

CHAPTER III  
SPECIAL PROVISIONS FOR THE STEEL INDUSTRY

ARTICLE 29

1. It is agreed that, during the transitional period, special safeguards may be necessary in the case of the steel industry to ensure that shifts in production levels due to the establishment of the common market neither create difficulties for undertakings which would be in a position to meet competition following the adaptation provided for in Article 1 of this Convention, nor lead to more redundancies than can benefit under Article 23. Where the High Authority finds that the provisions of the Treaty, and in particular Articles 57, 58, 59 and 60 (2)(b), cannot be applied, it is empowered, in the following order of preference:

- (a) after consulting the Consultative Committee and the Council, to limit by direct or indirect means the net increase in deliveries from one area to another within the common market;
- (b) after consulting the Consultative Committee and with the assent of the Council both as to the advisability and the details of the proposed action, to use the powers of intervention provided in Article 61 (b), but, by way of derogation from that Article, without the requirement that a manifest crisis should exist or be imminent;
- (c) after consulting the Consultative Committee and with the assent of the Council, to establish a system of production quotas, which shall not, however, affect production for export;
- (d) after consulting the Consultative Committee and with the assent of the Council, to authorize a Member State to take the steps referred to in the sixth paragraph of Article 15 of this Convention, in the manner provided therein.

2. For the purpose of applying these provisions, the High Authority shall during the preparatory period defined in Article 1 of this Convention, in consultation with associations of producers, the Consultative Committee and the Council, fix the technical details for the application of the safeguard arrangements.

3. If during part of the transitional period, either because of a shortage, or because the funds earned by undertakings or placed at their disposal are insufficient, or because of exceptional circumstances not now foreseeable, it has not been possible to effect the necessary adaptation of or alterations in production conditions, the provisions of this Article may, after the Consultative Committee has been consulted and the assent of the Council obtained, be applied after the end of the transitional period for as long as, but no longer than, this state of affairs continues, up to a maximum of two years.

**Italy**

ARTICLE 30

1. In view of the special position of the Italian steel industry, the High Authority is empowered to authorize the Italian Government to continue, to the necessary extent during the transitional period defined in Article 1 of this Convention, to charge customs duties on steel products from other Member States; however, in the first year of the transitional period these may not exceed the rates of duty under the Annecy Convention of 10 October 1949, this ceiling being reduced by 10 per cent in the second year, 25 per cent in the third, 45 per cent in the fourth and 70 per cent in the fifth, and the duties being abolished altogether at the end of the transitional period.

2. The prices charged by undertakings for sales of steel on the Italian market, when reduced to their equivalents at the point chosen for their price lists, may not be lower than the prices shown in the lists in question for comparable transactions, save where authorized by the High Authority in agreement with the Italian Government, without prejudice to the last subparagraph of Article 60 (2)(b).

**Luxembourg**

**ARTICLE 31**

In the operation of the safeguards provided for in Article 29 of this Convention, the High Authority shall take account of the exceptional importance of the steel industry to the general economy of Luxembourg and the need to avoid serious disturbances in the marketing of Luxembourg steel, given the special conditions under which this is effected by reason of the Belgo-Luxembourg Economic Union.

Failing other action, the High Authority may if necessary draw on the funds at its disposal under Article 49 of the Treaty up to the amount needed to deal with any repercussions on the Luxembourg steel industry of the arrangements provided for in Article 26 of this Convention.

Done at Paris this eighteenth day of April in the year one thousand nine hundred and fifty-one.

ADENAUER  
PAUL VAN ZEELAND  
J. MEURICE  
SCHUMAN  
SFORZA  
JOS. BECH  
STIKKER  
VAN DEN BRINK

# Treaty establishing the European Economic Community

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<sup>1</sup> The Protocol on the Privileges and Immunities of the European Economic Community has been repealed by the second paragraph of Article 28 of the Merger Treaty; see Protocol on the Privileges and Immunities of the European Communities annexed to the Merger Treaty.

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## I—TEXT OF THE TREATY

His Majesty the King of the Belgians, the President of the Federal Republic of Germany, the President of the French Republic, the President of the Italian Republic, Her Royal Highness the Grand Duchess of Luxembourg, Her Majesty the Queen of the Netherlands,

Determined to lay the foundations of an ever closer union among the peoples of Europe,

Resolved to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

Affirming as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples,

Recognizing that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

Anxious to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

Desiring to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

Intending to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

Resolved by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

Have decided to create a European Economic Community and to this end have designated as their Plenipotentiaries:

His Majesty the King of the Belgians:

Mr. Paul-Henri Spaak, Minister for Foreign Affairs,  
Baron J. Ch. Snoy et d'Oppuers, Secretary-General of the Ministry of Economic Affairs, Head of the Belgian Delegation to the Intergovernmental Conference;

The President of the Federal Republic of Germany:

Dr. Konrad Adenauer, Federal Chancellor,  
Professor Dr. Walter Hallstein, State Secretary of the Federal Foreign Office;

The President of the French Republic:

Mr. Christian Pineau, Minister for Foreign Affairs,  
Mr. Maurice Faure, Under-Secretary of State for Foreign Affairs;

The President of the Italian Republic:

Mr. Antonio Segni, President of the Council of Ministers,  
Professor Gaetano Martino, Minister for Foreign Affairs;

Her Royal Highness the Grand Duchess of Luxembourg:

Mr. Joseph Bech, President of the Government, Minister for Foreign Affairs,  
Mr. Lambert Schaus, Ambassador, Head of the Luxembourg Delegation to the Intergovernmental Conference;

Her Majesty the Queen of the Netherlands:

Mr. Joseph Luns, Minister for Foreign Affairs,  
Mr. J. Linthorst Homan, Head of the Netherlands Delegation to the Intergovernmental Conference;

Who, having exchanged their Full Powers, found in good and due form, have agreed as follows.

## **PART ONE**

### **Principles**

#### **ARTICLE 1**

By this Treaty, the High Contracting Parties establish among themselves a **EUROPEAN ECONOMIC COMMUNITY**.

#### **ARTICLE 2**

The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it.

#### **ARTICLE 3**

For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the time-table set out therein

- (a) the elimination, as between Member States, of customs duties and of quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- (b) the establishment of a common customs tariff and of a common commercial policy towards third countries;
- (c) the abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital;
- (d) the adoption of a common policy in the sphere of agriculture;
- (e) the adoption of a common policy in the sphere of transport;
- (f) the institution of a system ensuring that competition in the common market is not distorted;
- (g) the application of procedures by which the economic policies of Member States can be co-ordinated and disequilibria in their balances of payments remedied;
- (h) the approximation of the laws of Member States to the extent required for the proper functioning of the common market;
- (i) the creation of a European Social Fund in order to improve employment opportunities for workers and to contribute to the raising of their standard of living;
- (j) the establishment of a European Investment Bank to facilitate the economic expansion of the Community by opening up fresh resources;
- (k) the association of the overseas countries and territories in order to increase trade and to promote jointly economic and social development.

#### **ARTICLE 4**

1. The tasks entrusted to the Community shall be carried out by the following institutions:

- a European Parliament,
- a Council,
- a Commission,
- a Court of Justice.

Each institution shall act within the limits of the powers conferred upon it by this Treaty.

2. The Council and the Commission shall be assisted by an Economic and Social Committee acting in an advisory capacity.

3. The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.<sup>1</sup>

#### ARTICLE 5

Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardize the attainment of the objectives of this Treaty.

#### ARTICLE 6

1. Member States shall, in close co-operation with the institutions of the Community, co-ordinate their respective economic policies to the extent necessary to attain the objectives of this Treaty.

2. The institutions of the Community shall take care not to prejudice the internal and external financial stability of the Member States.

#### ARTICLE 7

Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council may, on a proposal from the Commission and in co-operation with the European Parliament, adopt by a qualified majority, rules designed to prohibit such discrimination.<sup>2</sup>

#### ARTICLE 8

1. The common market shall be progressively established during a transitional period of twelve years.

This transitional period shall be divided into three stages of four years each; the length of each stage may be altered in accordance with the provisions set out below.

