

## Protocols annexed to the EU Treaty, the EC Treaty and the EAEC Treaty — Consolidated version 2003

**Caption:** Protocols annexed to the Treaty on European Union, to the Treaty establishing the European Community and to the Treaty establishing the European Atomic Energy Community as amended by the Treaty of Nice of 2001 and the Treaty on the accession of ten new Member States to the European Union, signed in Athens on 16 April 2003.

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A.     **PROTOCOL ANNEXED TO THE TREATY ON  
EUROPEAN UNION**

Protocol (No 1)

**on Article 17 of the Treaty on European Union (1997)**

THE HIGH CONTRACTING PARTIES,

BEARING IN MIND the need to implement fully the provisions of Article 17(1), second subparagraph, and (3) of the Treaty on European Union,

BEARING IN MIND that the policy of the Union in accordance with Article 17 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 NATO, 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 on European Union,

The European Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them, within a year from the entry into force of the Treaty of Amsterdam.

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B. PROTOCOLS ANNEXED TO THE TREATY ON  
EUROPEAN UNION AND THE TREATY ESTAB-  
LISHING THE EUROPEAN COMMUNITY

Protocol (No 2)

**integrating the Schengen *acquis* into the framework of the  
European Union (1997)**

THE HIGH CONTRACTING PARTIES,

NOTING that 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 the rules adopted on the basis of these agreements, are aimed at enhancing European integration and, in particular, at enabling the European Union to develop more rapidly into an area of freedom, security and justice,

DESIRING to incorporate the abovementioned agreements and rules into the framework of the European Union,

CONFIRMING that the provisions of the Schengen *acquis* are applicable only if and as far as they are compatible with the European Union and Community law,

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 are not parties to and have not signed the abovementioned agreements; that provision should, however, be made to allow those Member States to accept some or all of the provisions thereof,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaty on European Union and of the Treaty establishing the European Community concerning closer cooperation between some Member States and that those provisions should only be used as a last resort,

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States having confirmed their intention to become bound by the provisions mentioned above, on the basis of the Agreement signed in Luxembourg on 19 December 1996,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community,

### *Article 1*

The Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland and the Kingdom of Sweden, signatories to the Schengen agreements, are authorised to establish closer cooperation among themselves within the scope of those agreements and related provisions, as they are listed in the Annex to this Protocol, hereinafter referred to as the 'Schengen *acquis*'. This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaty on European Union and of the Treaty establishing the European Community.

### *Article 2*

1. From the date of entry into force of the Treaty of Amsterdam, the Schengen *acquis*, including the decisions of the Executive Committee established by the Schengen agreements which have been adopted before this date, shall immediately apply to the thirteen Member States referred to in Article 1, without prejudice to the provisions of paragraph 2 of this Article. From the same date, the Council will substitute itself for the said Executive Committee.

The Council, acting by the unanimity of its Members referred to in Article 1, shall take any measure necessary for the implementation of this paragraph. The Council, acting unanimously, shall determine, in conformity with the relevant provisions of the Treaties, the legal basis for each of the provisions or decisions which constitute the Schengen *acquis*.

With regard to such provisions and decisions and in accordance with that determination, the Court of Justice of the European Communities shall exercise the powers conferred upon it by the relevant applicable provisions of the Treaties. In any event, the Court of Justice shall have no jurisdiction on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security.

As long as the measures referred to above have not been taken and without prejudice to Article 5 (2), the provisions or decisions which constitute the Schengen *acquis* shall be regarded as acts based on Title VI of the Treaty on European Union.

2. The provisions of paragraph 1 shall apply to the Member States which have signed accession protocols to the Schengen agreements, from the dates decided by the Council, acting with the unanimity of its Members mentioned in Article 1, unless the conditions for the accession of any of those States to the Schengen *acquis* are met before the date of the entry into force of the Treaty of Amsterdam.

### Article 3

Following the determination referred to in Article 2(1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories to the Schengen agreements, as before the said determination with regard to those parts of the Schengen *acquis* that are determined to have a legal basis in Title IV of the Treaty establishing the European Community.

With regard to those parts of the Schengen *acquis* that are determined to have legal base in Title VI of the Treaty on European Union, Denmark shall continue to have the same rights and obligations as the other signatories to the Schengen agreements.

### Article 4

Ireland and the United Kingdom of Great Britain and Northern Ireland, which are not bound by the Schengen *acquis*, may at any time request to take part in some or all of the provisions of this *acquis*.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

### Article 5

1. Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Treaties.

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 11 of the Treaty establishing the European Community or Article 40 of the Treaty on European Union 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.



2. The relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article 2(1), second subparagraph.

#### *Article 6*

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen *acquis* and its further development on the basis of the Agreement signed in Luxembourg on 19 December 1996. 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. Such 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 with Iceland and Norway by the Council, acting unanimously, 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*

The Council shall, acting by a qualified majority, adopt the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council.

#### *Article 8*

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

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## ANNEX

**SCHENGEN ACQUIS**

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.
  2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.
  3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.
  4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers.
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Protocol (No 3)  
**on the application of certain aspects of Article 14 of the  
Treaty establishing the European Community to the United  
Kingdom and to Ireland (1997)**

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 the European Community and to the Treaty on European Union,

*Article 1*

The United Kingdom shall be entitled, notwithstanding Article 14 of the Treaty establishing the European Community, any other provision of that Treaty or of the Treaty on European Union, any measure adopted under those Treaties, or any international agreement concluded by the Community or by the Community 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 States which are Contracting Parties to the Agreement on the European Economic Area and of their dependants exercising rights conferred by Community 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 Article 14 of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them 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*

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 Article 14 of the Treaty establishing the European Community, in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them, 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 Article 14 of the Treaty establishing the European Community or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the other Member States to adopt or exercise any such controls.

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Protocol (No 4)  
**on the position of the United Kingdom and Ireland (1997)**

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 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union,

*Article 1*

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title IV of the Treaty establishing the European Community. By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2). 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 decisions of the Council which must be adopted unanimously.

*Article 2*

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice 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 *acquis communautaire* nor form part of Community law as they apply to the United Kingdom or Ireland.

*Article 3*

1. The United Kingdom or Ireland 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 Title IV of the Treaty establishing the European Community, 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. By way

of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2).

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 decisions 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.

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

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title IV of the Treaty establishing the European Community 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 11(3) of the Treaty establishing the European Community shall apply *mutatis mutandis*.

#### Article 5

A Member State which is not bound by a measure adopted pursuant to Title IV of the Treaty establishing the European Community shall bear no financial consequences of that measure other than administrative costs entailed for the institutions.

#### Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title IV of the Treaty establishing the European Community, the relevant provisions of that Treaty, including Article 68, shall apply to that State in relation to that measure.

#### Article 7

Articles 3 and 4 shall be without prejudice to the Protocol integrating the Schengen *acquis* into the framework of the European Union.

*Article 8*

Ireland may notify the President of the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal Treaty provisions will apply to Ireland.

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Protocol (No 5)  
**on the position of Denmark (1997)**

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,

BEARING IN MIND Article 3 of the Protocol integrating the Schengen *acquis* into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union,

*PART I*

*Article 1*

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title IV of the Treaty establishing the European Community. By way of derogation from Article 205(2) of the Treaty establishing the European Community, a qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in the said Article 205(2). The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

*Article 2*

None of the provisions of Title IV of the Treaty establishing the European Community, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Community pursuant to that Title, and no decision of the Court of Justice 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 *acquis communautaire* nor form part of Community 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

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.

### Article 5

1. Denmark shall decide within a period of 6 months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* under the provisions of Title IV of the Treaty establishing the European Community, whether it will implement this decision in its national law. If it decides to do so, this decision will create an obligation under international law between Denmark and the other Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union as well as Ireland or the United Kingdom if those Member States take part in the areas of cooperation in question.

2. If Denmark decides not to implement a decision of the Council as referred to in paragraph 1, the Member States referred to in Article 1 of the Protocol integrating the Schengen *acquis* into the framework of the European Union will consider appropriate measures to be taken.

## PART II

### Article 6

With regard to measures adopted by the Council in the field of Articles 13(1) and 17 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications, but will not prevent the development of closer cooperation between Member States in this area. Therefore Denmark shall not participate in their adoption. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures.

## PART III

### Article 7

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 European Union.

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C. PROTOCOLS ANNEXED TO THE TREATY ON EUROPEAN UNION, TO THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY AND TO THE TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY

Protocol (No 6)

**on the Statute of the Court of Justice (2001)**

THE HIGH CONTRACTING PARTIES

DESIRING to lay down the Statute of the Court of Justice provided for in Article 245 of the Treaty establishing the European Community and in Article 160 of the Treaty establishing the European Atomic Energy Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community:

*Article 1*

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

TITLE I

**JUDGES AND ADVOCATES-GENERAL**

*Article 2*

Before taking up his duties each Judge shall, 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, sitting as a full Court, may waive the immunity.

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 12 to 15 and Article 18 of the Protocol on the privileges and immunities of the European Communities shall apply to the Judges, Advocates-General, Registrar and Assistant Rapporteurs of the Court, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the preceding paragraphs.

*Article 4*

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council.

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.

*Article 5*

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

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court 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*

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, 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.

The Registrar of the Court shall communicate the decision of the Court 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 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***Article 9<sup>(1)</sup>*

When, every three years, the Judges are partially replaced, 13 and 12 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*

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

*Article 11*

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

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<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

*Article 12*

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

*Article 13*

On a proposal from the Court, the Council may, acting unanimously, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. 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 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 the Council. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

*Article 14*

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

*Article 15*

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

*Article 16*

The Court 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.

The Grand Chamber shall consist of 13 Judges. It shall be presided over by the President of the Court. 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.

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

The Court shall sit as a full Court where cases are brought before it pursuant to Article 195(2), Article 213(2), Article 216 or Article 247(7) of the EC Treaty or Article 107d(2), Article 126(2), Article 129 or Article 160b(7) of the EAEC Treaty.

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

#### *Article 17*

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

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

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

Decisions of the full Court shall be valid only if 15 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*

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.

A party may not apply for a change in the composition of the Court 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**

#### *Article 19*

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

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 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.

Such agents, advisers and lawyers shall, when they appear before the Court, 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 shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

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

#### *Article 20*

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

The written procedure shall consist of the communication to the parties and to the institutions of the Communities whose decisions 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 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 may decide, after hearing the Advocate-General, that the case shall be determined without a submission from the Advocate-General.

### *Article 21*

A case shall be brought before the Court 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 232 of the EC Treaty and Article 148 of the EAEC Treaty, by documentary evidence of the date on which an institution was, in accordance with those Articles, 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*

A case governed by Article 18 of the EAEC Treaty shall be brought before the Court 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 35(1) of the EU Treaty, by Article 234 of the EC Treaty and by Article 150 of the EAEC Treaty, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and also to the Council or to the European Central Bank if the act the validity or interpretation of which is in dispute originates from one of them, and to the European Parliament and the Council if the act the validity or interpretation of which is in dispute was adopted jointly by those two institutions.



Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the European Parliament, the Council and the European Central Bank, shall be entitled to submit statements of case or written observations to the Court.

In the cases governed by Article 234 of the EC Treaty, the decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court 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.

Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member States, provides that those States 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 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 States concerned. Within two months from such notification, those States may lodge at the Court statements of case or written observations.

#### *Article 24*

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

The Court may also require the Member States and institutions not being parties to the case to supply all information which the Court considers necessary for the proceedings.

#### *Article 25*

The Court 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 may be heard under conditions laid down in the Rules of Procedure.

#### *Article 27*

With respect to defaulting witnesses the Court 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*

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 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 under the same conditions.

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

*Article 30*

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, the Member State concerned shall prosecute the offender before its competent court.

*Article 31*

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

*Article 32*

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

*Article 33*

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*

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

*Article 36*

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 shall adjudicate upon costs.

