provision should, however, be made to allow those Member States to accept other provisions of this *acquis* in full or in part;

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Constitution concerning closer cooperation between some Member States;

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the European Union;

*Norway and Iceland;  
Nordic passport union*

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe,

ARTICLE 1

The Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden shall be authorised to implement closer cooperation among themselves in areas covered by provisions defined by the Council which constitute the Schengen *acquis*. This cooperation shall be conducted within the institutional and legal framework of the Union and with respect for the relevant provisions of the Constitution.

#### ARTICLE 2

*Schengen applies to all Member States except UK and Ireland*

The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Protocol on the Treaty and the Act of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic. The Council will substitute itself for the Executive Committee established by the Schengen agreements.

#### ARTICLE 3

*Danish derogation*

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

#### ARTICLE 4

*UK, Ireland may join at any time*

Ireland and the United Kingdom of Great Britain and Northern Ireland, may at any time request to take part in some or all of the provisions of the Schengen *acquis*.

The Council shall adopt a European decision on this request. It shall act by a unanimous decision of the members referred to in Article 1 and of the member representing the government of the Member State concerned.

#### ARTICLE 5

Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Constitution.

In this context, where either Ireland or the United Kingdom or both have not notified the President of the Council in writing within a reasonable

period that they wish to take part, the authorisation referred to in Article III-419(1) of the Constitution shall be deemed to have been granted to the Member States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

#### ARTICLE 6

*Norway and Iceland*

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen *acquis* and its further development. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its members mentioned in Article 1. That Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded by the Council, acting unanimously, with Iceland and Norway for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen *acquis* which apply to these States.

#### ARTICLE 7

*New Member States must accept Schengen acquis*

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen acquis and further measures adopted by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

*Border control in the UK and Ireland*

### **18. PROTOCOL ON THE APPLICATION OF CERTAIN ASPECTS OF ARTICLE III-130 OF THE CONSTITUTION TO THE UNITED KINGDOM AND TO IRELAND**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland;

HAVING REGARD to the existence for many years of special travel arrangements between the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### ARTICLE 1

*UK decides over its borders*

The United Kingdom shall be entitled, notwithstanding Articles III-130 and III-265 of the Constitution, any other provision of the Constitution, any measure adopted under the Constitution, or any international agreement concluded by the Union or by the Union and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

- (a) of verifying the right to enter the United Kingdom of citizens of Member States and of their dependants exercising rights conferred by Union law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and
- (b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Articles III-130 and III-265 of the Constitution or in any other provision of the Constitution or in any measure adopted under it shall prejudice the right of the United Kingdom to adopt or exercise any such controls. References to the United Kingdom in this Article shall include territories for whose external relations the United Kingdom is responsible.

## ARTICLE 2

*Ireland–UK relations*

The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ("the Common Travel Area"), while fully respecting the rights of persons referred to in Article 1, first paragraph, point (a), of this Protocol. Accordingly, as long as they maintain such arrangements, the provisions of Article 1 of this Protocol shall apply to Ireland under the same terms and conditions as for the United Kingdom. Nothing in Articles III-130 and III-265 of the Constitution, in any other provision of the Constitution or in any measure adopted under it shall affect any such arrangements.

## ARTICLE 3

The other Member States shall be entitled to exercise at their frontiers or at any point of entry into their territory such controls on persons seeking to enter their territory from the United Kingdom or any territories whose external relations are under its responsibility for the same purposes stated in Article 1 of this Protocol, or from Ireland as long as the provisions of Article 1 of this Protocol apply to Ireland.

Nothing in Articles III-130 and III-265 of the Constitution or in any other provision of the Constitution or in any measure adopted under it shall prejudice the right of the other Member States to adopt or exercise any

such controls.

#### ARTICLE 4

This Protocol shall also apply to acts which remain in force by virtue of Article IV-438 of the Constitution.

*United Kingdom and Ireland on police and judicial cooperation*

### **19. PROTOCOL ON THE POSITION OF THE UNITED KINGDOM AND IRELAND ON POLICIES IN RESPECT OF BORDER CONTROLS, ASYLUM AND IMMIGRATION, JUDICIAL COOPERATION IN CIVIL MATTERS AND ON POLICE COOPERATION**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland;

HAVING REGARD to the Protocol on the application of certain aspects of Article III-130 of the Constitution to the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing a Constitution for Europe:

#### ARTICLE 1

*Does not take part in the adoption of measures concerning border control, judicial co-operation and civil matters*

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-260 thereof, insofar as that Article relates to the areas covered by those Sections, to Article III-263 or to Article III-275(2)(a) of the Constitution. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for acts of the Council which must be adopted unanimously.

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

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

By way of derogation from the second and third paragraphs, where the

Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

## ARTICLE 2

*May opt in within 3 months*

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or of Article III-260 of the Constitution, insofar as that Article relates to the areas covered by those Sections, or of Article III-263 or Article III-275(2)(a) of the Constitution, no measure adopted pursuant to those Sections or Articles, no provision of any international agreement concluded by the Union pursuant to those Sections or Articles, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

## ARTICLE 3

1. The United Kingdom or Ireland may notify the Council in writing, within three months after a proposal has been presented to the Council pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or after a proposal or initiative has been presented to the Council pursuant to Article III-263 or to Article III-275(2)(a) of the Constitution, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so. The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for acts of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption. The European regulations or decisions adopted pursuant to Article III-260 of the Constitution shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution.

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

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

majority shall be deemed attained.

By way of derogation from the second and third subparagraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

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

#### ARTICLE 4

*UK may join at any time*

The United Kingdom or Ireland may, at any time after the adoption of a measure pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution or to Article III-263 or to Article III-275(2)(a) of the Constitution, notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article III-420(1) of the Constitution shall apply *mutatis mutandis*.