2. To each stage there shall be assigned a set of actions to be initiated and carried through concurrently.

3. Transition from the first to the second stage shall be conditional upon a finding that the objectives specifically laid down in this Treaty for the first stage have in fact been attained in substance and that, subject to the exceptions and procedures provided for in this Treaty, the obligations have been fulfilled.

This finding shall be made at the end of the fourth year by the Council, acting unanimously on a report from the Commission. A Member State may not, however prevent unanimity by relying upon the non-fulfilment of its own obligations. Failing unanimity, the first stage shall automatically be extended for one year.

At the end of the fifth year, the Council shall make its finding under the same conditions. Failing unanimity, the first stage shall automatically be extended for a further year.

At the end of the sixth year, the Council shall make its finding, acting by a qualified majority on a report from the Commission.

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<sup>1</sup> Paragraph 3 added by Article 11 of the Treaty amending Certain Financial Provisions.

<sup>2</sup> Second paragraph as amended by Article 6 (2) of the SEA.



4. Within one month of the last-mentioned vote any Member State which voted with the minority or, if the required majority was not obtained, any Member State shall be entitled to call upon the Council to appoint an arbitration board whose decision shall be binding upon all Member States and upon the institutions of the Community. The arbitration board shall consist of three members appointed by the Council acting unanimously on a proposal from the Commission.

If the Council has not appointed the members of the arbitration board within one month of being called upon to do so, they shall be appointed by the Court of Justice within a further period of one month.

The arbitration board shall elect its own Chairman.

The board shall make its award within six months of the date of the Council vote referred to in the last subparagraph of paragraph 3.

5. The second and third stages may not be extended or curtailed except by a decision of the Council, acting unanimously on a proposal from the Commission.

6. Nothing in the preceding paragraphs shall cause the transitional period to last more than fifteen years after the entry into force of this Treaty.

7. Save for the exceptions or derogations provided for in this Treaty, the expiry of the transitional period shall constitute the latest date by which all the rules laid down must enter into force and all the measures required for establishing the common market must be implemented.

#### ARTICLE 8A<sup>1</sup>

The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8B, 8C, 28, 57 (2), 59, 70 (1), 84, 99, 100A and 100B and without prejudice to the other provisions of this Treaty.

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.

#### ARTICLE 8B<sup>2</sup>

The Commission shall report to the Council before 31 December 1988 and again before 31 December 1990 on the progress made towards achieving the internal market within the time limit fixed in Article 8A.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

#### ARTICLE 8C<sup>3</sup>

When drawing up its proposals with a view to achieving the objectives set out in Article 8A, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the common market.

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<sup>1</sup> Article added by Article 13 of the SEA.

<sup>2</sup> Article added by Article 14 of the SEA.

<sup>3</sup> Article added by Article 15 of the SEA.

## PART TWO

### Foundations of The Community

#### TITLE I

#### Free movement of goods

##### ARTICLE 9

1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.
2. The provisions of Chapter 1, Section 1, and of Chapter 2 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

##### ARTICLE 10

1. Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.
2. The Commission shall, before the end of the first year after the entry into force of this Treaty, determine the methods of administrative co-operation to be adopted for the purpose of applying Article 9 (2), taking into account the need to reduce as much as possible formalities imposed on trade.

Before the end of the first year after the entry into force of this Treaty, the Commission shall lay down the provisions applicable, as regards trade between Member States, to goods originating in another Member State in whose manufacture products have been used on which the exporting Member State has not levied the appropriate customs duties or charges having equivalent effect, or which have benefited from a total or partial drawback of such duties or charges.

In adopting these provisions, the Commission shall take into account the rules for the elimination of customs duties within the Community and for the progressive application of the common customs tariff.

##### ARTICLE 11

Member States shall take all appropriate measures to enable Governments to carry out, within the periods of time laid down, the obligations with regard to customs duties which devolve upon them pursuant to this Treaty.

#### CHAPTER 1

#### THE CUSTOMS UNION

##### Section 1

#### Elimination of customs duties between Member States

##### ARTICLE 12

Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.

##### ARTICLE 13

1. Customs duties on imports in force between Member States shall be progressively abolished by them during the transitional period in accordance with Articles 14 and 15.

2. Charges having an effect equivalent to customs duties on imports, in force between Member States, shall be progressively abolished by them during the transitional period. The Commission shall determine by means of directives the timetable for such abolition. It shall be guided by the rules contained in Article 14 (2) and (3) and by the directives issued by the Council pursuant to Article 14 (2).

#### ARTICLE 14

1. For each product, the basic duty to which the successive reductions shall be applied shall be the duty applied on 1 January 1957.
2. The timetable for the reductions shall be determined as follows:
  - (a) during the first stage, the first reduction shall be made one year after the date when this Treaty enters into force; the second reduction, eighteen months later; the third reduction, at the end of the fourth year after the date when this Treaty enters into force;
  - (b) during the second stage, a reduction shall be made eighteen months after that stage begins; a second reduction, eighteen months after the preceding one; a third reduction, one year later;
  - (c) any remaining reductions shall be made during the third stage; the Council shall, acting by a qualified majority on a proposal from the Commission, determine the timetable therefor by means of directives.
3. At the time of the first reduction, Member States shall introduce between themselves a duty on each product equal to the basic duty minus 10 per cent.

At the time of each subsequent reduction, each Member State shall reduce its customs duties as a whole in such manner as to lower by 10 per cent its total customs receipts as defined in paragraph 4 and to reduce the duty on each product by at least 5 per cent of the basic duty.

In the case, however, of products on which the duty is still in excess of 30 per cent, each reduction must be at least 10 per cent of the basic duty.

4. The total customs receipts of each Member State, as referred to in paragraph 3, shall be calculated by multiplying the value of its imports from other Member States during 1956 by the basic duties.
5. Any special problems raised in applying paragraphs 1 to 4 shall be settled by directives issued by the Council acting by a qualified majority on a proposal from the Commission.
6. Member States shall report to the Commission on the manner in which effect has been given to the preceding rules for the reduction of duties. They shall endeavour to ensure that the reduction made in the duties on each product shall amount:
  - at the end of the first stage, to at least 25 per cent of the basic duty;
  - at the end of the second stage, to at least 50 per cent of the basic duty.

If the Commission finds that there is a risk that the objectives laid down in Article 13, and the percentages laid down in this paragraph, cannot be attained, it shall make all appropriate recommendations to Member States.

7. The provisions of this Article may be amended by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament.

#### ARTICLE 15

1. Irrespective of the provisions of Article 14, any Member State may, in the course of the transitional period, suspend in whole or in part the collection of duties applied by it to products imported from other Member States. It shall inform the other Member States and the Commission thereof.

2. The Member States declare their readiness to reduce customs duties against the other Member States more rapidly than is provided for in Article 14 if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

#### ARTICLE 16

Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest.

#### ARTICLE 17

1. The provisions of Articles 9 to 15(1) shall also apply to customs duties of a fiscal nature. Such duties shall not, however, be taken into consideration for the purpose of calculating either total customs receipts or the reduction of customs duties as a whole as referred to in Article 14 (3) and (4).

Such duties shall, at each reduction, be lowered by not less than 10 per cent of the basic duty. Member States may reduce such duties more rapidly than is provided for in Article 14.

2. Member States shall, before the end of the first year after the entry into force of this Treaty, inform the Commission of their customs duties of a fiscal nature.

3. Member States shall retain the right to substitute for these duties an internal tax which complies with the provisions of Article 95.

4. If the Commission finds that substitution for any customs duty of a fiscal nature meets with serious difficulties in a Member State, it shall authorize that State to retain the duty on condition that it shall abolish it not later than six years after the entry into force of this Treaty. Such authorization must be applied for before the end of the first year after the entry into force of this Treaty.

### Section 2

#### Setting up of the common customs tariff

#### ARTICLE 18

The Member States declare their readiness to contribute to the development of international trade and the lowering of barriers to trade by entering into agreements designed, on a basis of reciprocity and mutual advantage, to reduce customs duties below the general level of which they could avail themselves as a result of the establishment of a customs union between them.

#### ARTICLE 19

1. Subject to the conditions and within the limits provided for hereinafter, duties in the common customs tariff shall be at the level of the arithmetical average of the duties applied in the four customs territories comprised in the Community.