*Article 39*

The President of the Court may, by way of summary procedure, which may, in so far 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 242 of the EC Treaty and Article 157 of the EAEC Treaty, or to prescribe interim measures pursuant to Article 243 of the EC Treaty or Article 158 of the EAEC Treaty, or to suspend enforcement in accordance with the fourth paragraph of Article 256 of the EC Treaty 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 on the substance of the case.

*Article 40*

Member States and institutions of the Communities may intervene in cases before the Court.

The same right shall be open to any other person establishing an interest in the result of any case submitted to the Court, save in cases between Member States, between institutions of the Communities or between Member States and institutions of the Communities.

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 where one of the fields of application 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*

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 decides otherwise.

#### *Article 42*

Member States, institutions of the Communities and any other natural or legal persons may, in cases and under conditions to be determined by 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 shall construe it on application by any party or any institution of the Communities establishing an interest therein.

#### *Article 44*

An application for revision of a judgment may be made to the Court 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.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

#### *Article 45*

Periods of grace based on considerations of distance shall be determined by 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 Communities 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 or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Communities. In the latter event the proceedings must be instituted within the period of two months provided for in Article 230 of the EC Treaty and Article 146 of the EAEC Treaty; the provisions of the second paragraph of Article 232 of the EC Treaty and the second paragraph of Article 148 of the EAEC Treaty, respectively, shall apply where appropriate.

## TITLE IV

### THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

#### Article 47

Articles 2 to 8, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the Court of First Instance and its members. The oath referred to in Article 2 shall be taken before the Court of Justice and the decisions referred to in Articles 3, 4 and 6 shall be adopted by that Court after hearing the Court of First Instance.

The fourth paragraph of Article 3 and Articles 10, 11 and 14 shall apply to the Registrar of the Court of First Instance *mutatis mutandis*.

#### Article 48 <sup>(1)</sup>

The Court of First Instance shall consist of 25 Judges.

#### Article 49

The Members of the Court of First Instance may be called upon to perform the task of an 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 Court of First Instance in order to assist the Court of First Instance 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 Court of First Instance.

<sup>(1)</sup> Article amended by the 2003 Act of Accession. See Appendix at the end of this publication.

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*

The Court of First Instance 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.

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 Court of First Instance may sit as a full court or be constituted by a single Judge.

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

#### *Article 51*

By way of derogation from the rule laid down in Article 225(1) of the EC Treaty and Article 140a (1) of the EAEC Treaty, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 230 and 232 of the EC Treaty and Articles 146 and 148 of the EAEC Treaty when they are brought by a Member State against:

- (a) an act of or failure to act by the European Parliament or the Council, or by both those institutions acting jointly, except for:
  - decisions taken by the Council under the third subparagraph of Article 88(2) of the EC Treaty;
  - acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 133 of the EC Treaty;
  - acts of the Council by which the Council exercises implementing powers in accordance with the third indent of Article 202 of the EC Treaty;
- (b) against an act of or failure to act by the Commission under Article 11a of the EC Treaty.

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 Communities or by the European Central Bank against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Communities 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 Court of First Instance 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 Court of First Instance to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Court of First Instance under the authority of the President of the Court of First Instance.

*Article 53*

The procedure before the Court of First Instance 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 Court of First Instance 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 Court of First Instance; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the Court of First Instance, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the Court of First Instance 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 Court of First Instance, it shall refer that action to the Court of First Instance, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the Court of First Instance 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 Court of First Instance 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 230 of the EC Treaty 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 Court of First Instance shall continue.

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

#### *Article 55*

Final decisions of the Court of First Instance, 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 Court of First Instance to all parties as well as all Member States and the institutions of the Communities even if they did not intervene in the case before the Court of First Instance.

#### *Article 56*

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 Court of First Instance 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 Communities may bring such an appeal only where the decision of the Court of First Instance directly affects them.

With the exception of cases relating to disputes between the Communities and their servants, an appeal may also be brought by Member States and institutions of the Communities which did not intervene in the proceedings before the Court of First Instance. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

#### *Article 57*

Any person whose application to intervene has been dismissed by the Court of First Instance 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 Court of First Instance made pursuant to Article 242 or Article 243 or the fourth paragraph of Article 256 of the EC Treaty or Article 157 or Article 158 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 of this Article shall be heard and determined under the procedure referred to in Article 39.

#### *Article 58*

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 Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Court of First Instance.

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

#### *Article 59*

Where an appeal is brought against a decision of the Court of First Instance, 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*

Without prejudice to Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 244 of the EC Treaty and Article 159 of the EAEC Treaty, decisions of the Court of First Instance declaring a regulation 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 Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the EAEC Treaty, for the suspension of the effects of the 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 Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

Where a case is referred back to the Court of First Instance, 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 Communities, which did not intervene in the proceedings before the Court of First Instance, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the Court of First Instance which has been quashed shall be considered as definitive in respect of the parties to the litigation.

#### *Article 62*

In the cases provided for in Article 225(2) and (3) of the EC Treaty and Article 140a(2) and (3) of the EAEC Treaty, where the First Advocate-General considers that there is a serious risk of the unity or consistency of Community law being affected, he may propose that the Court of Justice review the decision of the Court of First Instance.

The proposal must be made within one month of delivery of the decision by the Court of First Instance. 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.

#### *Article 62a*

The Court of Justice shall give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the Court of First Instance.

Those referred to in Article 23 of this Statute and, in the cases provided for in Article 225(2) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, the parties to the proceedings before the Court of First Instance shall be entitled to lodge statements or written observations with the Court of Justice relating to questions which are subject to review within a period prescribed for that purpose.

The Court of Justice may decide to open the oral procedure before giving a ruling.

#### *Article 62b*

In the cases provided for in Article 225(2) of the EC Treaty and in Article 140a(2) of the EAEC Treaty, without prejudice to Articles 242 and 243 of the EC Treaty, proposals for review and decisions to open the review procedure shall not have suspensory effect. If the Court of Justice finds that the decision of the Court of First Instance affects the unity or consistency of Community law, it shall refer the case back to the Court of First Instance which shall be bound by the points of law decided by the Court of Justice; the Court of Justice may state which of the effects of the decision of the Court of First Instance are to be considered as definitive in respect of the parties to the litigation. If, however, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the Court of First Instance was based, the Court of Justice shall give final judgment.

In the cases provided for in Article 225(3) of the EC Treaty and in Article 140a(3) of the EAEC Treaty, in the absence of proposals for review or decisions to open the review procedure, the answer(s) given by the Court of First Instance to the questions submitted to it shall take effect upon expiry of the periods prescribed for that purpose in the second paragraph of Article 62. Should a review procedure be opened, the answer(s) subject to review shall take effect following that procedure, unless the Court of Justice decides otherwise. If the Court of Justice finds that the decision of the Court of First Instance affects the unity or consistency of Community law, the answer given by the Court of Justice to the questions subject to review shall be substituted for that given by the Court of First Instance.

#### TITLE IVa

### JUDICIAL PANELS

#### *Article 62c*

The provisions relating to the jurisdiction, composition, organisation and procedure of the judicial panels established under Articles 225a of the EC Treaty and 140b of the EAEC Treaty are set out in an Annex to this Statute.

#### TITLE V

### FINAL PROVISIONS

#### *Article 63*

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

#### *Article 64*

Until the rules governing the language arrangements applicable at the Court of Justice and the Court of First Instance have been adopted in this Statute, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the Court of First Instance governing language arrangements shall continue to apply. Those provisions may only be amended or repealed in accordance with the procedure laid down for amending this Statute.

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## ANNEX I

**THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL***Article 1*

The European Union Civil Service Tribunal (hereafter the Civil Service Tribunal) shall exercise at first instance jurisdiction in disputes between the Communities and their servants referred to in Article 236 of the EC Treaty and Article 152 of the EAEC Treaty, including disputes between all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice.

*Article 2*

The Civil Service Tribunal shall consist of seven judges. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of judges.

The judges shall be appointed for a period of six years. Retiring judges may be reappointed.

Any vacancy shall be filled by the appointment of a new judge for a period of six years.

*Article 3*

1. The judges shall be appointed by the Council, acting in accordance with the fourth paragraph of Article 225a of the EC Treaty and the fourth paragraph of Article 140b of the EAEC Treaty, after consulting the committee provided for by this Article. When appointing judges, the Council shall ensure a balanced composition of the Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented.

2. Any person who is a Union citizen and fulfils the conditions laid down in the fourth paragraph of Article 225a of the EC Treaty and the fourth paragraph of Article 140b of the EAEC Treaty may submit an application. The Council, acting by a qualified majority on a recommendation from the Court, shall determine the conditions and the arrangements governing the submission and processing of such applications.

3. A committee shall be set up comprising seven persons chosen from among former members of the Court of Justice and the Court of First Instance and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting by a qualified majority on a recommendation by the President of the Court of Justice.

4. The committee shall give an opinion on candidates' suitability to perform the duties of judge at the Civil Service Tribunal. The committee shall append to its opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of at least twice as many candidates as there are judges to be appointed by the Council.

*Article 4*

1. The judges shall elect the President of the Civil Service Tribunal from among their number for a term of three years. He may be re-elected.

2. The Civil Service Tribunal shall sit in chambers of three judges. It may, in certain cases determined by its rules of procedure, sit in full court or in a chamber of five judges or of a single judge.
3. The President of the Civil Service Tribunal shall preside over the full court and the chamber of five judges. The Presidents of the chambers of three judges shall be designated as provided in paragraph 1. If the President of the Civil Service Tribunal is assigned to a chamber of three judges, he shall preside over that chamber.
4. The jurisdiction of and quorum for the full court as well as the composition of the chambers and the assignment of cases to them shall be governed by the rules of procedure.

#### *Article 5*

Articles 2 to 6, 14, 15, the first, second and fifth paragraphs of Article 17, and Article 18 of the Statute of the Court of Justice shall apply to the Civil Service Tribunal and its members.

The oath referred to in Article 2 of the Statute shall be taken before the Court of Justice, and the decisions referred to in Articles 3, 4 and 6 thereof shall be adopted by the Court of Justice after consulting the Civil Service Tribunal.

#### *Article 6*

1. The Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the Court of First Instance. The President of the Court of Justice or, in appropriate cases, the President of the Court of First Instance, shall determine by common accord with the President of the Civil Service Tribunal the conditions under which officials and other servants attached to the Court of Justice or the Court of First Instance shall render their services to the Civil Service Tribunal to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Civil Service Tribunal under the authority of the President of that Tribunal.
2. The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Article 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice shall apply to the Registrar of the Tribunal.

#### *Article 7*

1. The procedure before the Civil Service Tribunal shall be governed by Title III of the Statute of the Court of Justice, with the exception of Articles 22 and 23. Such further and more detailed provisions as may be necessary shall be laid down in the rules of procedure.
2. The provisions concerning the Court of First Instance's language arrangements shall apply to the Civil Service Tribunal.
3. The written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, the Civil Service Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.
4. At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.
5. The Civil Service Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs should the court so decide.

*Article 8*

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

2. Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the Court of First Instance has jurisdiction, it shall refer that action to the Court of Justice or to the Court of First Instance. Likewise, where the Court of Justice or the Court of First Instance finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

3. Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the Court of First Instance has been delivered.

Where the Civil Service Tribunal and the Court of First Instance are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the Court of First Instance may act on those cases.

*Article 9*

An appeal may be brought before the Court of First Instance, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction 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 Communities may bring such an appeal only where the decision of the Civil Service Tribunal directly affects them.

*Article 10*

1. Any person whose application to intervene has been dismissed by the Civil Service Tribunal may appeal to the Court of First Instance within two weeks of notification of the decision dismissing the application.

2. The parties to the proceedings may appeal to the Court of First Instance against any decision of the Civil Service Tribunal made pursuant to Article 242 or Article 243 or the fourth paragraph of Article 256 of the EC Treaty or Article 157 or Article 158 or the third paragraph of Article 164 of the EAEC Treaty within two months of its notification.