#### ARTICLE 5

A Member State which is not bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution, to Article III-263 or to Article III-275(2)(a) of the Constitution, shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

#### ARTICLE 6

*Ireland may withdraw without UK*

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted pursuant to Section 2 or Section 3 of Chapter IV of Title III of Part III of the Constitution, to Article III-260 of the Constitution, insofar as that Article relates to the areas covered by those Sections, to Article III-263 or to Article III-275(2)(a) of the Constitution, the relevant provisions of the Constitution shall apply to that State in relation to that measure.

#### ARTICLE 7

Articles 3 and 4 shall be without prejudice to the Protocol on the Schengen *acquis* integrated into the framework of the European Union.

ARTICLE 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, this Protocol shall no longer apply to Ireland.

**PROTOCOL ON THE  
EXCEPTIONS FOR  
DENMARK**

*Decided upon in  
Edinburgh, 1992*

*Denmark's position on:*  
- citizenship  
- economic and monetary  
union  
- defence policy  
- justice and home affairs

*In the Union's interest to  
safeguard Danish  
participation*

*Give Denmark possibility  
of 'opting in' to area of  
freedom, security and  
justice*

*Denmark will not be able  
to block further  
integration*

*Schengen*

**20. PROTOCOL  
ON THE POSITION OF DENMARK**

THE HIGH CONTRACTING PARTIES,

RECALLING the decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union;

HAVING NOTED the position of Denmark with regard to citizenship, economic and monetary union, defence policy, and justice and home affairs as laid down in the Edinburgh decision;

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

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

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

BEARING IN MIND the Protocol on the Schengen acquis integrated into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:



**Justice and Home  
Affairs**

*Denmark shall not  
participate in Justice and  
Home Affairs*

*Decisions made by  
unanimity and by  
qualified majority do not  
require Denmark's vote*

*No decision taken within  
Justice and Home Affairs  
shall bind Denmark*

*Denmark will only fund  
administrative aspects*

*Denmark shall decide  
within 6 months whether*

**PART I**

ARTICLE 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Chapter IV of Title III of Part III of the Constitution. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

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

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

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

ARTICLE 2

None of the provisions of Chapter IV of Title III of Part III of the Constitution, no measure adopted pursuant to that Chapter, no provision of any international agreement concluded by the Union pursuant to that Chapter, and no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

ARTICLE 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

ARTICLE 4

1. Denmark shall decide within a period of six months after the adoption of a measure to build upon the Schengen *acquis* covered by Part I whether

*to apply the Schengen rules. If so, obligation is under international law, not EU-law*

*If not, “appropriate steps” would apply*

*Agreements made before Constitution enters into force still apply*

### ***Common defence***

*Denmark shall not participate in the Common Defence and Security Policy*

*Does not prevent others to proceed in that area*

*Unanimity necessary*

it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.

If Denmark decides not to implement such a measure, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. Denmark shall maintain the rights and obligations existing before the entry into force of the Treaty establishing a Constitution for Europe with regard to the Schengen acquis.

## **PART II**

### **ARTICLE 5**

With regard to measures adopted by the Council pursuant to Article I-41, Article III-295(1) and Articles III-309 to III-313 of the Constitution, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications. Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

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

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

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

By way of derogation from the third and fourth paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

### PART III

#### ARTICLE 6

*Legal continuity of all agreements between the Union and Denmark*

This Protocol shall also apply to measures remaining in force by virtue of Article IV-438 of the Constitution, which were covered, prior to the entry into force of the Treaty establishing a Constitution for Europe, by the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community.

#### ARTICLE 7

*No opt-out from visas for 3<sup>rd</sup> countries*

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

### PART IV

#### ARTICLE 8

*Denmark can always join*

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the Union.

#### ARTICLE 9

*Denmark can change its opt out to an opt in, as set out in Annex*

1. At any time and without prejudice to Article 8, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 9 shall be renumbered in consequence.

*Rules in these areas will bind Denmark under Union law*

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

### ANNEX TO THE PROTOCOL

#### ARTICLE 1

*Denmark shall not take part in Justice and Home*

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Chapter IV of Title III of Part

*Affairs  
Decisions made by  
unanimity and qualified  
majority do not require  
Denmark's vote*

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

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

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

By way of derogation from the second and third paragraphs, where the Council does not act on a proposal from the Commission or from the Union Minister for Foreign Affairs, the required qualified majority shall be defined as at least 72% of the members of the Council representing the participating Member States, comprising at least 65% of the population of these States.

## ARTICLE 2

*No decision taken within  
Justice and Home Affairs  
shall bind Denmark*

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

## ARTICLE 3

*Denmark can always  
decide to take part in  
adoption of proposals  
within Justice and Home  
Affairs*

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

*But Denmark cannot  
block a decision*

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

## ARTICLE 4

*Denmark can always accept such measures, then procedure to participate in enhanced cooperation applies*

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

#### ARTICLE 5

*Denmark has 6 months to accept...*

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

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

*...or else Union takes “appropriate measures”*

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

#### ARTICLE 6

*When Denmark participates in adopting a decision the Constitution binds*

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Chapter IV of Title III of Part III of the Constitution, the relevant provisions of the Constitution shall apply to Denmark in relation to that measure.

#### ARTICLE 7

*Denmark will only fund administrative aspects*

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

*Crossing of external borders*

**21. PROTOCOL ON EXTERNAL RELATIONS OF THE MEMBER STATES WITH REGARD TO THE CROSSING OF EXTERNAL BORDERS**

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the need of the Member States to ensure effective controls at their external borders, in cooperation with third countries where appropriate,

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

*Member States must respect Union law*

The provisions on the measures on the crossing of external borders included in Article III-265(2)(b) of the Constitution shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Union law and other relevant international agreements.