2. The duties taken as the basis for calculating this average shall be those applied by Member States on 1 January 1957.

In the case of the Italian tariff, however, the duty applied shall be that without the temporary 10 per cent reduction. Furthermore, with respect to items on which the Italian tariff contains a conventional duty, this duty shall be substituted for the duty applied as defined above, provided that it does not exceed the latter by more than 10 per cent. Where the conventional duty exceeds the duty applied as defined above by more than 10 per cent, the latter duty plus 10 per cent shall be taken as the basis for calculating the arithmetical average.

With regard to the tariff headings in List A, the duties shown in that List shall, for the purpose of calculating the arithmetical average, be substituted for the duties applied.

3. The duties in the common customs tariff shall not exceed:
  - (a) 3 per cent for products within the tariff headings in List B;
  - (b) 10 per cent for products within the tariff headings in List C;
  - (c) 15 per cent for products within the tariff headings in List D;
  - (d) 25 per cent for products within the tariff headings in List E; where in respect of such products, the tariff of the Benelux countries contains a duty not exceeding 3 per cent, such duty shall, for the purpose of calculating the arithmetical average, be raised to 12 per cent.
4. List F prescribes the duties applicable to the products listed therein.
5. The Lists of tariff headings referred to in this Article and Article 20 are set out in Annex I to this Treaty.

#### ARTICLE 20

The duties applicable to the products in List G shall be determined by negotiation between the Member States. Each Member State may add further products to this List to a value not exceeding 2 per cent of the total value of its imports from third countries in the course of the year 1956.

The Commission shall take all appropriate steps to ensure that such negotiations shall be undertaken before the end of the second year after the entry into force of this Treaty and be concluded before the end of the first stage.

If, for certain products, no agreement can be reached within these periods, the Council shall, on a proposal from the Commission, acting unanimously until the end of the second stage and by a qualified majority thereafter, determine the duties in the common customs tariff.

#### ARTICLE 21

1. Technical difficulties which may arise in applying Articles 19 and 20 shall be resolved, within two years of the entry into force of this Treaty, by directives issued by the Council acting by a qualified majority on a proposal from the Commission.
2. Before the end of the first stage, or at latest when the duties are determined, the Council shall, acting by a qualified majority on a proposal from the Commission, decide on any adjustments required in the interests of the internal consistency of the common customs tariff as a result of applying the rules set out in Articles 19 and 20, taking account in particular of the degree of processing undergone by the various goods to which the common tariff applies.

#### ARTICLE 22

The Commission shall, within two years of the entry into force of this Treaty, determine the extent to which the customs duties of a fiscal nature referred to in Article 17 (2) shall be taken into account in calculating the arithmetical average provided for in Article 19 (1). The Commission shall take account of any protective character which such duties may have.

Within six months of such determination, any Member State may request that the procedure provided for in Article 20 should be applied to the product in question, but in this event the percentage limit provided in that Article shall not be applicable to that State.

## ARTICLE 23

1. For the purpose of the progressive introduction of the common customs tariff, Member States shall amend their tariffs applicable to third countries as follows:
  - (a) in the case of tariff headings on which the duties applied in practice on 1 January 1957 do not differ by more than 15 per cent in either direction from the duties in the common customs tariff, the latter duties shall be applied at the end of the fourth year after the entry into force of this Treaty;
  - (b) in any other case, each Member State shall, as from the same date, apply a duty reducing by 30 per cent the difference between the duty applied in practice on 1 January 1957 and the duty in the common customs tariff;
  - (c) at the end of the second stage this difference shall again be reduced by 30 per cent;
  - (d) in the case of tariff headings for which the duties in the common customs tariff are not yet available at the end of the first stage, each Member State shall, within six months of the Council's action in accordance with Article 20, apply such duties as would result from application of the rules contained in this paragraph.
2. Where a Member State has been granted an authorization under Article 17 (4), it need not, for as long as that authorization remains valid, apply the preceding provisions to the tariff headings to which the authorization applies. When such authorization expires, the Member State concerned shall apply such duty as would have resulted from application of the rules contained in paragraph 1.
3. The common customs tariff shall be applied in its entirety by the end of the transitional period at the latest.

## ARTICLE 24

Member States shall remain free to change their duties more rapidly than is provided for in Article 23 in order to bring them into line with the common customs tariff.

## ARTICLE 25

1. If the Commission finds that the production in Member States of particular products contained in Lists B, C and D is insufficient to supply the demands of one of the Member States, and that such supply traditionally depends to a considerable extent on imports from third countries, the Council shall, acting by a qualified majority on a proposal from the Commission, grant the Member State concerned tariff quotas at a reduced rate of duty or duty free.

Such quotas may not exceed the limits beyond which the risk might arise of activities being transferred to the detriment of other Member States.

2. In the case of the products in List E, and of those in List G for which the rates of duty have been determined in accordance with the procedure provided for in the third paragraph of Article 20, the Commission shall, where a change in sources of supply or shortage of supplies within the Community is such as to entail harmful consequences for the processing industries of a Member State, at the request of that Member State, grant it tariff quotas at a reduced rate of duty or duty free.

Such quotas may not exceed the limits beyond which the risk might arise of activities being transferred to the detriment of other Member States.

3. In the case of the products listed in Annex II to this Treaty, the Commission may authorize any Member State to suspend, in whole or in part, collection of the duties applicable or may grant such Member State tariff quotas at a reduced rate of duty or duty free, provided that no serious disturbance of the market of the products concerned results therefrom.
4. The Commission shall periodically examine tariff quotas granted pursuant to this Article.

## ARTICLE 26

The Commission may authorize any Member State encountering special difficulties to postpone the lowering or raising of duties provided for in Article 23 in respect of particular headings in its tariff.

Such authorization may only be granted for a limited period and in respect of tariff headings which, taken together, represent for such State not more than 5 per cent of the value of its imports from third countries in the course of the latest year for which statistical data are available.

## ARTICLE 27

Before the end of the first stage, Member States shall, in so far as may be necessary, take steps to approximate their provisions laid down by law, regulation or administrative action in respect of customs matters. To this end, the Commission shall make all appropriate recommendations to Member States.

## ARTICLE 28

Any autonomous alteration or suspension of duties in the common customs tariff shall be decided by the Council acting by a qualified majority on a proposal from the Commission.<sup>1</sup>

## ARTICLE 29

In carrying out the tasks entrusted to it under this Section the Commission shall be guided by:

- (a) the need to promote trade between Member States and third countries;
- (b) developments in conditions of competition within the Community in so far as they lead to an improvement in the competitive capacity of undertakings;
- (c) the requirements of the Community as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;
- (d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Community.

## CHAPTER 2

### ELIMINATION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

#### ARTICLE 30

Quantitative restrictions on imports and all measures having equivalent effect shall, without prejudice to the following provisions, be prohibited between Member States.

#### ARTICLE 31

Member States shall refrain from introducing between themselves any new quantitative restrictions or measures having equivalent effect.

This obligation shall, however, relate only to the degree of liberalization attained in pursuance of the decisions of the Council of the Organization for European Economic Cooperation of 14 January 1955. Member States shall supply the Commission, not later than six months after the entry into force of this Treaty, with lists of the products liberalized by them in pursuance of these decisions. These lists shall be consolidated between Member States.

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<sup>1</sup> Article as replaced by Article 16 (1) of the SEA.

## ARTICLE 32

In their trade with one another Member States shall refrain from making more restrictive the quotas and measures having equivalent effect existing at the date of the entry into force of this Treaty.

These quotas shall be abolished by the end of the transitional period at the latest. During that period, they shall be progressively abolished in accordance with the following provisions.

## ARTICLE 33

1. One year after the entry into force of this Treaty, each Member State shall convert any bilateral quotas open to any other Member States into global quotas open without discrimination to all other Member States.

On the same date, Member States shall increase the aggregate of the global quotas so established in such a manner as to bring about an increase of not less than 20 per cent in their total value as compared with the preceding year. The global quota for each product, however, shall be increased by not less than 10 per cent.

The quotas shall be increased annually in accordance with the same rules and in the same proportions in relation to the preceding year.

The fourth increase shall take place at the end of the fourth year after the entry into force of this Treaty; the fifth, one year after the beginning of the second stage.