3. The President of the Court of First Instance may, by way of summary procedure, which may, insofar as necessary, differ from some of the rules contained in this Annex and which shall be laid down in the rules of procedure of the Court of First Instance, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

*Article 11*

1. An appeal to the Court of First Instance shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Community law by the Tribunal.

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

*Article 12*

1. Without prejudice to Articles 242 and 243 of the EC Treaty or Articles 157 and 158 of the Treaty, an appeal before the Court of First Instance shall not have suspensory effect.

2. Where an appeal is brought against a decision of the Civil Service Tribunal, the procedure before the Court of First Instance shall consist of a written part and an oral part. In accordance with conditions laid down in the rules of procedure, the Court of First Instance, having heard the parties, may dispense with the oral procedure.

*Article 13*

1. If the appeal is well founded, the Court of First Instance shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

2. Where a case is referred back to the Civil Service Tribunal, the Tribunal shall be bound by the decision of the Court of First Instance on points of law.

Protocol (No 7)  
**annexed to the Treaty on European Union and to the Treaties  
establishing the European Communities (1992)**

THE HIGH CONTRACTING PARTIES

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaties establishing the European Communities:

Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

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Protocol (No 8)  
**on the location of the seats of the institutions and of certain  
bodies and departments of the European Communities and of  
Europol (1997)**

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

HAVING REGARD to Article 289 of the Treaty establishing the European Community, Article 77 of the Treaty establishing the European Coal and Steel Community and Article 189 of the Treaty establishing the European Atomic Energy Community,

HAVING REGARD to the Treaty on European Union,

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

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities,

*Sole Article*

- (a) 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.
- (b) The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.
- (c) 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.
- (d) The Court of Justice and the Court of First Instance shall have their seats in Luxembourg.
- (e) The Court of Auditors shall have its seat in Luxembourg.
- (f) The Economic and Social Committee shall have its seat in Brussels.
- (g) The Committee of the Regions shall have its seat in Brussels.
- (h) The European Investment Bank shall have its seat in Luxembourg.
- (i) The European Monetary Institute and the European Central Bank shall have their seat in Frankfurt.
- (j) The European Police Office (Europol) shall have its seat in The Hague.

Protocol (No 9)  
**on the role of national parliaments in the European Union  
(1997)**

THE HIGH CONTRACTING PARTIES,

RECALLING that scrutiny by individual national parliaments of their own government in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING, however, to encourage greater involvement of national parliaments in the activities of the European Union and to enhance their ability to express their views on matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaties establishing the European Communities,

**I. Information for national parliaments of Member States**

1. All Commission consultation documents (green and white papers and communications) shall be promptly forwarded to national parliaments of the Member States.

2. Commission proposals for legislation as defined by the Council in accordance with Article 207(3) of the Treaty establishing the European Community, shall be made available in good time so that the government of each Member State may ensure that its own national parliament receives them as appropriate.

3. A six-week period shall elapse between a legislative proposal or a proposal for a measure to be adopted under Title VI of the Treaty on European Union being made available in all languages to the European Parliament and the Council by the Commission and the date when it is placed on a Council agenda for decision either for the adoption of an act or for adoption of a common position pursuant to Article 251 or 252 of the Treaty establishing the European Community, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or common position.

**II. The Conference of European Affairs Committees**

4. The Conference of European Affairs Committees, hereinafter referred to as COSAC, established in Paris on 16-17 November 1989, may make any contribution it deems appropriate for the attention of the institutions of the European Union, in particular on the basis of draft legal texts which representatives of governments of the Member States may decide by common accord to forward to it, in view of the nature of their subject matter.

5. COSAC may examine any legislative proposal or initiative in relation to the establishment of an area of freedom, security and justice which might have a direct bearing on the rights and freedoms of individuals. The European Parliament, the Council and the Commission shall be informed of any contribution made by COSAC under this point.
  6. COSAC may address to the European Parliament, the Council and the Commission any contribution which it deems appropriate on the legislative activities of the Union, notably in relation to the application of the principle of subsidiarity, the area of freedom, security and justice as well as questions regarding fundamental rights.
  7. Contributions made by COSAC shall in no way bind national parliaments or prejudice their position.
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Protocol (No 10)  
**on the enlargement of the European Union (2001)**

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaties establishing the European Communities:

*Article 1*

**Repeal of the Protocol on the institutions**

The Protocol on the institutions with the prospect of enlargement of the European Union, annexed to the Treaty on European Union and to the Treaties establishing the European Communities, is hereby repealed.

*Article 2*

**Provisions concerning the European Parliament**

1. On 1 January 2004 and with effect from the start of the 2004 to 2009 term, in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community, the first subparagraph shall be replaced by the following:

‘The number of representatives elected in each Member State shall be as follows:

Belgium	22
Denmark	13
Germany	99
Greece	22
Spain	50
France	72
Ireland	12
Italy	72
Luxembourg	6
Netherlands	25

Austria	17
Portugal	22
Finland	13
Sweden	18
United Kingdom	72'

2. Subject to paragraph 3, the total number of representatives in the European Parliament for the 2004 to 2009 term shall be equal to the number of representatives specified in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community plus the number of representatives of the new Member States resulting from the accession treaties signed by 1 January 2004 at the latest.

3. If the total number of members referred to in paragraph 2 is less than 732, a pro rata correction shall be applied to the number of representatives to be elected in each Member State, so that the total number is as close as possible to 732, without such a correction leading to the number of representatives to be elected in each Member State being higher than that provided for in Article 190(2) of the Treaty establishing the European Community and in Article 108(2) of the Treaty establishing the European Atomic Energy Community for the 1999 to 2004 term.

The Council shall adopt a decision to that effect.

4. By way of derogation from the second paragraph of Article 189 of the Treaty establishing the European Community and from the second paragraph of Article 107 of the Treaty establishing the European Atomic Energy Community, in the event of the entry into force of accession treaties after the adoption of the Council decision provided for in the second subparagraph of paragraph 3 of this Article, the number of members of the European Parliament may temporarily exceed 732 for the period for which that decision applies. The same correction as that referred to in the first subparagraph of paragraph 3 of this Article shall be applied to the number of representatives to be elected in the Member States in question.

### *Article 3*

#### **Provisions concerning the weighting of votes in the Council**

1 <sup>(1)</sup>. (Repealed)

<sup>(1)</sup> Paragraph repealed by the 2003 Act of Accession.

2. At the time of each accession, the threshold referred to in the second subparagraph of Article 205(2) of the Treaty establishing the European Community and in the second subparagraph of Article 118(2) of the Treaty establishing the European Atomic Energy Community shall be calculated in such a way that the qualified majority threshold expressed in votes does not exceed the threshold resulting from the table in the Declaration on the enlargement of the European Union, included in the Final Act of the Conference which adopted the Treaty of Nice.

#### Article 4

### Provisions concerning the Commission

1<sup>(1)</sup>. On 1 November 2004 and with effect from when the first Commission following that date takes up its duties, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:

‘1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.

The Commission shall include one national of each of the Member States.

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

2. When the Union consists of 27 Member States, Article 213(1) of the Treaty establishing the European Community and Article 126(1) of the Treaty establishing the European Atomic Energy Community shall be replaced by the following:

‘1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.

The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.

The number of Members of the Commission shall be set by the Council, acting unanimously.’

This amendment shall apply as from the date on which the first Commission following the date of accession of the 27th Member State of the Union takes up its duties.

3. The Council, acting unanimously after signing the treaty of accession of the 27th Member State of the Union, shall adopt:

— the number of Members of the Commission,

<sup>(1)</sup> Paragraph amended by the 2003 Act of Accession.

- the implementing arrangements for a rotation system based on the principle of equality containing all the criteria and rules necessary for determining the composition of successive colleges automatically on the basis of the following principles:
- (a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;
  - (b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States of the Union.
4. Any State which accedes to the Union shall be entitled, at the time of its accession, to have one of its nationals as a Member of the Commission until paragraph 2 applies.
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D. PROTOCOLS ANNEXED TO THE TREATY  
ESTABLISHING THE EUROPEAN COMMUNITY

Protocol (No 11)

**on the Statute of the European Investment Bank (1957)**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article 266 of the Treaty,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

*Article 1*

The European Investment Bank established by Article 266 of the Treaty (hereinafter called the 'Bank') is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of this Treaty and of this Statute.

The seat of the Bank shall be determined by common accord of the governments of the Member States.

*Article 2*

The task of the Bank shall be that defined in Article 267 of the Treaty.

*Article 3<sup>(1)</sup>*

In accordance with Article 266 of the Treaty, the following shall be members of the Bank:

- the Kingdom of Belgium,
- the Czech Republic,
- the Kingdom of Denmark,
- the Federal Republic of Germany,
- the Republic of Estonia,
- the Hellenic Republic,

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<sup>(1)</sup> Article amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.



- the Kingdom of Spain,
- the French Republic,
- Ireland,
- the Italian Republic,
- the Republic of Cyprus,
- the Republic of Latvia,
- the Republic of Lithuania,
- the Grand Duchy of Luxembourg,
- the Republic of Hungary,
- the Republic of Malta,
- the Kingdom of the Netherlands,
- the Republic of Austria,
- the Republic of Poland,
- the Portuguese Republic,
- the Republic of Slovenia,
- the Slovak Republic,
- the Republic of Finland,
- the Kingdom of Sweden,
- the United Kingdom of Great Britain and Northern Ireland.

#### *Article 4*

1. <sup>(1)</sup> The capital of the Bank shall be EUR 163 727 670 000, subscribed by the Member States as follows (\*):

Germany	26 649 532 500
France	26 649 532 500

<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.

(\*) The figures quoted for the new Member States are indicative and based on the 2002 forecast data published by Eurostat (New Cronos).

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	3 635 030 500
Finland	2 106 816 000
Greece	2 003 725 500
Portugal	1 291 287 000
Czech Republic	1 212 590 000
Hungary	1 121 583 000
Ireland	935 070 000
Slovakia	408 489 500
Slovenia	379 429 000
Lithuania	250 852 000
Luxembourg	187 015 500
Cyprus	180 747 000
Latvia	156 192 500
Estonia	115 172 000
Malta	73 849 000

The unit of account shall be defined as being the euro established as the single currency of the Member States participating in the third stage of Economic and Monetary Union. The Board of Governors, acting unanimously on a proposal from the Board of Directors, may alter the definition of the unit of account.

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.
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.
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 towards those who have made loans to it.

Each Member State shall make this payment in proportion to its share of the subscribed capital in the currencies required by the Bank to meet these obligations.

#### *Article 6*

1. The Board of Governors may, acting by a qualified majority on a proposal from the Board of Directors, decide that Member States shall grant the Bank special interest bearing loans if and to the extent that the Bank requires such loans to finance specific projects and the Board of Directors shows that the Bank is unable to obtain the necessary funds on the capital markets on terms appropriate to the nature and purpose of the projects to be financed.
2. Special loans may not be called for until the beginning of the fourth year after the entry into force of this Treaty. They shall not exceed 400 million units of account in the aggregate or 100 million units of account per annum.
3. The term of special loans shall be related to the term of the loans or guarantees which the Bank proposes to grant by means of the special loans; it shall not exceed 20 years. The Board of Governors may, acting by a qualified majority on a proposal from the Board of Directors, decide upon the prior repayment of special loans.

4. Special loans shall bear interest at 4 % per annum, unless the Board of Governors, taking into account the trend and level of interest rates on the capital markets, decides to fix a different rate.
5. Special loans shall be granted by Member States in proportion to their share in the subscribed capital; payment shall be made in national currency within six months of such loans being called for.
6. Should the Bank go into liquidation, special loans granted by Member States shall be repaid only after the other debts of the Bank have been settled.