*Asylum for EU citizens*

**22. PROTOCOL ON ASYLUM FOR NATIONALS OF MEMBER STATES**

THE HIGH CONTRACTING PARTIES,

WHEREAS, in accordance with Article I-9(1) of the Constitution, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

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

WHEREAS the Court of Justice of the European Union has jurisdiction to ensure that in the interpretation and application of Article I-9(1) and (3) of the Constitution the law is observed by the Union;

WHEREAS pursuant to Article I-58 of the Constitution, any European State, when applying to become a member of the Union, must respect the values set out in Article I-2 of the Constitution;

BEARING IN MIND that Article I-59 of the Constitution establishes a mechanism for the suspension of certain rights in the event of a serious

and persistent breach by a Member State of those values;

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Title II of Part I and Title II of Part III of the Constitution;

BEARING IN MIND that the Constitution establishes an area without internal frontiers and grants every citizen of the Union the right to move and reside freely within the territory of the Member States;

WISHING to prevent the institution of asylum being resorted to for purposes alien to those for which it is intended;

WHEREAS this Protocol respects the finality and the objectives of the Geneva Convention of 28 July 1951 relating to the status of refugees,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing a Constitution for Europe:

#### SOLE ARTICLE

*All Member States are safe countries of origin*

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

- (a) if the Member State of which the applicant is a national proceeds, availing itself of the provisions of Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;
- (b) if the procedure referred to in Article I-59(1) or (2) of the Constitution has been initiated and until the Council, or, where appropriate, the European Council, adopts a European decision in respect thereof with regard to the Member State of which the applicant is a national;
- (c) if the Council has adopted a European decision in accordance with Article I-59(1) of the Constitution in respect of the Member State of which the applicant is a national or if the European Council has adopted a European decision in accordance with Article I-59(2) of the Constitution in respect of the Member State of which the applicant is a national;

- (d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the case may be, the decision-making power of the Member State.

**PERMANENT  
STRUCTURED  
COOPERATION IN  
SECURITY AND  
DEFENCE POLICY**

**23. PROTOCOL ON PERMANENT STRUCTURED  
COOPERATION ESTABLISHED BY ARTICLE 1-41(6)  
AND ARTICLE III-312 OF THE CONSTITUTION**

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article I-41(6) and Article III-312 of the Constitution,

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

*Common security and  
defence policy - an  
integral part of common  
foreign and security  
policy*

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

*Principle: single set of  
forces*

*Neutrality*

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

*NATO*

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

*More active security role  
for the Union*

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

*Union responsible*



*towards international community*

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

*Speedy implementation of UN missions*

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

*Union needs more capabilities*

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

*Union needs more political will*

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

*Role of foreign minister*

RECALLING the importance of the Minister for Foreign Affairs being fully involved in proceedings relating to permanent structured cooperation,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

#### ARTICLE 1

*Open to all Member States, who:*

The permanent structured cooperation referred to in Article I-41(6) of the Constitution shall be open to any Member State which undertakes, from the date of entry into force of the Treaty establishing a Constitution for Europe, to:

*- develop defence capacities*

(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and

*- supply multinational forces*

(b) have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article III-309, within a period of 5 to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

#### ARTICLE 2

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

- cooperate on military investments

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

- bring defence apparatus into line

(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;

- make forces more flexible

(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;

- cooperate on capability development

(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";

- develop major joint programmes

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

### ARTICLE 3

Agency assesses military capabilities of participating Member States

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

The Council adopts recommendations

Enhanced cooperation in the area of defence policy

## **24. PROTOCOL ON ARTICLE 1-41(2) OF THE CONSTITUTION**

THE HIGH CONTRACTING PARTIES,

BEARING IN MIND the need to implement fully the provisions of Article I-41(2) of the Constitution;

BEARING IN MIND that the policy of the Union in accordance with Article I-41(2) of the Constitution shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework,

HAVE AGREED UPON the following provision, which is annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

*Western European Union*

The Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them.

*Import of petroleum refined in the Dutch Antilles*

**25. PROTOCOL CONCERNING IMPORTS INTO THE EUROPEAN UNION OF PETROLEUM PRODUCTS REFINED IN THE NETHERLANDS ANTILLES**

THE HIGH CONTRACTING PARTIES,

BEING DESIROUS of giving fuller details about the system of trade applicable to imports into the Union of petroleum products refined in the Netherlands Antilles,

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

This Protocol is applicable to petroleum products coming under the Combined Nomenclature numbers 27.10, 27.11, 27.12 (paraffin wax and petroleum wax), ex 27.13 (paraffin residues) and 27.14 (shale wax), imported for use in the Member States.

ARTICLE 2

Member States shall undertake to grant to petroleum products refined in the Netherlands Antilles the tariff preferences resulting from the Association of the latter with the Union, under the conditions provided for by this Protocol. These provisions shall hold good whatever may be the rules of origin applied by the Member States.

### ARTICLE 3

1. When the Commission, at the request of a Member State or on its own initiative, establishes that imports into the Union of petroleum products refined in the Netherlands Antilles under the system provided for in Article 2 are giving rise to real difficulties on the market of one or more Member States, it shall adopt a European decision establishing that customs duties on the said imports shall be introduced, increased or re-introduced by the Member States in question, to such an extent and for such a period as may be necessary to meet that situation. The rates of the customs duties thus introduced, increased or re-introduced may not exceed the customs duties applicable to third countries for these same products.
2. The provisions of paragraph 1 can in any case be applied when imports into the Union of petroleum products refined in the Netherlands Antilles reach two million tonnes a year.
3. The Council shall be informed of European decisions adopted by the Commission in pursuance of paragraphs 1 and 2, including those directed at rejecting the request of a Member State. The Council shall, at the request of any Member State, assume responsibility for the matter and may at any time adopt a European decision to amend or revoke such decisions.

