

## Final report by the General Secretariat of the Council of the European Union on the simplification and consolidation of the Treaties (21 November 1996)

**Caption:** On 21 November 1996, the General Secretariat of the Council of the European Union submits its final report on the simplification and consolidation of the Treaties. This question, originally the focus of debates by the Westendorp Group, had already been addressed in two preliminary reports in connection with the Intergovernmental Conference.

**Source:** General Secretariat of the Council, Report – Simplification and Consolidation of the Treaties, CONF 3988/96, Brussels, 21.11.96, [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/cig1996/03988en6.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/cig1996/03988en6.pdf).

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CONFERENCE OF THE REPRESENTATIVES  
OF THE GOVERNMENTS  
OF THE MEMBER STATES

Brussels, 21 November 1996 (27.11)

CONF 3988/96

LIMITE

**REPORT  
SIMPLIFICATION AND CONSOLIDATION OF THE TREATIES**

**I.BACKGROUND**

1. During discussions in the Reflection Group, the question of simplifying and consolidating the Treaties was addressed in a note of 17 October 1995 from the General Secretariat of the Council <sup>(1)</sup>. The brief given to the Intergovernmental Conference by the Turin European Council in March 1996 was to examine "whether it would be possible to simplify and consolidate the Treaties" <sup>(2)</sup>.

2. On that basis the Secretariat drew up a first preliminary report to the Intergovernmental Conference <sup>(3)</sup>. That report set out the various options as regards the consolidation, restructuring and simplification of the Treaties.

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<sup>(1)</sup>SN 513/95 (REFLEX 14).

<sup>(2)</sup>SN 100/1/96 REV 1, Turin European Council, 29 March 1996, Conclusions of the Presidency, p. 4.

<sup>(3)</sup>CONF/3831/96.

3. At its meeting in Florence in June 1996 the European Council called on the Conference to "seek all possible ways of simplifying the Treaties so as to make the Union's goals and operation easier for the public to understand" <sup>(4)</sup>.
4. On 22 July 1996 the Secretariat submitted a second preliminary report to the Intergovernmental Conference <sup>(5)</sup>, which aimed to provide clarification following the discussions between Representatives; it defined the scope and the general limits of the exercise and set out the options for the restructuring of the Treaties. That report was discussed at the Representatives' meeting on 3 and 4 September 1996.
5. On the basis of these discussions, this final report outlines the general approach proposed by the Conference Secretariat to the simplification and consolidation of the Treaties. It is accompanied by various versions of the Treaties tailored to meet the likely options <sup>(6)</sup>.

## II. SCOPE OF THE EXERCISE

6. The scope covered by the various Treaty versions is as follows:

- the Treaty on European Union
- the Treaty establishing the European Coal and Steel Community
- the Treaty establishing the European Community
- the Treaty establishing the European Atomic Energy Community
- the Annexes and Protocols to these various Treaties
- the Single European Act
- the Convention on certain institutions common to the European Communities

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<sup>(4)</sup>SN 300/96, Florence European Council, 21 and 22 June 1996, Conclusions of the Presidency, p. 10.

<sup>(5)</sup>CONF/3876/96.

<sup>(6)</sup>The various versions in question have been drawn up with the technical assistance of the Commission Legal Service; the Commission's responsibility is obviously not involved.

- the Treaty establishing a Single Council and a Single Commission of the European Communities
- the Act concerning the election of the representatives of the Assembly by direct universal suffrage.

7. The Accession Treaties are not included in the scope of the exercise; nor are the declarations contained in the Final Acts, which will continue to be attached to these acts. A statement will be drafted to the effect that they retain their force inasmuch as they relate to provisions which remain in application.