2. Where, in the case of a product which has not been liberalized, the global quota does not amount to 3 per cent of the national production of the State concerned, a quota equal to not less than 3 per cent of such national production shall be introduced not later than one year after the entry into force of this Treaty. This quota shall be raised to 4 per cent at the end of the second year, and to 5 per cent at the end of the third. Thereafter, the Member State concerned shall increase the quota by not less than 15 per cent annually.

Where there is no such national production, the Commission shall take a decision establishing an appropriate quota.

3. At the end of the tenth year, each quota shall be equal to not less than 20 per cent of the national production.

4. If the Commission finds by means of a decision that during two successive years the imports of any product have been below the level of the quota opened, this global quota shall not be taken into account in calculating the total value of the global quotas. In such case, the Member State shall abolish quota restrictions on the product concerned.

5. In the case of quotas representing more than 20 per cent of the national production of the product concerned, the Council may, acting by a qualified majority on a proposal from the Commission, reduce the minimum percentage of 10 per cent laid down in paragraph 1. This alteration shall not, however, affect the obligation to increase the total value of global quotas by 20 per cent annually.

6. Member States which have exceeded their obligations as regards the degree of liberalization attained in pursuance of the decisions of the Council of the Organization for European Co-operation of 14 January 1955 shall be entitled, when calculating the annual total increase of 20 per cent provided for in paragraph 1, to take into account the amount of imports liberalized by autonomous action. Such calculation shall be submitted to the Commission for its prior approval.

7. The Commission shall issue directives establishing the procedure and timetable in accordance with which Member States shall abolish, as between themselves, any measures in existence when this Treaty enters into force which have an effect equivalent to quotas.

8. If the Commission finds that the application of the provisions of this Article, and in particular of the provisions concerning percentages, makes it impossible to ensure that the abolition of quotas provided for in the second paragraph of Article 32 is carried out progressively, the Council may, on a proposal from the Commission, acting unanimously during the first stage and by a qualified majority thereafter, amend the procedure laid down in this Article and may, in particular, increase the percentages fixed.



#### ARTICLE 34

1. Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.
2. Member States shall, by the end of the first stage at the latest, abolish all quantitative restrictions on exports and any measures having equivalent effect which are in existence when this Treaty enters into force.

#### ARTICLE 35

The Member States declare their readiness to abolish quantitative restrictions on imports from and exports to other Member States more rapidly than is provided for in the preceding Articles, if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

#### ARTICLE 36

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

#### ARTICLE 37

1. Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the Articles dealing with the abolition of customs duties and quantitative restrictions between Member States.
3. The timetable for the measures referred to in paragraph 1 shall be harmonized with the abolition of quantitative restrictions on the same products provided for in Articles 30 to 34.

If a product is subject to a State monopoly of a commercial character in only one or some Member States, the Commission may authorize the other Member States to apply protective measures until the adjustment provided for in paragraph 1 has been effected; the Commission shall determine the conditions and details of such measures.

4. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialization that will be needed with the passage of time.
5. The obligations on Member States shall be binding only in so far as they are compatible with existing international agreements.
6. With effect from the first stage the Commission shall make recommendations as to the manner in which and the timetable according to which the adjustment provided for in this Article shall be carried out.

## TITLE II

### Agriculture

#### ARTICLE 38

1. The common market shall extend to agriculture and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products.
2. Save as otherwise provided in Articles 39 to 46, the rules laid down for the establishment of the common market shall apply to agricultural products.
3. The products subject to the provisions of Articles 39 to 46 are listed in Annex II to this Treaty. Within two years of the entry into force of this Treaty, however, the Council shall, acting by a qualified majority on a proposal from the Commission, decide what products are to be added to this list.
4. The operation and development of the common market for agricultural products must be accompanied by the establishment of a common agricultural policy among the Member States.

#### ARTICLE 39

1. The objectives of the common agricultural policy shall be:
  - (a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilization of the factors of production, in particular labour;
  - (b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;
  - (c) to stabilize markets;
  - (d) to assure the availability of supplies;
  - (e) to ensure that supplies reach consumers at reasonable prices.
2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
  - (a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
  - (b) the need to effect the appropriate adjustments by degrees;
  - (c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

#### ARTICLE 40

1. Member States shall develop the common agricultural policy by degrees during the transitional period and shall bring it into force by the end of that period at the latest.
2. In order to attain the objectives set out in Article 39 a common organization of agricultural markets shall be established.

This organization shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory co-ordination of the various national market organizations;
- (c) a European market organization.

3. The common organization established in accordance with paragraph 2 may include all measures required to attain the objectives set out in Article 39, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilizing imports or exports.

The common organization shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Community.

Any common price policy shall be based on common criteria and uniform methods of calculation.

4. In order to enable the common organization referred to in paragraph 2 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

#### ARTICLE 41

To enable the objectives set out in Article 39 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

- (a) an effective co-ordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;
- (b) joint measures to promote consumption of certain products.

#### ARTICLE 42

The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 43 (2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.

The Council may, in particular, authorize the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;
- (b) within the framework of economic development programmes.

#### ARTICLE 43

1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.

2. Having taken into account the work of the conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, the Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organizations by one of the forms of common organization provided for in Article 40 (2), and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting unanimously during the first two stages and by a qualified majority thereafter, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organizations by the common organization provided for in Article 40 (2) if:

- (a) the common organization offers Member States which are opposed to this measure and which have an organization of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialization that will be needed with the passage of time;
- (b) such an organization ensures conditions for trade within the Community similar to those existing in a national market.

4. If a common organization for certain raw materials is established before a common organization exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Community.

#### ARTICLE 44

1. In so far as progressive abolition of customs duties and quantitative restrictions between Member States may result in prices likely to jeopardize the attainment of the objectives set out in Article 39, each Member State shall, during the transitional period, be entitled to apply to particular products, in a non-discriminatory manner and in substitution for quotas and to such an extent as shall not impede the expansion of the volume of trade provided for in Article 45 (2), a system of minimum prices below which imports may be either:

- temporarily suspended or reduced; or
- allowed, but subjected to the condition that they are made at a price higher than the minimum price for the product concerned.

In the latter case the minimum prices shall not include customs duties.

2. Minimum prices shall neither cause a reduction of the trade existing between Member States when this Treaty enters into force nor form an obstacle to progressive expansion of this trade. Minimum prices shall not be applied so as to form an obstacle to the development of a natural preference between Member States.

3. As soon as this Treaty enters into force the Council shall, on a proposal from the Commission, determine objective criteria for the establishment of minimum price systems and for the fixing of such prices.

These criteria shall in particular take account of the average national production costs in the Member State applying the minimum price, of the position of the various undertakings concerned in relation to such average production costs, and of the need to promote both the progressive improvement of agricultural practice and the adjustments and specialization needed within the common market.

The Commission shall further propose a procedure for revising these criteria in order to allow for and speed up technical progress and to approximate prices progressively within the common market.

These criteria and the procedure for revising them shall be determined by the Council acting unanimously within three years of the entry into force of this Treaty.

4. Until the decision of the Council takes effect, Member States may fix minimum prices on condition that these are communicated beforehand to the Commission and to the other Member States so that they may submit their comments.

Once the Council has taken its decision, Member States shall fix minimum prices on the basis of the criteria determined as above.

The Council may, acting by a qualified majority on a proposal from the Commission, rectify any decisions taken by Member States which do not conform to the criteria defined above.

5. If it does not prove possible to determine the said objective criteria for certain products by the beginning of the third stage, the Council may, acting by a qualified majority on a proposal from the Commission, vary the minimum prices applied to these products.

6. At the end of the transitional period, a table of minimum prices still in force shall be drawn up. The Council shall, acting on a proposal from the Commission and by a majority of nine votes in accordance with the weighting laid down in the first subparagraph of Article 148 (2), determine the system to be applied within the framework of the common agricultural policy.

#### ARTICLE 45

1. Until national market organizations have been replaced by one of the forms of common organization referred to in Article 40 (2), trade in products in respect of which certain Member States:

- have arrangements designed to guarantee national producers a market for their products; and
- are in need of imports.

shall be developed by the conclusion of long-term agreements or contracts between importing and exporting Member States.