#### *Article 7*

1. Should the value of the currency of a Member State in relation to the unit of account defined in Article 4 be reduced, that State shall adjust the amount of its capital share paid in its own currency in proportion to the change in value by making a supplementary payment to the Bank.
2. Should the value of the currency of a Member State in relation to the unit of account defined in Article 4 be increased, the Bank shall adjust the amount of the capital share paid in by that State in its own currency in proportion to the change in value by making a repayment to that State.
3. For the purpose of this Article, the value of the currency of a Member State in relation to the unit of account, defined in Article 4, shall correspond to the rate for converting the unit of account into this currency and vice versa based on market rates.
4. The Board of Governors, acting unanimously on a proposal from the Board of Directors, may alter the method of converting sums expressed in units of account into national currencies and vice versa.

Furthermore, acting unanimously on a proposal from the Board of Directors, it may define the method for adjusting the capital referred to in paragraphs 1 and 2 of this Article; adjustment payments must be made at least once a year.

#### *Article 8*

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

*Article 9*

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, with particular reference to the objectives to be pursued as progress is made in the attainment of the common market.

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) exercise the powers provided in Article 6 in respect of special loans;
  - (c) exercise the powers provided in Articles 11 and 13 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 in the second subparagraph of Article 13(1);
  - (d) authorise the derogation provided for in Article 18(1);
  - (e) approve the annual report of the Board of Directors;
  - (f) approve the annual balance sheet and profit and loss account;
  - (g) exercise the powers and functions provided in Articles 4, 7, 14, 17, 26 and 27;
  - (h) approve the Rules of Procedure of the Bank.
4. Within the framework of this Treaty and this Statute, the Board of Governors shall be competent to take, acting unanimously, any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

*Article 10*

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. Voting by the Board of Governors shall be in accordance with the provisions of Article 205 of this Treaty.

*Article 11*

1. The Board of Directors shall have sole power to take decisions in respect of granting loans and guarantees and raising loans; it shall fix the interest rates on loans granted and the commission on guarantees; it shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of this Treaty and of 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.

2. <sup>(1)</sup> The Board of Directors shall consist of twenty-six directors and sixteen alternate directors.

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State, and one 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 of the Kingdom of Spain and the Portuguese Republic,
- one alternate nominated by common accord of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,
- one alternate nominated by common accord of the Kingdom of Denmark, the Hellenic Republic and Ireland,
- one alternate nominated by common accord of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,
- three alternates nominated by common accord 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,

<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession. See Appendix at the end of this publication.

— one alternate 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.

Alternates may take part in the meeting of the Board of Directors. Alternates nominated by a State, or by common accord of several States, or by the Commission, may replace directors nominated by that State, by one of those States or by the Commission respectively. Alternates shall have no right of vote except where they replace one director or more than one director or where they have been delegated for this purpose in accordance with Article 12(1).

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, acting unanimously, lay down what activities are incompatible with the duties of a director or an alternate.

## Article 12

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.

2.<sup>(1)</sup> 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 fifty per cent of the subscribed capital. A qualified majority shall require eighteen votes in favour and sixty-eight per cent of the subscribed capital. The rules of procedure of the Bank shall lay down the quorum required for the decisions of the Board of Directors to be valid.

<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession.

*Article 13*

1.<sup>(1)</sup> 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 in its turn 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, in particular decisions on the raising of loans and the granting of loans and guarantees; it shall ensure that these decisions are implemented.

4. The Management Committee shall act by a majority when delivering opinions on proposals for raising loans or granting 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 officials and other employees 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.

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 14*

1. A Committee consisting of three members, appointed on the grounds of their competence by the Board of Governors, shall annually verify that the operations of the Bank have been conducted and its books kept in a proper manner.

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<sup>(1)</sup> Paragraph amended by Protocol No 1 to the 2003 Act of Accession.



2. The Committee shall confirm that the balance sheet and profit and loss account are in agreement with the accounts and faithfully reflect the position of the Bank in respect of its assets and liabilities.

#### *Article 15*

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 bank of issue of the Member State concerned or to other financial institutions approved by that State.

#### *Article 16*

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 17*

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 9 of this Statute.

#### *Article 18*

1. Within the framework of the task set out in Article 267 of this Treaty, the Bank shall grant loans to its members or to private or public undertakings for investment projects to be carried out in the European territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

However, by way of derogation authorised by the Board of Governors, acting unanimously on a proposal from the Board of Directors, the Bank may grant loans for investment projects to be carried out, in whole or in part, outside the European territories of Member States.

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

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 project will be carried out or on other adequate guarantees.

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 267 of this Treaty.
5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital.
6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

#### *Article 19*

1. Interest rates on loans to be granted by the Bank and commission on guarantees 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 to build up a reserve fund as provided for in Article 24.
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 project 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 87 of this Treaty.

#### *Article 20*

In its loan and guarantee operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed as rationally as possible in the interests of the Community.

It may grant loans or guarantees only:

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

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 project opposed by the Member State in whose territory it is to be carried out.

#### *Article 21*

1. Applications for loans or guarantees may be made to the Bank either through the Commission or through the Member State in whose territory the project will be carried out. An undertaking may also apply direct to the Bank for a loan or guarantee.
2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the project 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 project in question.

3. The Board of Directors shall rule on applications for loans or guarantees submitted to it by the Management Committee.
4. The Management Committee shall examine whether applications for loans or guarantees submitted to it comply with the provisions of this Statute, in particular with Article 20. Where the Management Committee is in favour of granting the loan or guarantee, it shall submit the draft contract 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 loan or guarantee, 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 loan or guarantee concerned unless its decision is unanimous.
6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the loan or guarantee 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 loan or guarantee.

#### *Article 22*

1. The Bank shall borrow on the international capital markets the funds necessary for the performance of its tasks.

2. The Bank may borrow on the capital market of a Member State either in accordance with the legal provisions applying to internal issues or, if there are no such provisions in a Member State, after the Bank and the Member State concerned have conferred together and reached agreement on the proposed loan.

The competent authorities in the Member State concerned may refuse to give their assent only if there is reason to fear serious disturbances on the capital market of that State.

#### *Article 23*

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 20(2), buy and sell securities issued by itself or by those who have borrowed from it;
- (c) it may carry out any other financial operation linked with its objectives.

2. Without prejudice to the provisions of Article 25, 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 bank of issue of the Member State concerned.

#### *Article 24*

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 25*

1. The Bank shall at all times be entitled to transfer its assets in the currency of one Member State into the currency of another Member State in order to carry out financial operations corresponding to the task set out in Article 267 of this Treaty, taking into account the provisions of Article 23 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 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 in gold or convertible currency and of any currency borrowed on markets outside the Community.
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 projects to be carried out in their territory.

#### *Article 26*

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, to grant its special loans 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 State or its nationals from their obligations towards the Bank.

#### *Article 27*

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.

#### Article 28

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.

[See also Article 9(4) of the Treaty of Amsterdam, which reads as follows:

The European Communities shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks under the conditions set out in the Protocol referred to in paragraph 5.

The position shall be the same as regards the European Central Bank, the European Monetary Institute and the European Investment Bank.]

2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

#### Article 29

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.

The Bank shall have an address for service in each Member State. It may, however, in any contract, specify a particular address for service or provide for arbitration.

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 30

1. The Board of Governors may, acting unanimously, decide to establish a European Investment Fund, which shall have legal personality and financial autonomy, and of which the Bank shall be a founding member.

2. The Board of Governors shall establish the Statute of the European Investment Fund by unanimous decision. The Statute shall define, in particular, its objectives, structure, capital, membership, financial resources, means of intervention and auditing arrangements, as well as the relationship between the organs of the Bank and those of the Fund.

3. Notwithstanding the provisions of Article 20(2), the Bank shall be entitled to participate in the management of the Fund and contribute to its subscribed capital up to the amount determined by the Board of Governors acting unanimously.

4. The European Community may become a member of the Fund and contribute to its subscribed capital. Financial institutions with an interest in the objectives of the Fund may be invited to become members.

5. The Protocol on the privileges and immunities of the European Communities shall apply to the Fund, to the members of its organs in the performance of their duties as such and to its staff.

The Fund 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 Fund has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Fund and of its organs carried out in accordance with its Statute shall not be subject to any turnover tax.

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

6. The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of the Fund. Proceedings against such measures may be instituted by any member of the Fund in its capacity as such or by Member States under the conditions laid down in Article 230 of this Treaty.

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

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Protocol (No 12)  
**on Italy (1957)**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Italy,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

THE MEMBER STATES OF THE COMMUNITY

TAKE NOTE of the fact that the Italian Government is carrying out a 10-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less-developed areas in southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;

RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;

RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;

AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;

ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;

RECOGNISE that in the event of Articles 119 and 120 being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population.

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



Protocol (No 13)  
**on goods originating in and coming from certain countries and  
enjoying special treatment when imported into a Member State  
(1957)**

THE HIGH CONTRACTING PARTIES

DESIRING to define in greater detail the application of this Treaty to certain goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty:

1. The application of the Treaty establishing the European Economic Community shall not require any alteration in the customs treatment applicable on 1 January 1958 to imports into the Benelux countries of goods originating in and coming from Surinam (\*) or the Netherlands Antilles; (\*\*)
2. Goods imported into a Member State and benefiting from the treatment referred to above shall not be considered to be in free circulation in that State within the meaning of Article 24 of this Treaty when re-exported to another Member State.
3. Member States shall communicate to the Commission and to the other Member States their rules governing the special treatment referred to in this Protocol, together with a list of the goods entitled to such treatment.  
  
They shall also inform the Commission and the other Member States of any changes subsequently made in those lists or in the treatment.
4. The Commission shall ensure that the application of these rules cannot be prejudicial to other Member States; to this end it may take any appropriate measures as regards relations between Member States.

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

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(\*) The provisions of Part Four of the Treaty were applied to Surinam, by virtue of a Supplementary Act of the Kingdom of the Netherlands to complete its instrument of ratification, from 1 September 1962 to 16 July 1976.

(\*\*) In accordance with Article 1 of the Convention of 13 November 1962 amending the Treaty establishing the European Economic Community (OJ L 150, 1.10.1964, p. 2414), the Protocol no longer applies to the Netherlands Antilles.

Protocol (No 14)  
**concerning imports into the European Economic Community  
of petroleum products refined in the Netherlands Antilles (\*)  
(1962)**

THE HIGH CONTRACTING PARTIES,

BEING DESIROUS of giving fuller details about the system of trade applicable to imports into the European Economic Community of petroleum products refined in the Netherlands Antilles,

HAVE AGREED on the following provisions to be appended to that Treaty:

*Article 1*

This Protocol is applicable to petroleum products coming under the Brussels Nomenclature numbers 27.10, 27.11, 27.12, ex 27.13 (paraffin wax, petroleum or shale wax and paraffin residues) and 27.14, imported for use in 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 Community, under the conditions provided for in 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 Community of petroleum products refined in the Netherlands Antilles under the system provided for in Article 2 above are giving rise to real difficulties on the market of one or more Member States, it shall decide 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 Community of petroleum products refined in the Netherlands Antilles reach two million metric tons a year.

(\*) Added by Article 2 of the Convention of 13 November 1962 amending the Treaty establishing the European Economic Community (OJ 150, 1.10.1964).

3. The Council shall be informed of decisions taken 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 amend or revoke them by a decision taken by a qualified majority.

#### *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 above, 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 decide within one month whether the measures taken by the State should be maintained or must be amended or cancelled. The provisions of 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 above, into a Member State or States of the European Economic Community 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 Community 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 such a case preferential treatment shall be granted to the Netherlands Antilles as compared with third countries.

#### *Article 6*

1. The provisions of Articles 2 to 5 shall 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 must in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 2½ million metric tons of petroleum products.

3. The Community's commitments in regard to equivalent preferences as mentioned in paragraph 2 of this Article may, if necessary, be broken down country by country 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.

Done at Brussels, the thirteenth day of November, one thousand nine hundred and sixty-two.