8. The consolidation exercise does not in itself involve any substantive amendment to the Treaties. Amendments of that type which result from the proceedings of the Conference will be integrated into the consolidated Treaty after the Conference is over. For that reason no versions are included which suggest a merger of the Union with the Community. On the other hand, one of the versions proposed assumes the fusion of the legal personalities of the EC, the ECSC and the EAEC. That fusion has been designed in such a way as to have no effect on the specific features of each of these Communities notwithstanding the establishment of single legal personality for the Community. However, it makes a significant simplification of the Treaties possible. It is therefore being submitted to the Conference so that an assessment can be made of the value of such an exercise.

### III. THE MERGER HYPOTHESES

Having examined this issue the Secretariat has adopted the following hypotheses:

#### 9. First hypothesis

Merger of the three Treaties (EC, ECSC and Euratom) and retention of separate legal personality for each Community.

For reasons of clarity, the EC Treaty has been chosen as the basis and the provisions concerning the ECSC and the EAEC included in separate Protocols. That method makes it possible to retain the specific preambles and provisions of each Treaty by grouping together as much as possible the provisions that the texts have in common. Of course it would be possible to have a single Treaty, but that would be a long and complicated document because of the precautions which would need to be taken if the

Intergovernmental Conference were to decide to retain unchanged the rules peculiar to each Community, the hypothesis on which this version is based. The delicate issue of the merger of the preambles would also arise.

This option involves the deletion of 143 Articles.

#### 10. Second hypothesis

Merger of the EC, ECSC and EAEC Treaties and substitution of a single legal personality for the existing personalities.

This version, in which the ECSC and EAEC provisions would also be included in Protocols, has been drawn up with a care to avoid making any fundamental change either in the powers of each "former"-Community or in its institutional operation. Nonetheless, it would permit a greater degree of simplification without affecting the individuality of each Community.

This version results in the deletion of 201 Articles.

#### 11. Third hypothesis

Merger of the four Treaties: EU, EC, ECSC and EAEC.

This solution has been designed in such a way as to entirely safeguard the specific character of the provisions of the TEU and the three "pillars". The bulk of the TEU provisions is included in Volume I, which constitutes an autonomous legal entity. The Treaty does not give the EU legal personality.

Of course the question would have to be reviewed if the Conference decided specifically to give the Union legal personality, either by allowing the Community's single legal personality or the legal personalities of the three Communities to stand or by merging the legal personalities of the Union and the Communities into one, which would clearly have undoubted advantages as regards transparency and is the solution preferred by a majority of delegations.

This option involves the deletion of 209 Articles.

12. To carry out the merger exercise it was necessary to pick out identical provisions and similar provisions. Provisions are identical when they are worded in the same way in the different Treaties. They are similar when differences in the wording do not reflect actual legal differences.

13. Merger does not always mean the consolidation of identical or similar provisions. For instance, particularly when merging the EC, ECSC and EAEC Treaties in such a way as to leave unaffected the legal personalities they established, it was found necessary to retain in each Treaty a number of similar provisions which were closely linked to the actual structure of each Community (e.g. the provisions on the powers of the institutions). In certain cases, cross-referencing makes greater simplification possible (see for instance the provisions on the ombudsman or the Court of Justice).

#### **IV. RESTRUCTURING OF THE EC, ECSC AND EAEC TREATIES**

14. The Treaties have been restructured along the lines presented to the Conference in the second preliminary report, but in the light of the comments made by a number of delegations, which thought that as far as possible the use of Protocols should be eschewed. Protocols have been retained only for the ECSC and EAEC Treaties for the reasons outlined above. As a result, the text contains in turn provisions on general principles, citizenship, the institutions and the budget, the internal market, economic and monetary union, Community policies, external relations, the association of the overseas countries and territories and final provisions.

15. The restructuring involves a renumbering of the Articles of the Treaty. For the time being the texts prepared for the Conference show both the old and the new numbers with the aim of facilitating the discussions. A decision will eventually have to be made as to whether this approach should not continue so as to make the text more reader-friendly or whether the old numbers should at least be dropped from the new Treaty but given for guidance in footnote form in the compilations of texts published by the Publications Office. Whatever the solution finally adopted, a correlation table has been prepared.