### ARTICLE 4

1. If a Member State considers that imports of petroleum products refined in the Netherlands Antilles, made either directly or through another Member State under the system provided for in Article 2, are giving rise to real difficulties on its market and that immediate action is necessary to meet them, it may on its own initiative decide to apply customs duties to such imports, the rate of which may not exceed those of the customs duties applicable to third countries in respect of the same products. It shall notify its decision to the Commission, which shall within one month adopt a European decision establishing whether the measures taken by the State should be maintained or must be amended or cancelled. Article 3(3) shall be applicable to such decision of the Commission.
2. When the quantities of petroleum products refined in the Netherlands Antilles imported either directly or through another Member State, under the system provided for in Article 2, into a Member State or States exceed during a calendar year the tonnage shown in the Annex to this Protocol, the measures taken in pursuance of paragraph 1 by that or those Member States for the current year shall be considered to be justified. The Commission shall, after assuring itself that the tonnage fixed has been reached, formally record the measures taken. In such a case the other Member States shall abstain from formally placing the matter before the Council.

## ARTICLE 5

If the Union decides to apply quantitative restrictions to petroleum products, no matter whence they are imported, these restrictions may also be applied to imports of such products from the Netherlands Antilles. In this case preferential treatment shall be granted to the Netherlands Antilles as compared with third countries.

## ARTICLE 6

1. Articles 2 to 5 may be reviewed by the Council, by unanimous decision, after consulting the European Parliament and the Commission, when a common definition of origin for petroleum products from third countries and associated countries is adopted, or when decisions are taken within the framework of a common commercial policy for the products in question or when a common energy policy is established.
2. When such revision is made, however, equivalent preferences shall in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 2½ million tonnes of petroleum products.
3. The Union's commitments in regard to equivalent preferences as referred to in paragraph 2 may, if necessary, be broken down State by State taking into account the tonnage indicated in the Annex to this Protocol.

## ARTICLE 7

For the implementation of this Protocol, the Commission is responsible for following the pattern of imports into the Member States of petroleum products refined in the Netherlands Antilles. Member States shall communicate to the Commission, which shall see that it is circulated, all useful information to that end in accordance with the administrative conditions recommended by it.

## ANNEX

For the implementation of Article 4(2), the High Contracting Parties have decided that the quantity of 2 million tonnes of petroleum products from the Antilles shall be allocated among the following Member States as follows:

Germany	625 000 tonnes
Belgo/Luxembourg Economic Union	200 000 tonnes
France	75 000 tonnes
Italy	100 000 tonnes
Netherlands	1 000 000 tonnes

*Acquisition of property  
in Denmark*

**26. PROTOCOL  
ON THE ACQUISITION OF PROPERTY  
IN DENMARK**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

*May maintain existing  
legislation for second  
homes*

Notwithstanding the provisions of the Constitution, Denmark may maintain the existing legislation on the acquisition of second homes.

*Public broadcasting in  
Member States*

**27. PROTOCOL ON THE SYSTEM OF PUBLIC  
BROADCASTING IN THE MEMBER STATES**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism,

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

SOLE ARTICLE

*Public service  
broadcasting may not  
affect trading conditions  
and competition rules*

The provisions of the Constitution shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

*Benefits under social security schemes*

## **28. PROTOCOL CONCERNING ARTICLE III-214 OF THE CONSTITUTION**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty establishing a Constitution for Europe:

### SOLE ARTICLE

For the purposes of Article III-214 of the Constitution, benefits under occupational social security schemes shall not be considered as remuneration if and insofar as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.

*Economic, social and territorial cohesion*

## **29. PROTOCOL ON ECONOMIC, SOCIAL AND TERRITORIAL COHESION**

THE HIGH CONTRACTING PARTIES,

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

RECALLING that the provisions of Section 3 of Chapter III of Title III of Part III of the Constitution, on economic, social and territorial cohesion as a whole provide the legal basis for consolidating and further developing the Union's action in this field, including the creation of a fund;

RECALLING that Article III-223 of the Constitution envisages setting up a Cohesion Fund;

NOTING that the European Investment Bank is lending large and increasing amounts for the benefit of the poorer regions;

NOTING the desire for greater flexibility in the arrangements for allocations from the Structural Funds;

NOTING the desire for modulation of the levels of Union participation in programmes and projects in certain Member States;

NOTING the proposal to take greater account of the relative prosperity of Member States in the system of own resources,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### SOLE ARTICLE

1. The Member States reaffirm that the promotion of economic, social and territorial cohesion is vital to the full development and enduring success of the Union.
2. The Member States reaffirm their conviction that the Structural Funds should continue to play a considerable part in the achievement of Union objectives in the field of cohesion.
3. The Member States reaffirm their conviction that the European Investment Bank should continue to devote the majority of its resources to the promotion of economic, social and territorial cohesion, and declare their willingness to review the capital needs of the European Investment Bank as soon as this is necessary for that purpose.
4. The Member States agree that the Cohesion Fund shall provide Union financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90% of the Union average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article III-184 of the Constitution.
5. The Member States declare their intention of allowing a greater margin of flexibility in allocating financing from the Structural Funds to specific needs not covered under the present Structural Funds regulations.
6. The Member States declare their willingness to modulate the levels of Union participation in the context of programmes and projects of the Structural Funds, with a view to avoiding excessive increases in budgetary expenditure in the less prosperous Member States.
7. The Member States recognise the need to monitor regularly the progress made towards achieving economic, social and territorial cohesion, and state their willingness to study all necessary measures in this respect.
8. The Member States declare their intention of taking greater account of the contributive capacity of individual Member States in the system of own resources, and of examining means of correcting, for the less prosperous Member States, regressive elements existing in the present own resources system.