#### *Annex to the Protocol*

For the implementation of Article 4(2) of the Protocol concerning imports into the European Economic Community of petroleum products refined in the Netherlands Antilles, the High Contracting Parties have decided that the quantity of 2 million metric tons of petroleum products from the Antilles shall be allocated among the Member States as follows:

Germany .....	625 000 metric tons
Belgo-Luxembourg Economic Union .....	200 000 metric tons
France .....	75 000 metric tons
Italy .....	100 000 metric tons
Netherlands .....	1 000 000 metric tons

Protocol (\*) (No 15)  
**on special arrangements for Greenland (1985)**

*Article 1*

1. The treatment on import into the Community of products subject to the common organisation of the market in fishery products, 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 Community pursuant to an agreement between the Community and the authority responsible for Greenland are satisfactory to the Community.

2. All measures relating to the import arrangements for such products, including those relating to the adoption of such measures, shall be adopted in accordance with the procedure laid down in Article 37 of the Treaty establishing the European Economic Community.

*Article 2*

The Commission shall make proposals to the Council, which shall act by a qualified majority, for the transitional measures which it considers necessary, by reason of the entry into force of the new arrangements, with regard to the maintenance of rights acquired by natural or legal persons during the period when Greenland was part of the Community and the regularisation of the situation with regard to financial assistance granted by the Community to Greenland during that period.

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(\*) Article 3 of the Greenland Treaty provides that this Protocol, attached to that Treaty, shall be annexed to the Treaty establishing the European Economic Community (OJ L 29, 1.2.1985).

Protocol (No 16)  
**on the acquisition of property in Denmark (1992)**

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 the European Community:

Notwithstanding the provisions of this Treaty, Denmark may maintain the existing legislation on the acquisition of second homes.

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Protocol (No 17)

**on Article 141 of the Treaty establishing the European Community (1992)**

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty establishing the European Community:

For the purposes of Article 141 of this Treaty, benefits under occupational social security schemes shall not be considered as remuneration if and in so far 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.

Protocol (No 18)  
**on the Statute of the European System of Central Banks and of  
the European Central Bank (1992)**

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 Article 8 of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*CHAPTER I*

**CONSTITUTION OF THE ESCB**

*Article 1*

**The European System of Central Banks**

1.1. The European System of Central Banks (ESCB) and the European Central Bank (ECB) shall be established in accordance with Article 8 of this Treaty; they shall perform their tasks and carry on their activities in accordance with the provisions of this Treaty and of this Statute.

1.2. In accordance with Article 107(1) of this Treaty, the ESCB shall be composed of the ECB and of the central banks of the Member States ('national central banks'). The Institut monétaire luxembourgeois will be the central bank of Luxembourg.

*CHAPTER II*

**OBJECTIVES AND TASKS OF THE ESCB**

*Article 2*

**Objectives**

In accordance with Article 105(1) of this Treaty, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Community with a view to contributing to the achievement of the objectives of the Community as laid down in Article 2 of this Treaty. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 4 of this Treaty.

### Article 3

#### Tasks

3.1. In accordance with Article 105(2) of this Treaty, the basic tasks to be carried out through the ESCB shall be:

- to define and implement the monetary policy of the Community;
- to conduct foreign-exchange operations consistent with the provisions of Article 111 of this Treaty;
- to hold and manage the official foreign reserves of the Member States;
- to promote the smooth operation of payment systems.

3.2. In accordance with Article 105(3) of this Treaty, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 105(5) of this Treaty, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

### Article 4

#### Advisory functions

In accordance with Article 105(4) of this Treaty:

- (a) the ECB shall be consulted:
- on any proposed Community act in its fields of competence;
  - by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 42;
- (b) the ECB may submit opinions to the appropriate Community institutions or bodies or to national authorities on matters in its fields of competence.



*Article 5***Collection of statistical information**

5.1. In order to undertake the tasks of the ESCB, the ECB, 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 the Community institutions or bodies and with the competent authorities of the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB 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 fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article 42, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

*Article 6***International cooperation**

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 111(4) of this Treaty.

*CHAPTER III***ORGANISATION OF THE ESCB***Article 7***Independence**

In accordance with Article 108 of this Treaty, when exercising the powers and carrying out the tasks and duties conferred upon them by this Treaty and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Community institutions or bodies, from any government of a Member State or from any other body. The Community institutions and bodies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

*Article 8***General principle**

The ESCB shall be governed by the decision-making bodies of the ECB.

*Article 9***The European Central Bank**

9.1. The ECB which, in accordance with Article 107(2) of this Treaty, shall have 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.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 105(2), (3) and (5) of this Treaty are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article 107(3) of this Treaty, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.

*Article 10***The Governing Council**

10.1. In accordance with Article 112(1) of this Treaty, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks.

10.2. 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:

- as from the date on which the number of governors exceeds 15, 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 which have adopted 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;

- 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 above criteria. 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;
- within each group, the governors shall have their voting rights for equal amounts of time;
- 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 European Community at the time of the calculation;
- 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 above principles;
- 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 above principles 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 provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 10.6 and 41.2.

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.

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.

10.3. For any decisions to be taken under Articles 28, 29, 30, 32, 33 and 51, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights 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 ECB 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.

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

10.5. The Governing Council shall meet at least 10 times a year.

10.6. Article 10.2 may be amended by the Council meeting in the composition of the Heads of State or Government, acting unanimously either on a recommendation from the ECB and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the ECB. The Council shall recommend such amendments to the Member States for adoption. These amendments shall enter into force after having been ratified by all the Member States in accordance with their respective constitutional requirements.

A recommendation made by the ECB under this paragraph shall require a decision by the Governing Council acting unanimously.

### *Article 11*

#### **The Executive Board**

11.1. In accordance with Article 112(2)(a) of this Treaty, 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.

11.2. In accordance with Article 112(2)(b) of this Treaty, the President, the Vice-President and the other members of the Executive Board shall be appointed from among persons of recognised standing and professional experience in monetary or banking matters by common accord of the governments of the Member States at the level of the Heads of State or Government, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

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.

11.3. 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 ECB 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.

11.4. 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.

11.5. 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.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

## *Article 12*

### **Responsibilities of the decision-making bodies**

12.1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under this Treaty and this Statute. The Governing Council shall formulate the monetary policy of the Community including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

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.

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

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

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

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

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

### *Article 13*

#### **The President**

13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.

13.2. Without prejudice to Article 39, the President or his nominee shall represent the ECB externally.

### *Article 14*

#### **National central banks**

14.1. In accordance with Article 109 of this Treaty, each Member State shall ensure, at the latest at the date of the establishment of the ESCB, that its national legislation, including the statutes of its national central bank, is compatible with this Treaty and this Statute.

14.2. 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 this Treaty 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.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. 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 ESCB. 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 ESCB.

### *Article 15*

#### **Reporting commitments**

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article 113(3) of this Treaty, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

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

### *Article 16*

#### **Banknotes**

In accordance with Article 106(1) of this Treaty, the Governing Council shall have the exclusive right to authorise the issue of banknotes within the Community. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Community.

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

## CHAPTER IV

### MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

#### *Article 17*

#### **Accounts with the ECB and the national central banks**

In order to conduct their operations, the ECB 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**

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

- 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 Community or in non-Community currencies, as well as precious metals;
- conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB 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**

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



19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 42, 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 42, define the scope of such methods if they impose obligations on third parties.

#### *Article 21*

### **Operations with public entities**

21.1. In accordance with Article 101 of this Treaty, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Community institutions or bodies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3. 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 ECB as private credit institutions.

#### *Article 22*

### **Clearing and payment systems**

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

*Article 23***External operations**

The ECB and national central banks may:

- establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;
- 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;
- hold and manage the assets referred to in this Article;
- 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 ECB and national central banks may enter into operations for their administrative purposes or for their staff.

*CHAPTER V***PRUDENTIAL SUPERVISION***Article 25***Prudential supervision**

25.1. The ECB 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 Community legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any decision of the Council under Article 105(6) of this Treaty, the ECB 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 ESCB

#### *Article 26*

##### **Financial accounts**

26.1. The financial year of the ECB and national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB 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.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardizing the accounting and reporting of operations undertaken by the national central banks.

#### *Article 27*

##### **Auditing**

27.1. The accounts of the ECB 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 ECB and national central banks and obtain full information about their transactions.

27.2. The provisions of Article 248 of this Treaty shall only apply to an examination of the operational efficiency of the management of the ECB.

#### *Article 28*

##### **Capital of the ECB**

28.1. The capital of the ECB, which shall become operational upon its establishment, shall be ECU 5 000 million. The capital may be increased by such amounts as may be decided 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 42.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. 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.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. 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**

29.1. When in accordance with the procedure referred to in Article 123(1) of this Treaty the ESCB and the ECB have been established, the key for subscription of the ECB's capital shall be established. Each national central bank shall be assigned a weighting in this key which shall be equal to the sum of:

- 50 % of the share of its respective Member State in the population of the Community in the penultimate year preceding the establishment of the ESCB;
- 50 % of the share of its respective Member State in the gross domestic product at market prices of the Community as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up to the nearest multiple of 0.05 percentage points.

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 42.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

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

*Article 30***Transfer of foreign reserve assets to the ECB**

30.1. Without prejudice to Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, ECUs, IMF reserve positions and SDRs, up to an amount equivalent to ECU 50 000 million. The Governing Council shall decide upon the proportion to be called up by the ECB following its establishment and the amounts called up at later dates. The ECB 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.

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

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

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 42.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. 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**

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

31.2. 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 Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Community.

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

### *Article 32*

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

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as 'monetary income') shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. Subject to Article 32.3, 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.

32.3. 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 Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. 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 ESCB. 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.

32.5. 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 ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

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

32.7. 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 ECB**

33.1. The net profit of the ECB 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 ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB 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**

34.1. In accordance with Article 110 of this Treaty, the ECB shall:

- make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 42;
- take decisions necessary for carrying out the tasks entrusted to the ESCB under this Treaty and this Statute;
- make recommendations and deliver opinions.

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

Recommendations and opinions shall have no binding force.

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

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

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

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 42, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

### *Article 35*

#### **Judicial control and related matters**

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this Treaty. The ECB may institute proceedings in the cases and under the conditions laid down in this Treaty.

35.2. Disputes between the ECB, 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.

35.3. The ECB shall be subject to the liability regime provided for in Article 288 of this Treaty. The national central banks shall be liable according to their respective national laws.

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

35.5. A decision of the ECB to bring an action before the Court of Justice shall be taken by the Governing Council.

35.6. The Court of Justice shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under 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 ECB, the latter may bring the matter before the Court of Justice.



*Article 36***Staff**

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2. The Court of Justice shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

*Article 37***Seat**

Before the end of 1992, the decision as to where the seat of the ECB will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or Government.

*Article 38***Professional secrecy**

38.1. Members of the governing bodies and the staff of the ECB 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.

38.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.

*Article 39***Signatories**

The ECB 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 ECB who have been duly authorised by the President to sign on behalf of the ECB.

*Article 40***Privileges and immunities**

The ECB 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 Communities.

## CHAPTER VIII

## AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

*Article 41***Simplified amendment procedure**

41.1. In accordance with Article 107(5) of this Treaty, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission, or unanimously on a proposal from the Commission and after consulting the ECB. In either case the assent of the European Parliament shall be required.

41.2. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

*Article 42***Complementary legislation**

In accordance with Article 107(6) of this Treaty, immediately after the decision on the date for the beginning of the third stage, the Council, acting by a qualified majority either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

## CHAPTER IX

## TRANSITIONAL AND OTHER PROVISIONS FOR THE ESCB

*Article 43***General provisions**

43.1. A derogation as referred to in Article 122(1) of this Treaty 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, 50 and 52.

43.2. The central banks of Member States with a derogation as specified in Article 122(1) of this Treaty shall retain their powers in the field of monetary policy according to national law.

43.3. In accordance with Article 122(4) of this Treaty, 'Member States' shall be read as 'Member States without a derogation' in the following Articles of this Statute: 3, 11.2, 19, 34.2 and 50.