These agreements or contracts shall be directed towards the progressive abolition of any discrimination in the application of these arrangements to the various producers within the Community.

Such agreements or contracts shall be concluded during the first stage; account shall be taken of the principle of reciprocity.

2. As regards quantities, these agreements or contracts, shall be based on the average volume of trade between Member States in the products concerned during the three years before the entry into force of this Treaty and shall provide for an increase in the volume of trade within the limits of existing requirements, account being taken of traditional patterns of trade.

As regards prices, these agreements or contracts shall enable producers to dispose of the agreed quantities at prices which shall be progressively approximated to those paid to national producers on the domestic market of the purchasing country.

This approximation shall proceed as steadily as possible and shall be completed by the end of the transitional period at the latest.

Prices shall be negotiated between the parties concerned within the framework of directives issued by the Commission for the purpose of implementing the two preceding subparagraphs.

If the first stage is extended, these agreements or contracts shall continue to be carried out in accordance with the conditions applicable at the end of the fourth year after the entry into force of this Treaty, the obligation to increase quantities and to approximate prices being suspended until the transition to the second stage.

Member States shall avail themselves of any opportunity open to them under their legislation, particularly in respect of import policy, to ensure the conclusion and carrying out of these agreements or contracts.

3. To the extent that Member States require raw materials for the manufacture of products to be exported outside the Community in competition with products of third

countries, the above agreements or contracts shall not form an obstacle to the importation of raw materials for this purpose from third countries. This provision shall not, however, apply if the Council unanimously decides to make provision for payments required to compensate for the higher price paid on goods imported for this purpose on the basis of these agreements or contracts in relation to the delivered price of the same goods purchased on the world market.

#### ARTICLE 46

Where in a Member State a product is subject to a national market organization or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organization or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorize other measures, the conditions and details of which it shall determine.

#### ARTICLE 47

As to the functions to be performed by the Economic and Social Committee in pursuance of this Title, its agricultural section shall hold itself at the disposal of the Commission to prepare, in accordance with the provisions of Articles 197 and 198, the deliberations of the Committee.

### TITLE III

#### **Free movement of persons, services and capital**

##### CHAPTER 1

##### **Workers**

#### ARTICLE 48

1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.
2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.
3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:
  - (a) to accept offers of employment actually made;
  - (b) to move freely within the territory of Member States for this purpose;
  - (c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
  - (d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.
4. The provisions of this Article shall not apply to employment in the public service.

#### ARTICLE 49

As soon as this Treaty enters into force, the Council shall, acting by a qualified majority on a proposal from the Commission, in co-operation with the European Parliament and after consulting the Economic and Social Committee, issue directives or

make regulations setting out the measures required to bring about, by progressive stages, freedom of movement for workers, as defined in Article 48, in particular:<sup>1</sup>

- (a) by ensuring close co-operation between national employment services;
- (b) by systematically and progressively abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalization of the movement of workers;
- (c) by systematically and progressively abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;
- (d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

#### ARTICLE 50

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

#### ARTICLE 51

The Council shall, acting unanimously on a proposal from the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

- (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;
- (b) payment of benefits to persons resident in the territories of Member States.

### CHAPTER 2

#### **Right of Establishment**

#### ARTICLE 52

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

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<sup>1</sup> First sentence as amended by Article 6 (3) of the SEA.

## ARTICLE 53

Member States shall not introduce any new restrictions on the right of establishment in their territories of nationals of other Member States, save as otherwise provided in this Treaty.

## ARTICLE 54

1. Before the end of the first stage, the Council shall, acting unanimously from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of existing restrictions on freedom of establishment within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which freedom of establishment is to be attained in the case of each type of activity and in particular the stages by which it is to be attained.

2. In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in attaining freedom of establishment as regards a particular activity, the Council shall, acting on a proposal from the Commission, in co-operation with the European Parliament and after consulting the Economic and Social Committee, issue directives, acting unanimously until the end of the first stage and by a qualified majority thereafter.<sup>1</sup>

3. The Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

- (a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;
- (b) by ensuring close co-operation between the competent authorities in the Member States in order to ascertain the particular situation within the Community of the various activities concerned;
- (c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;
- (d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;
- (e) by enabling a national of one Member State to acquire and use land and building situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39 (2);
- (f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;
- (g) by co-ordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 58 with a view to making such safeguards equivalent throughout the Community;
- (h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

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<sup>1</sup> Paragraph 2 as amended by Article 6 (4) of the SEA.



#### ARTICLE 55

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The Council may, acting by a qualified majority on a proposal from the Commission, rule that the provisions of this Chapter shall not apply to certain activities.

#### ARTICLE 56

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. Before the end of the transitional period, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, issue directives for the co-ordination of the aforementioned provisions laid down by law, regulation or administrative action. After the end of the second stage, however, the Council shall, acting by a qualified majority on a proposal from the Commission and in co-operation with the European Parliament, issue directives for the co-ordination of such provisions as, in each Member State, are a matter for regulation or administrative action.<sup>1</sup>

#### ARTICLE 57

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and in co-operation with the European Parliament, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.<sup>2</sup>

2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the European Parliament, issue directives for the co-ordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons.<sup>3</sup> In other cases the Council shall act by a qualified majority, in co-operation with the European Parliament.<sup>4</sup>

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon co-ordination of the conditions for their exercise in the various Member States.

#### ARTICLE 58

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Community shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of the Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including co-operative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

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<sup>1</sup> Second sentence of paragraph 2 as amended by Article 6 (5) of the SEA.

<sup>2</sup> Paragraph 1 as amended by Article 6 (6) of the SEA.

<sup>3</sup> Second sentence of paragraph 2 as amended by Article 16 (2) of the SEA.

<sup>4</sup> Third sentence of paragraph 2 as amended by Article 6 (7) of the SEA.

## CHAPTER 3

### Services

#### ARTICLE 59

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community.<sup>1</sup>

#### ARTICLE 60

Services shall be considered to be 'services' within the meaning of this Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

- (a) activities of an industrial character;
- (b) activities of a commercial character;
- (c) activities of craftsmen;
- (d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the persons providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

#### ARTICLE 61

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.
2. The liberalization of banking and insurance services connected with movements of capital shall be effected in step with the progressive liberalization of movement of capital.

#### ARTICLE 62

Save as otherwise provided in this Treaty, Member States shall not introduce any new restrictions on the freedom to provide services which have in fact been attained at the date of entry into force of this Treaty.

#### ARTICLE 63

1. Before the end of the first stage, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, draw up a general programme for the abolition of existing restrictions on freedom to provide services within the Community. The Commission shall submit its proposal to the Council during the first two years of the first stage.

The programme shall set out the general conditions under which and the stages by which each type of service is to be liberalized.

2. In order to implement this general programme or, in the absence of such programme, in order to achieve a stage in the liberalization of a specific service, the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, issue directives acting unanimously until the end of the first stage and by a qualified majority thereafter.

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<sup>1</sup> Second paragraph as amended by Article 16 (3) of the SEA.

3. As regards the proposals and decisions referred to in paragraphs 1 and 2, priority shall as a general rule be given to those services which directly affect production costs or the liberalization of which helps to promote trade in goods.

#### ARTICLE 64

The Member States declare their readiness to undertake the liberalization of services beyond the extent required by the directives issued pursuant to Article 63 (2), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the member States concerned.

#### ARTICLE 65

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 59.

#### ARTICLE 66

The provisions of Articles 55 to 58 shall apply to the matters covered by this Chapter.

### CHAPTER 4

#### Capital

#### ARTICLE 67

1. During the transitional period and to the extent necessary to ensure that the proper functioning of the common market Member States shall progressively abolish among themselves all restrictions on the movement of capital belonging to persons resident in Member States and any discrimination based on the nationality or on the place of residence of the parties or on the place where such capital is invested.

2. Current payments connected with the movement of capital between Member States shall be freed from all restrictions by the end of the first stage at the latest.

#### ARTICLE 68

1. Member States shall, as regards the matters dealt with in this Chapter, be as liberal as possible in granting such exchange authorizations as are still necessary after the entry into force of this Treaty.

2. Where a Member State applies to the movements of capital liberalized in accordance with the provisions of this Chapter the domestic rules governing the capital market and the credit system, it shall do so in a non-discriminatory manner.