**V. PROVISIONS IN THE COMMUNITY TREATIES WHICH ARE OBSOLETE OR HAVE LAPSED**

16. Simplification of the wording of the Treaty provisions has been ruled out. It was agreed that an exercise of this type would go beyond mere simplification and would be likely to lead to a renegotiation of the Treaties. The only suggestion was for a deletion of obsolete or lapsed provisions, whose removal would necessarily involve minor adjustments to the drafting. A provision lapses expressly where power granted to the Member States or to the institutions is limited in time; it lapses implicitly when power can no longer be exercised as a result of other Treaty provisions (such as the standstill clauses predating entry into force of the Customs Union).
17. The lapsed or obsolete provisions were listed in SN 4220/96 (EC Treaty), SN 4206/96 (ECSC Treaty) and SN 4213/96 (EAEC Treaty). 39 Articles of the EC Treaty were deemed wholly lapsed or obsolete and 59 Articles in part, as were 2 Articles of the ECSC Treaty and 16 of the EAEC Treaty.

**VI. DOCUMENTS SUBMITTED**

18. The three simplified Treaties: EC (SN 4220/96), ECSC (SN 4206/96) and EAEC (SN 4213/96). These documents pinpoint the provisions which have lapsed and indicate a few points on which there is "technical" disagreement between the Conference Secretariat and the Commission Legal Service. To give an idea of what a simplified Treaty might look like, a version of the EC Treaty without the lapsed provisions has been added (SN 4222/96). The Annexes and the Protocols to the Treaties are given in SN 4223/96 (EC), SN 4207/96 (ECSC) and SN 4214/96 (EAEC).
19. Merging and restructuring the three Community Treaties while keeping separate the three legal personalities they established (SN 4230/96). This version is based on the simplified versions. A commentary on each Article indicates what is proposed and the difficulties inherent therein.

20. Merger and restructuring the three Community Treaties with single legal personality for the unified European Community (SN 4463/96). This version is based on the previous versions and suggests simplifications made possible by the fusion of the three legal personalities.
21. Merging and restructuring the three Community Treaties plus the Treaty on European Union (SN 4664/96). This version is based on the previous version and incorporates in a separate volume the fundamentals of the TEU provisions. The Treaty does not expressly give the Union legal personality.
22. Correlation table and presentation of the figures in each hypothesis (SN 4692/96).

## VII. PRESENTATION OF THE OUTCOME OF PROCEEDINGS

23. The Secretariat is of the opinion that submitting a comprehensive text with both the (substantive) amendments resulting from the Treaty revision and the (formal) amendments resulting from the simplification/consolidation/restructuring exercise would detract from the political implications of the substantive revision. This should therefore be submitted separately.
24. The simplified Treaty should be presented in the second part of the final act of the Conference following a first part containing an exhaustive list of the substantive amendments made by the Conference.
25. These substantive amendments would include a provision which might read as follows:
- "The Treaty resulting from these amendments shall enter into force in the simplified, consolidated version set out in the Annex. That version shall be authentic in all the languages of the Community."
- A statement attached will indicate the aim of the simplification/consolidation and will make it clear that it is not in itself intended to create substantive amendments.



26. If the option adopted is the merger of the three Communities, such merger will need to be laid down in an Article in the first part accompanied by a clause on the succession of the new Community to the three previous Communities (succession to the Treaties, contracts, assets, etc).
27. A provision will indicate that the previous Treaties and the lapsed Protocols, Conventions and acts will cease to produce their effects as soon as the new Treaty or Treaties enter(s) into force but that the "acquis" will obviously stand.
28. Finally, a statement will indicate that the declarations contained in the final acts to the Treaties which no longer produce their effects will continue to apply provided that the substantive provisions to which they relate remain in force.