*Special arrangements for Greenland*

### **30. PROTOCOL ON SPECIAL ARRANGEMENTS FOR GREENLAND**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### SOLE ARTICLE

*Free import of fish against fishing rights*

1. The treatment on import into the Union of products subject to the common organisation of the market in fishery products and originating in Greenland shall, while complying with the mechanisms of the common market organisation, involve exemption from customs duties and charges having equivalent effect and the absence of quantitative restrictions or measures having equivalent effect if the possibilities for access to Greenland fishing zones granted to the Union pursuant to an agreement between the Union and the authority responsible for Greenland are satisfactory to the Union.

2. The measures relating to the import arrangements for the products referred to in paragraph 1 shall be adopted in accordance with the procedures laid down in Article III-231 of the Constitution.

*Art. 40.3.3. of the Irish Constitution about abortion*

### **31. PROTOCOL ON ARTICLE 40.3.3 OF THE CONSTITUTION OF IRELAND**

THE HIGH CONTRACTING PARTIES

HAVE AGREED upon the following provision, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

#### SOLE ARTICLE

Nothing in the Treaty establishing a Constitution for Europe or in the Treaties or Acts modifying or supplementing it shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

*Accession to Convention  
on Human Rights*

**32. PROTOCOL RELATING TO ARTICLE I-9(2) OF  
THE CONSTITUTION ON THE ACCESSION OF THE  
UNION TO THE EUROPEAN CONVENTION ON THE  
PROTECTION OF HUMAN RIGHTS AND  
FUNDAMENTAL FREEDOMS**

THE HIGH CONTRACTING PARTIES

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

ARTICLE 1

*Preserve specific  
character of Union law*

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

*participation in control  
bodies*

(a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;

*correctly addressed to  
Member States and/or  
Union*

(b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

ARTICLE 2

*Accession does not  
affect:  
- Union competences or  
powers*

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

*- Member States'  
situation in relation to  
Convention*

ARTICLE 3

*Primacy of EU Court on  
matters covered by the  
Constitution*

Nothing in the agreement referred to in Article 1 shall affect Article III-375(2) of the Constitution.

**33. PROTOCOL ON THE ACTS AND TREATIES  
WHICH HAVE SUPPLEMENTED OR AMENDED THE  
TREATY ESTABLISHING THE EUROPEAN  
COMMUNITY AND THE TREATY ON EUROPEAN  
UNION**

THE HIGH CONTRACTING PARTIES,

WHEREAS Article IV-437(1) of the Constitution repeals the Treaty establishing the European Community and the Treaty on European Union and the Acts and Treaties which have supplemented or amended them;

WHEREAS a list should be drawn up of the acts and treaties referred to in Article IV-437(1);

WHEREAS the substance of Article 9(7) of the Treaty of Amsterdam should be incorporated;

RECALLING that the Act of 20 September 1976 concerning the election of representatives of the European Parliament by direct universal suffrage is to remain in force,

HAVE AGREED upon the following provisions, which are annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

ARTICLE 1

*Treaties repealed by the  
Constitution*

1. The following Acts and Treaties which have supplemented or amended the Treaty establishing the European Community are hereby repealed:

- (a) the Protocol of 8 April 1965 on the privileges and immunities of the European Communities annexed to the Treaty establishing a single Council and a single Commission (OJ 152, 13.7.1967, p. 13);
- (b) the Treaty of 22 April 1970 amending certain budgetary provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities (OJ L 2, 2.1.1971, p. 1);
- (c) the Treaty of 22 July 1975 amending certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities (OJ L 359, 31.12.1977, p. 4);
- (d) the Treaty of 10 July 1975 amending certain provisions of the Protocol on the Statute of the European Investment Bank (OJ L 91, 6.4.1978, p. 1);

- (e) the Treaty of 13 March 1984 amending, with regard to Greenland, the Treaties establishing the European Communities (OJ L 29, 1.2.1985, p. 1);
- (f) the Single European Act of 17 February 1986 and 28 February 1986 (OJ L 169, 29.6.1987, p. 1);
- (g) the Act of 25 March 1993 amending the Protocol on the Statute of the European Investment Bank, empowering the Board of Governors to establish a European Investment Fund (OJ L 173, 7.7.1994, p. 14);
- (h) Decision 2003/223/EC of the Council, meeting in the composition of the Heads of State or Government, of 21 March 2003 on an amendment to Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank (OJ L 83, 1.4.2003, p. 66).

2. The Treaty of Amsterdam of 2 October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts is hereby repealed (OJ C 340, 10.11.1997, p. 1).

3. The Treaty of Nice of 26 February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts is hereby repealed (OJ C 80, 10.3.2001, p. 1).

## ARTICLE 2

1. Without prejudice to the application of Article III-432 of the Constitution and Article 189 of the Treaty establishing the European Atomic Energy Community, the representatives of the Governments of the Member States shall adopt by common accord the necessary provisions for the purpose of dealing with certain problems particular to the Grand Duchy of Luxembourg which arise from the creation of a Single Council and a Single Commission of the European Communities.

2. The Act concerning the election of representatives of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom (OJ L 278, 8.10.1976, p. 1), as it stands at the time of entry into force of the Treaty establishing a Constitution for Europe remains in force. In order to bring it into line with the Constitution, this Act is hereby amended as follows:

- (a) Article 1(3) shall be deleted.
- (b) This amendment does not concern the English text.
- (c) In Article 6(2), the words "of 8 April 1965" shall be deleted; and the term "European Communities" shall be replaced by "European

Union".