3. Loans for the direct or indirect financing of a Member State or its regional or local authorities shall not be issued or placed in other Member States unless the States concerned have reached agreement thereon. This provision shall not preclude the application of Article 22 of the Protocol on the Statute of the European Investment Bank.

#### ARTICLE 69

The Council shall, on a proposal from the Commission, which for this purpose shall consult the Monetary Committee provided for in Article 105, issue the necessary directives for the progressive implementation of the provisions of Article 67, acting unanimously during the first two stages and by a qualified majority thereafter.

## ARTICLE 70

1. The Commission shall propose to the Council measures for the progressive co-ordination of the exchange policies of Member States in respect of the movement of capital between those States and third countries. For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.<sup>1</sup>

2. Where the measures taken in accordance with paragraph 1 do not permit the elimination of differences between the exchange rules of Member States and where such differences could lead persons resident in one of the Member States to use the freer transfer facilities within the Community which are provided for in Article 67 in order to evade the rules of one of the Member States concerning the movement of capital to or from third countries, that State may, after consulting the other Member States and the Commission, take appropriate measures to overcome these difficulties.

Should the Council find that these measures are restricting the free movement of capital within the Community to a greater extent than is required for the purpose of overcoming the difficulties, it may, acting by a qualified majority on a proposal from the Commission, decide that the State concerned shall amend or abolish these measures.

## ARTICLE 71

Member States shall endeavour to avoid introducing within the Community any new exchange restrictions on the movement of capital and current payments connected with such movements, and shall endeavour not to make existing rules more restrictive.

They declare their readiness to go beyond the degree of liberalization of capital movements provided for in the preceding Articles in so far as their economic situation, in particular the situation of their balance of payments, so permits.

The Commission may, after consulting the Monetary Committee, make recommendations to Member States on this subject.

## ARTICLE 72

Member States shall keep the Commission informed of any movements of capital to and from third countries which come to their knowledge. The Commission may deliver to Member States any opinions which it considers appropriate on this subject.

## ARTICLE 73

1. If movements of capital lead to disturbances in the functioning of the capital market in any Member State, the Commission shall, after consulting the Monetary Committee, authorize that State to take protective measures in the field of capital movements, the conditions and details of which the Commission shall determine.

The Council may, acting by a qualified majority, revoke this authorization or amend the conditions or details thereof.

2. A Member State which is in difficulties may, however, on grounds of secrecy or urgency, take the measures mentioned above, where this proves necessary, on its own initiative. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest. In this event the Commission may, after consulting the Monetary Committee, decide that the State concerned shall amend or abolish the measures.

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<sup>1</sup> Paragraph 1, excepting the first sentence, as amended by Article 16 (4) of the SEA.

## TITLE IV

### Transport

#### ARTICLE 74

The objectives of this Treaty shall, in matters governed by this Title, be pursued by Member States within the framework of a common transport policy.

#### ARTICLE 75

1. For the purpose of implementing Article 74, and taking into account the distinctive features of transport, the Council shall, acting unanimously until the end of the second stage and by a qualified majority thereafter, lay down, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) any other appropriate provisions.

2. The provisions referred to in (a) and (b) of paragraph 1 shall be laid down during the transitional period.

3. By way of derogation from the procedure provided for in paragraph 1, where the application of provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously. In so doing, the Council shall take into account the need for adaptation to the economic development which will result from establishing the common market.

#### ARTICLE 76

Until the provisions referred to in Article 75 (1) have been laid down, no member State may, without the unanimous approval of the Council, make the various provisions governing the subject when this Treaty enters into force less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

#### ARTICLE 77

Aids shall be compatible with this Treaty if they meet the needs of co-ordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

#### ARTICLE 78

Any measures taken within the framework of this Treaty in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

#### ARTICLE 79

1. In the case of transport within the Community, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question, shall be abolished, at the latest, before the end of the second stage.

2. Paragraph 1 shall not prevent the Council from adopting other measures in pursuance of Article 75 (1).

3. Within two years of the entry into force of this Treaty, the Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Community to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

#### ARTICLE 80

1. The imposition by a Member State, in respect of transport operations carried out within the Community, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited as from the beginning of the second stage, unless authorized by the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

#### ARTICLE 81

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this Article.

#### ARTICLE 82

The provisions of this Title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

#### ARTICLE 83

An Advisory Committee consisting of experts designated by the Governments of Member States, shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters without prejudice to the powers of the transport section of the Economic and Social Committee.

#### ARTICLE 84

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.  
2. The Council may, acting by a qualified majority, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.<sup>1</sup>

The procedural provisions of Article 75 (1) and (3) shall apply.<sup>2</sup>

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<sup>1</sup> First subparagraph of paragraph 2 as amended by Article 16 (5) of the SEA.

<sup>2</sup> Second subparagraph of paragraph 2 as amended by Article 16 (6) of the SEA.

## PART THREE

### Policy of The Community

#### TITLE I

#### Common rules

#### CHAPTER I

#### RULES ON COMPETITION

##### Section 1

##### Rules applying to undertakings

##### ARTICLE 85

1. The following shall be prohibited as incompatible with the common market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, and in particular those which:

- (a) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (b) limit or control production, markets, technical development, or investment;
- (c) share markets or sources of supply;
- (d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

- any agreement or category of agreements between undertakings;
- any decision or category of decisions by associations of undertakings;
- any concerted practice or category of concerted practices;

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

- (a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;
- (b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

##### ARTICLE 86

Any abuse by one or more undertakings of a dominant position within the common market or in a substantial part of it shall be prohibited as incompatible with the common market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

- (a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
- (b) limiting production, markets or technical development to the prejudice of consumers;
- (c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;
- (d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

#### ARTICLE 87

1. Within three years of the entry into force of this Treaty the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt any appropriate regulations or directives to give effect to the principles set out in Articles 85 and 86.

If such provisions have not been adopted within the period mentioned, they shall be laid down by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:
- (a) to ensure compliance with the prohibitions laid down in Article 85 (1) and in Article 86 by making provision for fines and periodic penalty payments;
  - (b) to lay down detailed rules for the application of Article 85 (3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;
  - (c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 85 and 86;
  - (d) to define the respective functions of the Commission and of the Court of Justice in applying the provisions laid down in this paragraph;
  - (e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

#### ARTICLE 88

Until the entry into force of the provisions adopted in pursuance of Article 87, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the common market in accordance with the law of their country and with the provisions of Article 85, in particular paragraph 3, and of Article 86.

#### ARTICLE 89

1. Without prejudice to Article 88, the Commission shall, as soon as it takes up its duties, ensure the application of the principles laid down in Articles 85 and 86. On application by a Member State or on its own initiative, and in co-operation with the competent authorities in the Member States, who shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorize Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.



## ARTICLE 90

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights. Member States shall neither enact nor maintain in force any measure contrary to the rules contained in this Treaty, in particular to those rules provided for in Article 7 and Articles 85 to 94.
2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in this Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular task assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Community.
3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

### Section 2

#### **Dumping**

## ARTICLE 91

1. If during the transitional period, the Commission, on application by a Member State or by any other interested party, finds that dumping is being practised within the common market, it shall address recommendations to the person or persons with whom such practices originate for the purpose of putting an end to them.

Should the practices continue, the Commission shall authorize the injured Member State to take protective measures, the conditions and details of which the Commission shall determine.

2. As soon as this Treaty enters into force, products which originate in or are in free circulation in one Member State and which have been exported to another Member State shall, on reimportation, be admitted into the territory of the first-mentioned State free of all customs duties, quantitative restrictions or measures having equivalent effect. The Commission shall lay down appropriate rules for the application of this paragraph.

### Section 3

#### **Aids granted by States**

## ARTICLE 92

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.
2. The following shall be compatible with the common market:
  - (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;
  - (b) aid to make good the damage caused by natural disasters or exceptional occurrences;
  - (c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division.
3. The following may be considered to be compatible with the common market:
  - (a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment;
  - (b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

- (c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. However, the aids granted to shipbuilding as of 1 January 1957 shall, in so far as they serve only to compensate for the absence of customs protection, be progressively reduced under the same conditions as apply to the elimination of customs duties, subject to the provisions of this Treaty concerning common commercial policy towards third countries;
- (d) such other categories of aid as may be specified by decision of the Council acting by a qualified majority on a proposal from the Commission;

#### ARTICLE 93

1. The Commission shall, in co-operation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 169 and 170, refer the matter to the Court of Justice direct.