43.4. 'National central banks' shall be read as 'central banks of Member States without a derogation' in the following Articles of this Statute: 9.2, 10.1, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 52.

43.5. 'Shareholders' shall be read as 'central banks of Member States without a derogation' in Articles 10.3 and 33.1.

43.6. 'Subscribed capital of the ECB' shall be read as 'capital of the ECB subscribed by the central banks of Member States without a derogation' in Articles 10.3 and 30.2.

#### *Article 44*

### **Transitional tasks of the ECB**

The ECB shall take over those tasks of the EMI which, because of the derogations of one or more Member States, still have to be performed in the third stage.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 122 of this Treaty.

#### *Article 45*

### **The General Council of the ECB**

45.1. Without prejudice to Article 107(3) of this Treaty, the General Council shall be constituted as a third decision-making body of the ECB.

45.2. The General Council shall comprise the President and Vice-President of the ECB 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.

45.3. The responsibilities of the General Council are listed in full in Article 47 of this Statute.

*Article 46***Rules of Procedure of the General Council**

- 46.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.
- 46.2. 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.
- 46.3. The President shall prepare the meetings of the General Council.
- 46.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.
- 46.5. The Secretariat of the General Council shall be provided by the ECB.

*Article 47***Responsibilities of the General Council**

- 47.1. The General Council shall:
- perform the tasks referred to in Article 44;
  - contribute to the advisory functions referred to in Articles 4 and 25.1.
- 47.2. The General Council shall contribute to:
- the collection of statistical information as referred to in Article 5;
  - the reporting activities of the ECB as referred to in Article 15;
  - the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;
  - the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;
  - the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

47.3. 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 currencies, or the single currency, of the Member States without a derogation, as referred to in Article 123(5) of this Treaty.

47.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

#### *Article 48*

### **Transitional provisions for the capital of the ECB**

In accordance with Article 29.1 each national central bank shall be assigned a weighting in the key for subscription of the ECB'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 ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

#### *Article 49*

### **Deferred payment of capital, reserves and provisions of the ECB**

49.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States without a derogation, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the ECU value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB 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.

49.2. In addition to the payment to be made in accordance with Article 49.1, the central bank concerned shall contribute to the reserves of the ECB, 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 ECB, 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.

49.3. <sup>(1)</sup> Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the subscribed capital of the ECB and the limit on the amount of foreign reserve assets that may be transferred to the ECB 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 ESCB. 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 50*

### **Initial appointment of the members of the Executive Board**

When the Executive Board of the ECB is being established, the President, the Vice-President and the other members of the Executive Board shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from the Council and after consulting the European Parliament and the Council of the EMI. The President of the Executive Board shall be appointed for eight years. By way of derogation from Article 11.2, the Vice-President shall be appointed for four years and the other members of the Executive Board for terms of office of between five and eight years. No term of office shall be renewable. The number of members of the Executive Board may be smaller than provided for in Article 11.1, but in no circumstance shall it be less than four.

#### *Article 51*

### **Derogation from Article 32**

51.1. 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.

51.2. Article 51.1 shall be applicable for not more than five financial years after the start of the third stage.

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<sup>(1)</sup> Paragraph added by the 2003 Act of Accession

*Article 52***Exchange of banknotes in Community currencies**

Following the irrevocable fixing of exchange rates, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

*Article 53***Applicability of the transitional provisions**

If and as long as there are Member States with a derogation Articles 43 to 48 shall be applicable.

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aProtocol (No 19)  
**on the Statute of the European Monetary Institute (1992)**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Monetary Institute,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*Article 1*

**Constitution and name**

1.1. The European Monetary Institute (EMI) shall be established in accordance with Article 117 of this Treaty; it shall perform its functions and carry out its activities in accordance with the provisions of this Treaty and of this Statute.

1.2. The members of the EMI shall be the central banks of the Member States ('national central banks'). For the purposes of this Statute, the Institut monétaire luxembourgeois shall be regarded as the central bank of Luxembourg.

1.3. Pursuant to Article 117 of this Treaty, both the Committee of Governors and the European Monetary Cooperation Fund (EMCF) shall be dissolved. All assets and liabilities of the EMCF shall pass automatically to the EMI.

*Article 2*

**Objectives**

The EMI shall contribute to the realisation of the conditions necessary for the transition to the third stage of economic and monetary union, in particular by:

- strengthening the coordination of monetary policies with a view to ensuring price stability;
- making the preparations required for the establishment of the European System of Central Banks (ESCB), and for the conduct of a single monetary policy and the creation of a single currency in the third stage;
- overseeing the development of the ECU.



*Article 3***General principles**

3.1. The EMI shall carry out the tasks and functions conferred upon it by this Treaty and this Statute without prejudice to the responsibility of the competent authorities for the conduct of the monetary policy within the respective Member States

3.2. The EMI shall act in accordance with the objectives and principles stated in Article 2 of the Statute of the ESCB.

*Article 4***Primary tasks**

4.1. In accordance with Article 117(2) of this Treaty, the EMI shall:

- strengthen cooperation between the national central banks;
- strengthen the coordination of the monetary policies of the Member States with the aim of ensuring price stability;
- monitor the functioning of the European Monetary System (EMS);
- hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets;
- take over the tasks of the EMCF; in particular it shall perform the function referred to in Articles 6.1, 6.2 and 6.3;
- facilitate the use of the ECU and oversee its development, including the smooth functioning of the ECU clearing system.

The EMI shall also:

- hold regular consultations concerning the course of monetary policies and the use of monetary policy instruments;
- normally be consulted by the national monetary authorities before they take decisions on the course of monetary policy in the context of the common framework for ex ante coordination.

4.2. At the latest by 31 December 1996, the EMI shall specify the regulatory, organisational and logistical framework necessary for the ESCB to perform its tasks in the third stage, in accordance with the principle of an open market economy with free competition. This framework shall be submitted by the Council of the EMI for decision to the ECB at the date of its establishment.

In accordance with Article 117(3) of this Treaty, the EMI shall in particular:

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

#### *Article 5*

### **Advisory functions**

5.1. In accordance with Article 117(4) of this Treaty, the Council of the EMI may formulate opinions or recommendations on the overall orientation of monetary policy and exchange-rate policy as well as on related measures introduced in each Member State. The EMI may submit opinions or recommendations to governments and to the Council on policies which might affect the internal or external monetary situation in the Community and, in particular, the functioning of the EMS.

5.2. The Council of the EMI may also make recommendations to the monetary authorities of the Member States concerning the conduct of their monetary policy.

5.3. In accordance with Article 117(6) of this Treaty, the EMI shall be consulted by the Council regarding any proposed Community act within its field of competence.

Within the limits and under the conditions set out by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the EMI, the EMI shall be consulted by the authorities of the Member States on any draft legislative provision within its field of competence, in particular with regard to Article 4.2.

5.4. In accordance with Article 117(5) of this Treaty, the EMI may decide to publish its opinions and its recommendations.

## Article 6

### Operational and technical functions

6.1. The EMI shall:

- provide for the multilateralisation of positions resulting from interventions by the national central banks in Community currencies and the multilateralisation of intra-Community settlements;
- administer the very short-term financing mechanism provided for by the Agreement of 13 March 1979 between the central banks of the Member States of the European Economic Community laying down the operating procedures for the European Monetary System (hereinafter referred to as 'EMS Agreement') and the short-term monetary support mechanism provided for in the Agreement between the central banks of the Member States of the European Economic Community of 9 February 1970, as amended;
- perform the functions referred to in Article 11 of Council Regulation (EEC) No 1969/88 of 24 June 1988 establishing a single facility providing medium-term financial assistance for Member States' balances of payments.

6.2. The EMI may receive monetary reserves from the national central banks and issue ECUs against such assets for the purpose of implementing the EMS Agreement. These ECUs may be used by the EMI and the national central banks as a means of settlement and for transactions between them and the EMI. The EMI shall take the necessary administrative measures for the implementation of this paragraph.

6.3. The EMI may grant to the monetary authorities of third countries and to international monetary institutions the status of 'other holders' of ECUs and fix the terms and conditions under which such ECUs may be acquired, held or used by other holders.

6.4. The EMI shall be entitled to hold and manage foreign exchange reserves as an agent for and at the request of national central banks. Profits and losses regarding these reserves shall be for the account of the national central bank depositing the reserves. The EMI shall perform this function on the basis of bilateral contracts in accordance with rules laid down in a decision of the EMI. These rules shall ensure that transaction with these reserves shall not interfere with the monetary policy and exchange-rate policy of the competent monetary authority of any Member State and shall be consistent with the objectives of the EMI and the proper functioning of the exchange-rate mechanism of the EMS.

#### *Article 7*

### **Other tasks**

7.1. Once a year the EMI shall address a report to the Council on the state of the preparations for the third stage. These reports shall include an assessment of the progress towards convergence in the Community, and cover in particular the adaptation of monetary policy instruments and the preparation of the procedures necessary for carrying out a single monetary policy in the third stage, as well as the statutory requirements to be fulfilled for national central banks to become an integral part of the ESCB.

7.2. In accordance with the Council decisions referred to in Article 117(7) of this Treaty, the EMI may perform other tasks for the preparation of the third stage.

#### *Article 8*

### **Independence**

The members of the Council of the EMI who are the representatives of their institutions shall, with respect to their activities, act according to their own responsibilities. In exercising the powers and performing the tasks and duties conferred upon them by this Treaty and this Statute, the Council of the EMI may not seek or take any instructions from Community institutions or bodies or governments of Member States. The Community institutions and bodies as well as the governments of the Member States undertake to respect this principle and not to seek to influence the Council of the EMI in the performance of its tasks.

#### *Article 9*

### **Administration**

9.1. In accordance with Article 117(1) of this Treaty, the EMI shall be directed and managed by the Council of the EMI.

9.2. The Council of the EMI shall consist of a President and the Governors of the national central banks, one of whom shall be Vice-President. If a Governor is prevented from attending a meeting, he may nominate another representative of his institution.

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

9.4. The President shall perform his duties on a full-time basis. He shall not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council of the EMI.

9.5. The President shall:

- prepare and chair the meetings of the Council of the EMI;
- without prejudice to Article 22, present the views of the EMI externally;
- be responsible for the day-to-day management of the EMI.

In the absence of the President, his duties shall be performed by the Vice-President.

9.6. The terms and conditions of employment of the President, in particular his salary, pension and other social security benefits, shall be the subject of a contract with the EMI and shall be fixed by the Council of the EMI on a proposal from a Committee comprising three members appointed by the Committee of Governors or the Council of the EMI, as the case may be, and three members appointed by the Council. The President shall not have the right to vote on matters referred to in this paragraph.

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

9.8. The Rules of Procedure of the EMI shall be adopted by the Council of the EMI.

*Article 10***Meetings of the Council of the EMI and voting procedures**

10.1. The Council of the EMI shall meet at least 10 times a year. The proceedings of Council meetings shall be confidential. The Council of the EMI may, acting unanimously, decide to make the outcome of its deliberations public.

10.2. Each member of the Council of the EMI or his nominee shall have one vote.

10.3. Save as otherwise provided for in this Statute, the Council of the EMI shall act by a simple majority of its members.

10.4. Decisions to be taken in the context of Articles 4.2, 5.4, 6.2 and 6.3 shall require unanimity of the members of the Council of the EMI.

The adoption of opinions and recommendations under Articles 5.1 and 5.2, the adoption of decisions under Articles 6.4, 16 and 23.6 and the adoption of guidelines under Article 15.3 shall require a qualified majority of two thirds of the members of the Council of the EMI.

*Article 11***Interinstitutional cooperation and reporting requirements**

11.1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Council of the EMI.

11.2. The President of the EMI shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the EMI.

11.3. At a date to be established in the Rules of Procedure, the EMI shall prepare an annual report on its activities and on monetary and financial conditions in the Community. The annual report, together with the annual accounts of the EMI, shall be addressed to the European Parliament, the Council and the Commission and also to the European Council.