- (d) In the second indent of Article 7(1), the term "Commission of the European Communities" shall be replaced by "European Commission".
- (e) In the third indent of Article 7(1), the phrase "Court of Justice of the European Communities or of the Court of First Instance" shall be replaced by "Court of Justice of the European Union".
- (f) In the fifth indent of Article 7(1), the term "Court of Auditors of the European Communities" shall be replaced by "Court of Auditors".
- (g) In the sixth indent of Article 7(1), the term "Ombudsman of the European Communities" shall be replaced by "European Ombudsman".
- (h) In the seventh indent of Article 7(1), the phrase "of the European Economic Community and of the European Atomic Energy Community" shall be replaced by "of the European Union".
- (i) In the ninth indent of Article 7(1), the phrase "pursuant to the Treaties establishing the European Economic Community and the European Atomic Energy Community" shall be replaced by "pursuant to the Treaty establishing a Constitution for Europe and the Treaty establishing the European Atomic Energy Community"; and the term "Communities" shall be replaced by "Union's".
- (j) In the eleventh indent of Article 7(1), the phrase "institutions of the European Communities or of the specialised bodies attached to them or of the European Central Bank" shall be replaced by "institutions, bodies, offices or agencies of the European Union".
- (k) The indents of Article 7(1) shall become points (a) to (k) respectively.
- (l) The indents of the second subparagraph of Article 7(2) shall become points (a) and (b) respectively.
- (m) In the second subparagraph of Article 11(2), the term "Community" shall be replaced by "Union"; the word "determine" shall be replaced by "adopt a European decision which shall determine"; and the words "preceding subparagraph" shall be replaced by "first subparagraph".
- (n) In Article 11(3), the phrase "without prejudice to Article 139 of the Treaty establishing the European Community" shall be replaced by "without prejudice to Article III-336 of the Constitution".
- (o) In Article 14, the term "a proposal" shall be replaced by "an

initiative"; and the phrase "adopt such measures" shall be replaced by "adopt the necessary European regulations or decisions".

*Seats in EP and votes in the Council*

*Transitional provisions*

*European Parliament*

*U\*\*\*  
New rules adopted before 2009 by unanimity*

*Composition shall not change with new enlargements until 2009*

### **34. PROTOCOL ON THE TRANSITIONAL PROVISIONS RELATING TO THE INSTITUTIONS AND BODIES OF THE UNION**

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the European Union established by the Treaty on European Union and the European Community to the European Union established by the Treaty establishing a Constitution for Europe which is their successor, it is necessary to lay down transitional provisions which will apply before all the provisions of the Constitution and the instruments necessary for their implementation take full effect,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and to the Treaty establishing the European Atomic Energy Community:

#### **TITLE 1**

#### **Provisions concerning the European Parliament**

#### **ARTICLE 1**

1. In accordance with the second subparagraph of Article I-20(2) of the Constitution, the European Council shall adopt a European decision determining the composition of the European Parliament sufficiently in advance of the 2009 European Parliament elections.

2. During the 2004-2009 parliamentary term, the composition and the number of representatives elected to the European Parliament in each Member State shall remain the same as on the date of the entry into force of the Treaty establishing a Constitution for Europe, the number of representatives being as follows:

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78

Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Netherlands	27
Austria	18
Poland	54
Portugal	24
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78

*The Council*

**TITLE 2  
PROVISIONS CONCERNING THE EUROPEAN COUNCIL  
AND THE COUNCIL**

Article 2

***New qualified majority  
(55% of countries  
comprising 65% of the  
EU population) to take  
effect from 01.11.2009***

1. The provisions of Article I-25(1), (2) and (3) of the Constitution on the definition of the qualified majority in the European Council and the Council shall take effect on 1 November 2009, after the 2009 European Parliament elections have taken place in accordance with Article I-20(2) of the Constitution.

2. The following provisions shall remain in force until 31 October 2009, without prejudice to Article I-25(4) of the Constitution.

*Until then the following  
weighting of votes  
applies:*

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

Belgium	12
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4

Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29

**Qualified majority**

1. 232 out of 321
2. majority of Member States
3. 62% of the population

Acts shall be adopted if there are at least 232 votes in favour representing a majority of the members where, under the Constitution, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 232 votes in favour representing at least two thirds of the members.

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

*Adjusted following enlargement according to the principles of Nice*

3. For subsequent accessions, the threshold referred to in paragraph 2 shall be calculated to ensure that the qualified majority threshold expressed in votes does not exceed that resulting from the table in the Declaration on the enlargement of the European Union in the Final Act of the Conference which adopted the Treaty of Nice.

*Articles in the Constitution taking effect from 01.11.2009*

4. The provisions of the following Articles shall take effect on 1 November 2009:

- Article I-44(3), third, fourth and fifth subparagraphs, of the Constitution,
- Article I-59(5), second and third subparagraphs, of the Constitution,
- Article I-60(4), second subparagraph, of the Constitution,
- Article III-179(4), third and fourth subparagraphs, of the Constitution,
- Article III-184(6), third and fourth subparagraphs, of the Constitution,
- Article III-184(7), third and fourth subparagraphs, of the Constitution,
- Article III-194(2), second and third subparagraphs, of the Constitution,



- Article III-196(3), second and third subparagraphs, of the Constitution,
- Article III-197(4), second and third subparagraphs, of the Constitution,
- Article III-198(2), third subparagraph, of the Constitution,
- Article III-312(3), third and fourth subparagraphs, of the Constitution,
- Article III-312(4), third and fourth subparagraphs, of the Constitution,
- Article 1, second, third and fourth paragraphs, and Article 3(1), second, third and fourth subparagraphs, of the Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation,
- Article 1, second, third and fourth paragraphs and Article 5, third, fourth and fifth paragraphs, of the Protocol on the position of Denmark.

*If not all members vote then qualified majority is adjusted in accordance with the principles of Nice*

Until 31 October 2009, the qualified majority shall, in cases where not all the members of the Council participate in voting, namely in the cases referred to in the articles mentioned in the first subparagraph, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 2.