On application by a Member State, the Council, may acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 92 or from the regulations provided for in Article 94, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

#### ARTICLE 94

The Council may, acting by a qualified majority on a proposal from the Commission, make any appropriate regulations for the application of Articles 92 and 93 and may in particular determine the conditions in which Article 93 (3) shall apply and the categories of aid exempted from this procedure.

### CHAPTER 2

#### TAX PROVISIONS

#### ARTICLE 95

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Member States shall, not later than at the beginning of the second stage, repeal or amend any provisions existing when this Treaty enters into force which conflict with the preceding rules.

#### ARTICLE 96

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

#### ARTICLE 97

Member States which levy a turnover tax calculated on a cumulative multi-stage tax system may, in the case of internal taxation imposed by them on imported products or of repayments allowed by them on exported products, establish average rates for products or groups of products, provided that there is no infringement of the principles laid down in Articles 95 and 96.

Where the average rates established by a Member State do not conform to these principles, the Commission shall address appropriate directives or decisions to the State concerned.

#### ARTICLE 98

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council acting by a qualified majority on a proposal from the Commission.

#### ARTICLE 99<sup>1</sup>

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt provisions for the harmonization of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and the functioning of the internal market within the time-limit laid down in Article 8a.

### CHAPTER 3

#### APPROXIMATION OF LAWS

#### ARTICLE 100

The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.

The European Parliament and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation.

#### ARTICLE 100A<sup>2</sup>

1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 8a. The Council shall, acting by a qualified majority on a proposal from the

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<sup>1</sup> Article as replaced by Article 17 of the SEA.

<sup>2</sup> Article added by Article 18 of the SEA.

Commission in co-operation with the European Parliament and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection.

4. If, after the adoption of a harmonization measure by the Council acting by a qualified majority, a Member State deems it necessary to apply national provisions on grounds of major needs referred to in Article 36, or relating to protection of the environment or the working environment, it shall notify the Commission of these provisions.

The Commission shall confirm the provisions involved after having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

5. The harmonization measures referred to above shall, in appropriate cases, include a safeguard clause authorizing the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Community control procedure.

#### ARTICLE 100B<sup>1</sup>

1. During 1992, the Commission shall, together with each Member State, draw up an inventory of national laws, regulations and administrative provisions which fall under Article 100a and which have not been harmonized pursuant to that Article.

The Council, acting in accordance with the provisions of Article 100a, may decide that the provisions in force in a Member State must be recognized as being equivalent to those applied by another Member State.

2. The provisions of Article 100a (4) shall apply by analogy.

3. The Commission shall draw up the inventory referred to in the first subparagraph of paragraph 1 and shall submit appropriate proposals in good time to allow the Council to act before the end of 1992.

#### ARTICLE 101

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the common market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the Council shall, on a proposal from the Commission, acting unanimously during the first stage and by a qualified majority thereafter, issue the necessary directives. The Commission and the Council may take any other appropriate measures provided for in this Treaty.

#### ARTICLE 102

1. Where there is reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 101, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

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<sup>1</sup> Article added by Article 19 of the SEA.

2. If a State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, in pursuant of Article 101, to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, the provisions of Article 101 shall not apply.

## TITLE II

### Economic policy

#### CHAPTER 1<sup>1</sup>

### CO-OPERATION IN ECONOMIC AND MONETARY POLICY (ECONOMIC AND MONETARY UNION)

#### ARTICLE 102a

1. In order to ensure the convergence of economic and monetary policies which is necessary for the further development of the Community, Member States shall co-operate in accordance with the objectives of Article 104. In so doing, they shall take account of the experience acquired in co-operation within the framework of the European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field.
2. Insofar as further development in the field of economic and monetary policy necessitates institutional changes, the provisions of Article 236 shall be applicable. The Monetary Committee and the Committee of Governors of the Central Banks shall also be consulted regarding institutional changes in the monetary area.

#### CHAPTER 2<sup>2</sup>

### CONJUNCTURAL POLICY

#### ARTICLE 103

1. Member States shall regard their conjunctural policies as a matter of common concern. They shall consult each other and the Commission on the measures to be taken in the light of the prevailing circumstances.
2. Without prejudice to any other procedures provided for in this Treaty, the Council may, acting unanimously on a proposal from the Commission, decide upon the measures appropriate to the situation.
3. Acting by a qualified majority on a proposal from the Commission, the Council shall, where required, issue any directives needed to give effect to the measures decided upon under paragraph 2.
4. The procedures provided for in this Article shall also apply if any difficulty should arise in the supply of certain products.

#### CHAPTER 3<sup>2</sup>

### BALANCE OF PAYMENTS

#### ARTICLE 104

Each Member State shall pursue the economic policy needed to ensure the equilibrium of its overall balance of payments and to maintain confidence in its currency, while taking care to ensure a high level of employment and a stable level of prices.

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<sup>1</sup> Chapter as inserted in Title II of Part Three of the Treaty of Article 20 of the SEA.

<sup>2</sup> Renumbering of the Chapter as established by Article 20(2) of the SEA.

## ARTICLE 105

1. In order to facilitate attainment of the objectives set out in Article 104, Member States shall co-ordinate their economic policies. They shall for this purpose provide for co-operation between their appropriate administrative departments and between their central banks.

The Commission shall submit to the Council recommendations on how to achieve such co-operation.

2. In order to promote co-ordination of the policies of Member States in the monetary field to the full extent needed for the functioning of the common market, a Monetary Committee with advisory status is hereby set up. It shall have the following tasks:

- to keep under review the monetary and financial situation of the Member States and of the Community and the general payments system of the Member States and to report regularly thereon to the Council and to the Commission;
- to deliver opinions at the request of the Council or of the Commission or on its own initiative, for submission to these institutions.

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

## ARTICLE 106

1. Each Member State undertakes to authorize, in the currency of the Member State in which the creditor or the beneficiary resides, any payments connected with the movement of goods, services or capital, and any transfers of capital and earnings, to the extent that the movement of goods, services, capital and persons between Member States has been liberalized pursuant to this Treaty.

The Member States declare their readiness to undertake the liberalization of payments beyond the extent provided in the preceding subparagraph, in so far as their economic situation in general and the state of their balance of payments in particular so permit.

2. In so far as movements of goods, services, and capital are limited only by restriction on payments connected therewith, these restrictions shall be progressively abolished by applying, *mutatis mutandis*, the provisions of the Chapters relating to the abolition of quantitative restrictions, to the liberalization of services and to the free movement of capital.

3. Member States undertake not to introduce between themselves any new restrictions on transfers connected with the invisible transactions listed in Annex III to this Treaty.

The progressive abolition of existing restrictions shall be effected in accordance with the provisions of Articles 63 to 65, in so far as such abolition is not governed by the provisions contained in paragraphs 1 and 2 or by the Chapter relating to the free movement of capital.

4. If need be, Member States shall consult each other on the measures to be taken to enable the payments and transfers mentioned in this Article to be effected; such measures shall not prejudice the attainment of the objectives set out in this Chapter.

## ARTICLE 107

1. Each Member State shall treat its policy with regard to rates of exchange as a matter of common concern.

2. If a Member State makes an alteration in its rate of exchange which is inconsistent with the objectives set out in Article 104 and which seriously distorts conditions of competition, the Commission may, after consulting the Monetary Committee, authorize other Member States to take for a strictly limited period the necessary measures, the conditions and details of which it shall determine, in order to counter the consequences of such alteration.

## ARTICLE 108

1. Where a Member State is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardize the functioning of the common market or the progressive implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of Article 104. The Commission shall state what measures it recommends the State concerned to take.

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

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

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

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

During the transitional period, mutual assistance may also take the form of special reductions in customs duties or enlargements of quotas in order to facilitate an increase in imports from the State which is in difficulties, subject to the agreement of the States by which such measures would have to be taken.