The President of the EMI may, at the request of the European Parliament or on his own initiative, be heard by the competent committees of the European Parliament.

11.4. Reports published by the EMI shall be made available to interested parties free of charge.

*Article 12***Currency denomination**

The operations of the EMI shall be expressed in ECUs.

*Article 13***Seat**

Before the end of 1992, the decision as to where the seat of the EMI will be established shall be taken by common accord of the governments of the Member States at the level of Heads of State or Government.

*Article 14***Legal capacity**

The EMI, which in accordance with Article 117(1) of this Treaty shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under their law; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

*Article 15***Legal acts**

15.1. In the performance of its tasks, and under the conditions laid down in this Statute, the EMI shall:

- deliver opinions;
- make recommendations;
- adopt guidelines, and take decisions, which shall be addressed to the national central banks.

15.2. Opinions and recommendations of the EMI shall have no binding force.

15.3. The Council of the EMI may adopt guidelines laying down the methods for the implementation of the conditions necessary for the ESCB to perform its functions in the third stage. EMI guidelines shall have no binding force; they shall be submitted for decision to the ECB.

15.4. Without prejudice to Article 3.1, a decision of the EMI shall be binding in its entirety upon those to whom it is addressed. Articles 253 and 254 of this Treaty shall apply to these decisions.

## *Article 16*

### **Financial resources**

16.1. The EMI shall be endowed with its own resources. The size of the resources of the EMI shall be determined by the Council of the EMI with a view to ensuring the income deemed necessary to cover the administrative expenditure incurred in the performance of the tasks and functions of the EMI.

16.2. The resources of the EMI determined in accordance with Article 16.1 shall be provided out of contributions by the national central banks in accordance with the key referred to in Article 29.1 of the Statute of the ESCB and be paid up at the establishment of the EMI. For this purpose, the statistical data to be used for the determination of the key shall be provided by the Commission, in accordance with the rules adopted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, the Committee of Governors and the Committee referred to in Article 114 of this Treaty.

16.3. The Council of the EMI shall determine the form in which contributions shall be paid up.

## *Article 17*

### **Annual accounts and auditing**

17.1. The financial year of the EMI shall begin on the first day of January and end on the last day of December.

17.2. The Council of the EMI shall adopt an annual budget before the beginning of each financial year.

17.3. The annual accounts shall be drawn up in accordance with the principles established by the Council of the EMI. The annual accounts shall be approved by the Council of the EMI and shall thereafter be published.



17.4. The annual accounts shall be audited by independent external auditors approved by the Council of the EMI. The auditors shall have full power to examine all books and accounts of the EMI and to obtain full information about its transactions.

The provisions of Article 248 of this Treaty shall only apply to an examination of the operational efficiency of the management of the EMI.

17.5. Any surplus of the EMI shall be transferred in the following order:

- (a) an amount to be determined by the Council of the EMI shall be transferred to the general reserve fund of the EMI;
- (b) any remaining surplus shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.

17.6. In the event of a loss incurred by the EMI, the shortfall shall be offset against the general reserve fund of the EMI. Any remaining shortfall shall be made good by contributions from the national central banks, in accordance with the key as referred to in Article 16.2.

#### *Article 18*

#### **Staff**

18.1. The Council of the EMI shall lay down the conditions of employment of the staff of the EMI.

18.2. The Court of Justice shall have jurisdiction in any dispute between the EMI and its servants within the limits and under the conditions laid down in the conditions of employment.

#### *Article 19*

#### **Judicial control and related matters**

19.1. The acts or omissions of the EMI shall be open to review or interpretation by the Court of Justice in the cases and under the conditions laid down in this Treaty. The EMI may institute proceedings in the cases and under the conditions laid down in this Treaty.

19.2. Disputes between the EMI, on the one hand, and its creditors, debtors or any other person, on the other, shall fall within the jurisdiction of the competent national courts, save where jurisdiction has been conferred upon the Court of Justice.

19.3. The EMI shall be subject to the liability regime provided for in Article 288 of this Treaty.

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

19.5. A decision of the EMI to bring an action before the Court of Justice shall be taken by the Council of the EMI.

#### *Article 20*

### **Professional secrecy**

20.1. Members of the Council of the EMI and the staff of the EMI shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

20.2. Persons having access to data covered by Community legislation imposing an obligation of secrecy shall be subject to such legislation.

#### *Article 21*

### **Privileges and immunities**

The EMI 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 Communities.

#### *Article 22*

### **Signatories**

The EMI shall be legally committed to third parties by the President or the Vice-President or by the signatures of two members of the staff of the EMI who have been duly authorised by the President to sign on behalf of the EMI.

#### *Article 23*

### **Liquidation of the EMI**

23.1. In accordance with Article 123 of this Treaty, the EMI shall go into liquidation on the establishment of the ECB. All assets and liabilities of the EMI shall then pass automatically to the ECB. The latter shall liquidate the EMI according to the provisions of this Article. The liquidation shall be completed by the beginning of the third stage.

23.2. The mechanism for the creation of ECUs against gold and US dollars as provided for by Article 17 of the EMS Agreement shall be unwound by the first day of the third stage in accordance with Article 20 of the said Agreement.

23.3. All claims and liabilities arising from the very short-term financing mechanism and the short-term monetary support mechanism, under the Agreements referred to in Article 6.1, shall be settled by the first day of the third stage.

23.4. All remaining assets of the EMI shall be disposed of and all remaining liabilities of the EMI shall be settled.

23.5. The proceeds of the liquidation described in Article 23.4 shall be distributed to the national central banks in accordance with the key referred to in Article 16.2.

23.6. The Council of the EMI may take the measures necessary for the application of Articles 23.4 and 23.5.

23.7. Upon the establishment of the ECB, the President of the EMI shall relinquish his office.

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Protocol (No 20)  
**on the excessive deficit procedure (1992)**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the excessive deficit procedure referred to in Article 104 of the Treaty establishing the European Community,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*Article 1*

The reference values referred to in Article 104(2) of this Treaty are:

- 3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices;
- 60 % for the ratio of government debt to gross domestic product at market prices.

*Article 2*

In Article 104 of this Treaty and in this Protocol:

- 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;
- deficit means net borrowing as defined in the European System of Integrated Economic Accounts;
- investment means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;
- 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 the first indent.

*Article 3*

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 the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from this Treaty. 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.

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Protocol (No 21)  
**on the convergence criteria referred to in Article 121 of the  
Treaty establishing the European Community (1992)**

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Community in taking decisions on the passage to the third stage of economic and monetary union, referred to in Article 121(1) of this Treaty,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community.

*Article 1*

The criterion on price stability referred to in the first indent of Article 121(1) of this Treaty shall mean that a Member State 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 ½ 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 the second indent of Article 121 (1) of this Treaty shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 104(6) of this Treaty that an excessive deficit exists.

*Article 3*

The criterion on participation in the exchange-rate mechanism of the European Monetary System referred to in the third indent of Article 121(1) of this Treaty shall mean that a Member State has respected the normal fluctuation margins provided for by the exchange-rate mechanism on 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 any other Member State's currency on its own initiative for the same period.

*Article 4*

The criterion on the convergence of interest rates referred to in the fourth indent of Article 121(1) of this Treaty shall mean that, observed over a period of one year before the examination, a Member State 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*

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the EMI or the ECB as the case may be, and the Committee referred to in Article 114, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 121 of this Treaty, which shall then replace this Protocol.

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Protocol (No 22)  
**on Denmark (1992)**

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 the European Community:

The provisions of 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 the Kingdom of Denmark which are not part of the Community.

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Protocol (No 23)  
**on Portugal (1992)**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Portugal,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. Portugal is hereby authorised to maintain the facility afforded to the autonomous regions of Azores and Madeira to benefit from an interest-free credit facility with the Banco de Portugal under the terms established by existing Portuguese law.
2. Portugal commits itself to pursue its best endeavours in order to put an end to the abovementioned facility as soon as possible.



Protocol (No 24)  
**on the transition to the third stage of economic and monetary  
union (1992)**

THE HIGH CONTRACTING PARTIES

Declare the irreversible character of the Community's movement to the third stage of economic and monetary union by signing the new Treaty provisions on economic and monetary union.

Therefore all Member States shall, whether they fulfil the necessary conditions for the adoption of a single currency or not, respect the will for the Community to enter swiftly into the third stage, and therefore no Member State shall prevent the entering into the third stage.

If by the end of 1997 the date of the beginning of the third stage has not been set, the Member States concerned, the Community institutions and other bodies involved shall expedite all preparatory work during 1998, in order to enable the Community to enter the third stage irrevocably on 1 January 1999 and to enable the ECB and the ESCB to start their full functioning from this date.

This Protocol shall be annexed to the Treaty establishing the European Community.

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Protocol (No 25)  
**on certain provisions relating to the United Kingdom of Great  
Britain and Northern Ireland (1992)**

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to move to the third stage of economic and monetary union without a separate decision to do so by its government and parliament,

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 the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. The United Kingdom shall notify the Council whether it intends to move to the third stage before the Council makes its assessment under Article 121(2) of this Treaty.

Unless the United Kingdom notifies the Council that it intends to move to the third stage, it shall be under no obligation to do so.

If no date is set for the beginning of the third stage under Article 121(3) of this Treaty, the United Kingdom may notify its intention to move to the third stage before 1 January 1998.

2. Paragraphs 3 to 9 shall have effect if the United Kingdom notifies the Council that it does not intend to move to the third stage.

3. The United Kingdom shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 121(2) and the first indent of Article 121(3) of this Treaty.

4. The United Kingdom shall retain its powers in the field of monetary policy according to national law.

5. Articles 4(2), 104(1), (9) and (11), 105(1) to (5), 106, 108, 109, 110, 111, 112(1) and (2) (b) and 123(4) and (5) of this Treaty shall not apply to the United Kingdom. In these provisions references to the Community or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

6. Articles 116(4) and 119 and 120 of this Treaty shall continue to apply to the United Kingdom. Articles 114(4) and 124 shall apply to the United Kingdom as if it had a derogation.

7. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 5. For this purpose the weighted votes of the United Kingdom shall be excluded from any calculation of a qualified majority under Article 122(5) of this Treaty.

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 ECB under Articles 112(2)(b) and 123(1) of this Treaty.

8. Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34, 50 and 52 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 Community 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 ECB' shall not include capital subscribed by the Bank of England.

9. Article 123(3) of this Treaty and Articles 44 to 48 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 44 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to move to that stage.

- (b) In addition to the tasks referred to in Article 47 the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs 10(a) and 10(c).
- (c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.
10. If the United Kingdom does not move to the third stage, it may change its notification at any time after the beginning of that stage. In that event:
- (a) The United Kingdom shall have the right to move to the third stage 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 122(2) of this Treaty, shall decide whether it fulfils the necessary conditions.
- (b) The Bank of England shall pay up its subscribed capital, transfer to the ECB 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 123(5) of this Treaty, shall take all other necessary decisions to enable the United Kingdom to move to the third stage.

If the United Kingdom moves to the third stage pursuant to the provisions of this Protocol, paragraphs 3 to 9 shall cease to have effect.

11. Notwithstanding Articles 101 and 116(3) of this Treaty 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 move to the third stage.

Protocol (No 26)  
**on certain provisions relating to Denmark (1992)**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle, in accordance with the general objectives of the Treaty establishing the European Community, certain particular problems existing at the present time,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Danish participation in the third stage of economic and monetary union,

HAVE AGREED on the following provisions, which shall be annexed to the Treaty establishing the European Community:

1. The Danish Government shall notify the Council of its position concerning participation in the third stage before the Council makes its assessment under Article 121(2) of this Treaty.
2. In the event of a notification that Denmark will not participate in the third stage, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of this Treaty and the Statute of the ESCB referring to a derogation shall be applicable to Denmark.
3. In such case, Denmark shall not be included among the majority of Member States which fulfil the necessary conditions referred to in the second indent of Article 121(2) and the first indent of Article 121(3) of this Treaty.
4. As for the abrogation of the exemption, the procedure referred to in Article 122(2) shall only be initiated at the request of Denmark.
5. In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

Protocol (No 27)  
**on France (1992)**

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 the European Community:

France will keep the privilege of monetary emission in its overseas territories under the terms established by its national laws, and will be solely entitled to determine the parity of the CFP franc.