### ARTICLE 3

*Until other decision on Council formations, General Affairs Council establishes Council by simple majority*

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

### TITLE 3

#### **Provisions concerning the Commission, including the Union's Minister of Foreign Affairs**

### ARTICLE 4

*Commission stays until end of term, but when Foreign Minister is elected, the Commissioner of the same nationality shall resign*

The members of the Commission in office on the date of entry into force of the Treaty establishing a Constitution for Europe shall remain in office until the end of their term of office. However, on the day of the appointment of the Union Minister for Foreign Affairs, the term of office of the member having the same nationality as the Union Minister for Foreign Affairs shall end.

**TITLE IV**

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

ARTICLE 5

*Secretary-General,  
Deputy and High  
Representative*

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

**TITLE V**

**PROVISIONS CONCERNING ADVISORY BODIES**

*Committee of the Regions*

ARTICLE 6

Until entry into force of the European decision referred to in Article III-386 of the Constitution, the allocation of members of the Committee of the Regions shall be as follows:

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

Finland	9
Sweden	12
United Kingdom	24

ARTICLE 7

*Economic and Social  
Committee*

Until entry into force of the European decision referred to in Article III-389 of the Constitution, the allocation of members of the Economic and Social Committee shall be as follows:

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

*COAL AND STEEL  
COMMUNITY*

**35. PROTOCOL ON THE FINANCIAL  
CONSEQUENCES OF THE EXPIRY OF THE TREATY  
ESTABLISHING THE EUROPEAN COAL AND STEEL  
COMMUNITY AND ON THE RESEARCH FUND FOR  
COAL AND STEEL**

THE HIGH CONTRACTING PARTIES,

RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the

European Community on 24 July 2002;

TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and therefore the necessity to provide for certain special rules in this regard,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe:

#### ARTICLE 1

*All assets from Coal and Steel Community are used for research in coal and steel*

1. The net worth of the assets and liabilities of the European Coal and Steel Community, as they appear in the balance sheet of the European Coal and Steel Community of 23 July 2002, subject to any increase or decrease which may occur as a result of the liquidation operations, shall be considered as Union assets intended for research in sectors related to the coal and steel industry, referred to as the "European Coal and Steel Community in liquidation". On completion of the liquidation they shall be referred to as the "Assets of the Research Fund for Coal and Steel".

2. The revenue from these assets, referred to as the "Research Fund for Coal and Steel", shall be used exclusively for research, outside the research framework programme, in sectors related to the coal and steel industry in accordance with this Protocol and with acts adopted under it.

#### ARTICLE 2

X\*\*\*  
*Council decides by qualified majority with consent of EP*

1. A European law of the Council shall lay down all the necessary provisions for the implementation of this Protocol, including essential principles. The Council shall act after obtaining the consent of the European Parliament.

*Multiannual financial guidelines*

2. The Council shall adopt, on a proposal from the Commission, the European regulations or decisions establishing multiannual financial guidelines for managing the assets of the Research Fund for Coal and Steel and technical guidelines for the research programme of the Research Fund for Coal and Steel. It shall act after consulting the European Parliament.

#### ARTICLE 3

Except as otherwise provided in this Protocol and in the acts adopted under it, the provisions of the Constitution shall apply.

**THE NUCLEAR  
TREATY**

*The EURATOM treaty regarding support for nuclear plants is annexed to the Constitution, thereby prolonging its effect beyond 2007*

*We have also made a reader friendly version of the whole EURATOM treaty. You can download it from [www.euabc.com](http://www.euabc.com)*

**36. PROTOCOL AMENDING THE TREATY  
ESTABLISHING THE EUROPEAN ATOMIC ENERGY  
COMMUNITY**

THE HIGH CONTRACTING PARTIES,

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

DESIRING to adapt that Treaty to the new rules laid down by the Treaty establishing a Constitution for Europe, in particular in the institutional and financial fields,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing a Constitution for Europe and which amend the Treaty establishing the European Atomic Energy Community as follows:

ARTICLE 1

This Protocol shall amend the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the "EAEC Treaty") in its version in force at the time of entry into force of the Treaty establishing a Constitution for Europe.

Notwithstanding the provisions of Article IV-437 of the Treaty establishing a Constitution for Europe and without prejudice to the other provisions of this Protocol, the legal effects of the amendments made to the EAEC Treaty by the Treaties and Acts repealed pursuant to Article IV-437 of the Treaty establishing a Constitution for Europe and the legal effects of the acts in force adopted on the basis of the EAEC Treaty shall not be affected.

ARTICLE 2

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

ARTICLE 3

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

"CHAPTER I

**Application of certain provisions of the Treaty establishing a  
Constitution for Europe**

ARTICLE 106a

1. Articles I-19 to I-29, Articles I-31 to I-39, Articles I-49 and I-50, Articles I-53 to I-56, Articles I-58 to I-60, Articles III-330 to III-372, Articles III-374 and III-375, Articles III-378 to III-381, Articles III-384 and III-385, Articles III-389 to III-392, Articles III-395 to III-410, Articles III-412 to III-415 and Articles III-427, III-433, IV-439 and IV-443 of the Treaty establishing a Constitution for Europe shall apply to this Treaty.
2. Within the framework of this Treaty, the references to the Union and to the Constitution in the provisions referred to in paragraph 1 and those in the protocols annexed both to the Treaty establishing a Constitution for Europe and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.
3. The provisions of the Treaty establishing a Constitution for Europe shall not derogate from the provisions of this Treaty."

ARTICLE 4

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

ARTICLE 5

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

ARTICLE 6

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

ARTICLE 7

1. In the third paragraph of Article 38 and the third paragraph of Article 82 of the EAEC Treaty the references to Articles 141 and 142 shall be replaced by references to Articles III-360 and III-361 respectively of the Constitution.
2. In Article 171(2) and Article 176(3) of the EAEC Treaty the references to Article 183 shall be replaced by references to Article III-412 of the Constitution.

3. In Article 172(4) of the EAEC Treaty the reference to Article 177(5) shall be replaced by a reference to Article III-404 of the Constitution.
4. In Articles 38, 82, 96 and 98 of the EAEC Treaty the term "directive" shall be replaced by the term "European regulation".
5. In the EAEC Treaty the term "decision" shall be replaced by "European decision" save in Articles 18, 20 and 23 and the first paragraph of Article 53 and in cases where a decision is taken by the Court of Justice of the European Union.
6. In the EAEC Treaty the term "Court of Justice" shall be replaced by "Court of Justice of the European Union".

#### ARTICLE 8

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

"ARTICLE 191

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

#### ARTICLE 9

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

"ARTICLE 198

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

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

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

Notwithstanding the first, second and third paragraphs:

*The Treaty also binds dependent areas outside the EU*

*Faeroe Islands and  
Greenland not bound  
÷ British base in Cyprus*

- (a) this Treaty shall not apply to the Faeroe Islands or to Greenland;
- (b) this Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus;

*÷ UK overseas territories*

- (c) this Treaty shall not apply to the overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not mentioned in the list in Annex II to the Treaty establishing a Constitution for Europe;

*Channel Islands and Isle  
of Man*

- (d) this Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands originally set out in the Treaty referred to in Article IV-437(2)(a) of the Treaty establishing a Constitution for Europe and which have been incorporated in the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden."

#### ARTICLE 10

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

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

"ARTICLE 206

*International agreements*

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

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

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted in accordance with the procedure laid down in Article IV-443 of the Treaty establishing a Constitution for Europe."

#### ARTICLE 11

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

"The Czech, Danish, English, Estonian, Finnish, Greek, Hungarian, Irish, Latvian, Lithuanian, Maltese, Polish, Portuguese, Slovak, Slovenian,



Spanish and Swedish versions of the Treaty shall also be authentic."

ARTICLE 12

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

**ANNEXES**  
**TO THE TREATY ESTABLISHING**  
**A CONSTITUTION FOR EUROPE**

**ANNEX I**

LIST REFERRED TO IN  
ARTICLE III-226 OF THE CONSTITUTION

*List of food products  
referred to in Art. III-226*

– 1 – Number in the Combined nomenclature	– 2 – Description of products
CHAPTER 1	Live animals
CHAPTER 2	Meat and edible meat offal
CHAPTER 3	Fish, crustaceans and molluscs
CHAPTER 4	Dairy produce; birds' eggs; natural honey
CHAPTER 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption
CHAPTER 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage

CHAPTER 7	Edible vegetables and certain roots and tubers
CHAPTER 8	Edible fruit and nuts; peel of melons or citrus fruit
CHAPTER 9	Coffee, tea and spices, excluding maté (heading No 09.03)
CHAPTER 10	Cereals
– 1 – Number in the Combined nomenclature	– 2 – Description of products
CHAPTER 11	Products of the milling industry; malt and starches; gluten; inulin
CHAPTER 12	Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
CHAPTER 13 ex 13.03	Pectin

CHAPTER 15	
15.01	Lard and other rendered pig fat; rendered poultry fat
15.02	Unrendered fats of bovine cattle, sheep or goats; tallow (including "premier jus") produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oil, of fish and marine mammals, whether or not refined
15.07	Fixed vegetable oils, fluid or solid, crude, refined or purified
15.12	Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fats
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
– 1 – Number in the Combined nomenclature	– 2 –  Description of products
CHAPTER 16	Preparations of meat, of fish, of crustaceans or molluscs

CHAPTER 17

- 17.01 Beet sugar and cane sugar, solid
- 17.01 Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
- 17.03 Molasses, whether or not decolourised
- 17.05 \* Flavoured or coloured sugars, syrups and molasses, but not including fruit juices containing added sugar in any proportion

CHAPTER 18

- 18.01 Cocoa beans, whole or broken, raw or roasted
- 18.02 Cocoa shells, husks, skins and waste

CHAPTER 20

Preparations of vegetables, fruit or other parts of plants

CHAPTER 22

- 22.04 Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol
- 22.05 Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol
- 22.07 Other fermented beverages (for example, cider, perry and mead)

ex 22.08 *	Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in this Annex, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as "concentrated extracts") for the manufacture of beverages
ex 22.09 *	
ex22.10 *	Vinegar and substitutes for vinegar
CHAPTER 23	Residues and waste from the food industries; prepared animal fodder
CHAPTER 24	
24.01	Unmanufactured tobacco, tobacco refuse
CHAPTER 45	
45.01	Natural cork, unworked, crushed, granulated or ground; waste cork
CHAPTER 54	
54.01	Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)
CHAPTER 57	
57.01	True hemp ( <i>Cannabis sativa</i> ), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

(\*) Heading added by Article 1 of Regulation No 7a of the Council of the European Economic Community of 18 December 1959 (OJ No 7, 30.1.1961, p. 71. Special edition (English edition) 1959-1962, p. 68)

**ANNEX II**

***OCT-countries***

OVERSEAS COUNTRIES AND TERRITORIES  
TO WHICH  
TITLE IV OF PART III OF THE CONSTITUTION APPLIES

*Overseas countries and territories referred to in title IV of part III with special relations to the EU*

- Greenland,
- New Caledonia and Dependencies,
- French Polynesia,
- French Southern and Antarctic Territories,
- Wallis and Futuna Islands,
- Mayotte,
- Saint Pierre and Miquelon,
- Aruba,
- Netherlands Antilles:
  - Bonaire,
  - Curaçao,
  - Saba,
  - Sint Eustatius,
  - Sint Maarten.
- Anguilla,
- Cayman Islands,
- Falkland Islands,
- South Georgia and the South Sandwich Islands,
- Montserrat,
- Pitcairn,
- Saint Helena and Dependencies,
- British Antarctic Territory,