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Protocol (No 28)  
**on economic and social cohesion (1992)**

THE HIGH CONTRACTING PARTIES,

RECALLING that the Union has set itself the objective of promoting economic and social progress, inter alia, through the strengthening of economic and social cohesion,

RECALLING that Article 2 of the Treaty establishing the European Community includes the task of promoting economic and social cohesion and solidarity between Member States and that the strengthening of economic and social cohesion figures among the activities of the Community listed in Article 3,

RECALLING that the provisions of Part Three, Title XVII, on economic and social cohesion as a whole provide the legal basis for consolidating and further developing the Community's action in the field of economic and social cohesion, including the creation of a new fund,

RECALLING that the provisions of Part Three, Title XV on trans-European networks and Title XIX on environment envisage a Cohesion Fund to be set up before 31 December 1993,

STATING their belief that progress towards economic and monetary union will contribute to the economic growth of all Member States,

NOTING that the Community's Structural Funds are being doubled in real terms between 1987 and 1993, implying large transfers, especially as a proportion of GDP of the less prosperous Member States,

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 Community participation in programmes and projects in certain countries,

NOTING the proposal to take greater account of the relative prosperity of Member States in the system of own resources,

REAFFIRM that the promotion of economic and social cohesion is vital to the full development and enduring success of the Community, and underline the importance of the inclusion of economic and social cohesion in Articles 2 and 3 of this Treaty;

REAFFIRM their conviction that the Structural Funds should continue to play a considerable part in the achievement of Community objectives in the field of cohesion;

REAFFIRM their conviction that the European Investment Bank should continue to devote the majority of its resources to the promotion of economic and social cohesion, and declare their willingness to review the capital needs of the European Investment Bank as soon as this is necessary for that purpose;

REAFFIRM the need for a thorough evaluation of the operation and effectiveness of the Structural Funds in 1992, and the need to review, on that occasion, the appropriate size of these Funds in the light of the tasks of the Community in the area of economic and social cohesion.

AGREE that the Cohesion Fund to be set up before 31 December 1993 will provide Community 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 Community average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 104;

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;

DECLARE their willingness to modulate the levels of Community 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;

RECOGNISE the need to monitor regularly the progress made towards achieving economic and social cohesion and state their willingness to study all necessary measures in this respect;

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;

AGREE to annex this Protocol to the Treaty establishing the European Community.

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Protocol (No 29)  
**on asylum for nationals of Member States of the European  
Union (1997)**

THE HIGH CONTRACTING PARTIES;

WHEREAS pursuant to the provisions of Article 6(2) of the Treaty on European Union the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;

WHEREAS the Court of Justice of the European Communities has jurisdiction to ensure that in the interpretation and application of Article 6(2) of the Treaty on European Union the law is observed by the European Community;

WHEREAS pursuant to Article 49 of the Treaty on European Union any European State, when applying to become a Member of the Union, must respect the principles set out in Article 6(1) of the Treaty on European Union,

BEARING IN MIND that Article 309 of the Treaty establishing the European Community establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those principles;

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 Part Two of the Treaty establishing the European Community;

BEARING IN MIND that the Treaty establishing the European Community 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;

RECALLING that the question of extradition of nationals of Member States of the Union is addressed in the European Convention on Extradition of 13 December 1957 and the Convention of 27 September 1996 drawn up on the basis of Article 31 of the Treaty on European Union relating to extradition between the Member States of the European Union;

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 the European Community,

*Sole Article*

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 after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the 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 7(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof;
  - (c) if the Council, acting on the basis of Article 7(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article 6(1);
  - (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 cases may be, the decision-making power of the Member State.
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Protocol (No 30)  
**on the application of the principles of subsidiarity and proportionality (1997)**

THE HIGH CONTRACTING PARTIES,

DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 5 of the Treaty establishing the European Community with a view to defining more precisely the criteria for applying them and to ensure their strict observance and consistent implementation by all institutions;

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

TAKING ACCOUNT of the Interinstitutional Agreement of 25 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;

HAVE CONFIRMED that the conclusions of the Birmingham European Council on 16 October 1992 and the overall approach to the application of the subsidiarity principle agreed by the European Council meeting in Edinburgh on 11-12 December 1992 will continue to guide the action of the Union's institutions as well as the development of the application of the principle of subsidiarity, and, for this purpose,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community:

1. In exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.

2. The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the maintaining in full of the *acquis communautaire* and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take into account Article 6(4) of the Treaty on European Union, according to which 'the Union shall provide itself with the means necessary to attain its objectives and carry through its policies'.

3. The principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice. The criteria referred to in the second paragraph of Article 5 of the Treaty shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.

4. For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators.

5. For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.

6. The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 249 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods.

7. Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

8. Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 10 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.

9. Without prejudice to its right of initiative, the Commission should:

- except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents;
- justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in whole or in part from the Community budget shall require an explanation;
- take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;
- submit an annual report to the European Council, the European Parliament and the Council on the application of Article 5 of the Treaty. This annual report shall also be sent to the Committee of the Regions and to the Economic and Social Committee.

10. The European Council shall take account of the Commission report referred to in the fourth indent of point 9 within the report on the progress achieved by the Union which it is required to submit to the European Parliament in accordance with Article 4 of the Treaty on European Union.

11. While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 5 of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.

12. In the course of the procedures referred to in Articles 251 and 252 of the Treaty, the European Parliament shall be informed of the Council's position on the application of Article 5 of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 5 of the Treaty.

13. Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty.

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Protocol (No 31)  
**on external relations of the Member States with regard to the  
crossing of external borders (1997)**

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 the European Community,

The provisions on the measures on the crossing of external borders included in Article 62(2)(a) of Title IV of the Treaty shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Community law and other relevant international agreements.

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Protocol (No 32)  
**on the system of public broadcasting in the Member States  
(1997)**

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 the European Community,

The provisions of the Treaty establishing the European Community 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 Community 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.

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Protocol (No 33)  
**on protection and welfare of animals (1997)**

THE HIGH CONTRACTING PARTIES,

DESIRING to ensure improved protection and respect for the welfare of animals as sentient beings;  
HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community,

In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

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Protocol (No 34)  
**on the financial consequences of the expiry of the ECSC  
Treaty and on the Research Fund for Coal and Steel (2001)**

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the expiry of the Treaty establishing the European Coal and Steel Community (ECSC),

WISHING to confer ownership of the ECSC funds on the European Community,

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 the European Community:

*Article 1*

1. All assets and liabilities of the ECSC, as they exist on 23 July 2002, shall be transferred to the European Community on 24 July 2002.
2. The net worth of these assets and liabilities, as they appear in the balance sheet of the ECSC of 23 July 2002, subject to any increase or decrease which may occur as a result of the liquidation operations, shall be considered as assets intended for research in the sectors related to the coal and steel industry, referred to as the 'ECSC in liquidation'. On completion of the liquidation they shall be referred to as the 'assets of the Research Fund for Coal and Steel'.
3. 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 the sectors related to the coal and steel industry in accordance with the provisions of this Protocol and of acts adopted on the basis hereof.

*Article 2*

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall adopt all the necessary provisions for the implementation of this Protocol, including essential principles and proper decision-making procedures, in particular for the adoption of 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.

*Article 3*

Except as otherwise provided in this Protocol and in the acts adopted on the basis hereof, the provisions of the Treaty establishing the European Community shall apply.

*Article 4*

This Protocol shall apply from 24 July 2002.

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Protocol (No 35)  
**on Article 67 of the Treaty establishing the European Commu-  
nity (2001)**

THE HIGH CONTRACTING PARTIES

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty establishing the European Community:

*Sole Article*

From 1 May 2004, the Council shall act by a qualified majority, on a proposal from the Commission and after consulting the European Parliament, in order to adopt the measures referred to in Article 66 of the Treaty establishing the European Community.

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E. PROTOCOL ANNEXED TO THE TREATIES  
ESTABLISHING THE EUROPEAN COMMUNITY  
AND THE EUROPEAN ATOMIC ENERGY  
COMMUNITY

Protocol (No 36)

**on the privileges and immunities of the European Communities  
(1965)**

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities, these Communities and the European Investment Bank shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to this Treaty.

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN COMMUNITIES

*Article 1*

The premises and buildings of the Communities shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Communities 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 Communities shall be inviolable.

*Article 3*

The Communities, their assets, revenues and other property shall be exempt from all direct taxes.

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 Communities make, for their 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 Communities.

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

#### *Article 4*

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

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

#### *Article 5*

The European Coal and Steel Community may hold currency of any kind and operate accounts in any currency.

### CHAPTER II

#### COMMUNICATIONS AND LAISSEZ-PASSER

#### *Article 6*

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

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

#### *Article 7*

1. *Laissez-passer* in a form to be prescribed by the Council, which shall be recognized as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Communities 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 Communities.

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

2. The provisions of Article 6 of the Protocol on the privileges and immunities of the European Coal and Steel Community shall, however, remain applicable to members and servants of the institutions who are at the date of entry into force of this Treaty in possession of the *laissez-passer* provided for in that Article, until the provisions of paragraph 1 of this Article are applied.

### CHAPTER III

#### MEMBERS OF THE EUROPEAN PARLIAMENT

##### *Article 8*

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

##### *Article 9*

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 10*

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 EUROPEAN COMMUNITIES

##### *Article 11*

Representatives of Member States taking part in the work of the institutions of the Communities, 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 Communities.

#### CHAPTER V

#### OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN COMMUNITIES

##### *Article 12*

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

- (a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Communities and, on the other hand, to the jurisdiction of the Court in disputes between the Communities and their 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 organizations;
- (d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country 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 country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

#### *Article 13*

Officials and other servants of the Communities shall be liable to a tax for the benefit of the Communities on salaries, wages and emoluments paid to them by the Communities, in accordance with the conditions and procedure laid down by the Council, acting on a proposal from the Commission.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Communities.

#### *Article 14*

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 Communities, officials and other servants of the Communities who, solely by reason of the performance of their duties in the service of the Communities, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Communities, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Communities. 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 preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries 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 organizations shall not be taken into consideration in applying the provisions of this Article.

#### *Article 15*

The Council shall, acting unanimously on a proposal from the Commission, lay down the scheme of social security benefits for officials and other servants of the Communities.

### *Article 16*

The Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Communities to whom the provisions of Article 12, the second paragraph of Article 13, and Article 14 shall apply, in whole or in part.

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 COUNTRIES ACCREDITED TO THE EUROPEAN COMMUNITIES**

### *Article 17*

The Member State in whose territory the Communities have their seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Communities.

## CHAPTER VII

### **GENERAL PROVISIONS**

### *Article 18*

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

Each institution of the Communities 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 Communities.

### *Article 19*

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

### *Article 20*

Articles 12 to 15 and Article 18 shall apply to Members of the Commission.

### *Article 21*

Articles 12 to 15 and Article 18 shall apply to the Judges, the Advocates-General, the Registrar and the Assistant Rapporteurs of the Court of Justice and to the Members and Registrar of the Court of First Instance, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice relating to immunity from legal proceedings of Judges and Advocates-General.

*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 provisions of 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.

*Article 23*

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

The above provisions shall also apply to the European Monetary Institute. Its dissolution or liquidation shall not give rise to any imposition.

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

Done at Brussels this eighth day of April in the year one thousand nine hundred and sixty-five.

Paul Henri SPAAK

Kurt SCHMÜCKER

Maurice COUVE DE MURVILLE

Amintore FANFANI

Pierre WERNER

J. M. A. H. LUNS