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

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

## ARTICLE 109

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 108(2) is not immediately taken, the Member State concerned may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the common market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 108.

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

## CHAPTER 4<sup>1</sup>

### COMMERCIAL POLICY

#### ARTICLE 110

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

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

#### ARTICLE 111

The following provisions shall, without prejudice to Articles 115 and 116, apply during the transitional period.

1. Member States shall co-ordinate their trade relations with third countries so as to bring about, by the end of the transitional period, the conditions needed for implementing a common policy in the field of external trade.

The Commission shall submit to the Council proposals regarding the procedure for common action to be followed during the transitional period and regarding the achievement of uniformity in their commercial policies.

2. The Commission shall submit to the Council recommendations for tariff negotiations with third countries in respect of the common customs tariff.

The Council shall authorize the Commission to open such negotiations.

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

3. In exercising the powers conferred upon it by this Article, the Council shall act unanimously during the first two stages and by a qualified majority thereafter.

4. Member States shall, in consultation with the Commission, take all necessary measures, particularly those designed to bring about an adjustment of tariff agreements in force with third countries, in order that the entry into force of the common customs tariff shall not be delayed.

5. Member States shall aim at securing as high a level of uniformity as possible between themselves as regards their liberalization lists in relation to third countries or groups of third countries. To this end, the Commission shall make all appropriate recommendations to Member States.

If Member States abolish or reduce quantitative restrictions in relation to third countries, they shall inform the Commission beforehand and shall accord the same treatment to other Member States.

#### ARTICLE 112

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

On a proposal from the Commission, the Council, shall, acting unanimously until the end of the second stage and by a qualified majority thereafter, issue any directives for this purpose.

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<sup>1</sup> Renumbering of the Chapter as established by Article 20(2) of the SEA.



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

#### ARTICLE 113

1. After the transitional period has ended, the common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

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

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

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

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

#### ARTICLE 114

The agreements referred to in Article 111(2) and in Article 113 shall be concluded by the Council on behalf of the Community, acting unanimously during the first two stages and by a qualified majority thereafter.

#### ARTICLE 115

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

In case of urgency during the transitional period, Member States may themselves take the necessary measures and shall notify them to the other Member States and to the Commission, which may decide that the States concerned shall amend or abolish such measures.

In the selection of such measures, priority shall be given to those which cause the least disturbance to the functioning of the common market and which take into account the need to expedite, as far as possible, the introduction of the common customs tariff.

#### ARTICLE 116

From the end of the transitional period onwards, Member States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organizations of an economic character only by common action. To this end, the Commission shall submit to the Council, which shall act by a qualified majority, proposals concerning the scope and implementation of such common action.

During the transitional period, Member States shall consult each other for the purpose of concerting the action they take and adopting as far as possible a uniform attitude.

## TITLE III

### Social policy

#### CHAPTER 1

#### SOCIAL PROVISIONS

##### ARTICLE 117

Member States agree upon the need to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained.

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

##### ARTICLE 118

Without prejudice to the other provisions of this Treaty and in conformity with its general objectives, the Commission shall have the task of promoting close co-operation between Member States in the social field, particularly in matters relating to:

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

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organizations

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

##### ARTICLE 118A<sup>1</sup>

1. Member States shall pay particular attention to encouraging improvements, especially in the working environment, as regards the health and safety of workers, and shall set as their objective the harmonization of conditions in this area, while maintaining the improvements made.

2. In order to help achieve the objective laid down in the first paragraph, the Council, acting by a qualified majority on a proposal from the Commission, in co-operation with the European Parliament and after consulting the Economic and Social Committee, shall adopt, by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States.

Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

3. The provisions adopted pursuant to this Article shall not prevent any Member State from maintaining or introducing more stringent measures for the protection of working conditions compatible with this Treaty.

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<sup>1</sup> Article added by Article 21 of the SEA.

#### ARTICLE 118B<sup>1</sup>

The Commission shall endeavour to develop the dialogue between management and labour at European level which could, if the two sides consider it desirable, lead to relations based on agreement.

#### ARTICLE 119

Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

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

#### ARTICLE 120

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

#### ARTICLE 121

The Council may, acting unanimously and after consulting the Economic and Social Committee, assign to the Commission tasks in connection with the implementation of common measures, particularly as regards social security for the migrant workers referred to in Articles 48 to 51.

#### ARTICLE 122

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

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

### CHAPTER 2

#### THE EUROPEAN SOCIAL FUND

#### ARTICLE 123

In order to improve employment opportunities for workers in the common market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall have the task of rendering the employment of workers easier and of increasing their geographical and occupational mobility within the Community.

#### ARTICLE 124

The Fund shall be administered by the Commission.

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

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<sup>1</sup> Article added by Article 22 of the SEA.

## ARTICLE 125

1. On application by a Member State the Fund shall, within the framework of the rules provided for in Article 127, meet 50 per cent of the expenditure incurred after the entry into force of this Treaty by that State or by a body governed by public law for the purposes of:

- (a) ensuring productive re-employment of workers by means of:
  - vocational retraining;
  - resettlement allowances;
- (b) granting aid for the benefit of workers whose employment is reduced or temporarily suspended, in whole or in part, as a result of the conversion of an undertaking to other production, in order that they may retain the same wage level pending their full re-employment.

2. Assistance granted by the Fund towards the cost of vocational retraining shall be granted only if the unemployed workers could not be found employment except in a new occupation and only if they have been in productive employment for at least six months in the occupation for which they have been retrained.

Assistance towards resettlement allowances shall be granted only if the unemployed workers have been caused to change their home within the Community and have been in productive employment for at least six months in their new place of residence.

Assistance for workers in the case of the conversion of an undertaking shall be granted only if:

- (a) the workers concerned have again been fully employed in that undertaking for at least six months;
- (b) the Government concerned has submitted a plan beforehand, drawn up by the undertaking in question, for that particular conversion and for financing it;
- (c) the Commission has given its prior approval to the conversion plan.

## ARTICLE 126

When the transitional period has ended, the Council, after receiving the opinion of the Commission and after consulting the Economic and Social Committee and the European Parliament, may:

- (a) rule, by a qualified majority, that all or part of the assistance referred to in Article 125 shall no longer be granted; or
- (b) unanimously determine what new tasks may be entrusted to the Fund within the framework of its terms of reference as laid down in Article 123.

## ARTICLE 127

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, lay down the provisions required to implement Article 124 to 126; in particular it shall determine in detail the conditions under which assistance shall be granted by the Fund in accordance with Article 125 and the classes of undertakings whose workers shall benefit from the assistance provided for in Article 125 (1) (b).

## ARTICLE 128

The Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee, lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies and of the common market.

## TITLE IV

### **The European Investment Bank**

#### ARTICLE 129

A European Investment Bank is hereby established; it shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to this Treaty.

#### ARTICLE 130

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilizing its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

- (a) projects for developing less-developed regions;
- (b) projects for modernizing or converting undertakings or for developing fresh activities called for by the progressive establishment of the common market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;
- (c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

## TITLE V<sup>1</sup>

### **Economic and social cohesion**

#### ARTICLE 130A<sup>1</sup>

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

In particular the Community shall aim at reducing disparities between the various regions and the backwardness of the least-favoured regions.

#### ARTICLE 130B<sup>1</sup>

Member States shall conduct their economic policies, and shall co-ordinate them, in such a way as, in addition, to attain the objectives set out in Article 130a. The implementation of the common policies and of the internal market shall take into account the objectives set out in Article 130a and in Article 130c and shall contribute to their achievement. The Community shall support the achievement of these objectives by the action it takes through the structural Funds (The European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

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<sup>1</sup> Title V consisting of Articles 130a, 130b, 130c, 130d and 130e as added to Part three of the Treaty by Article 23 of the SEA.

#### ARTICLE 130C<sup>1</sup>

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

#### ARTICLE 130D<sup>1</sup>

Once the Single European Act enters into force the Commission shall submit a comprehensive proposal to the Council, the purpose of which will be to make such amendments to the structure and operational rules of the existing structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section, European Social Fund, European Regional Development Fund) as are necessary to clarify and rationalize their tasks in order to contribute to the achievement of the objectives set out in Article 130a and Article 130c, to increase their efficiency and to co-ordinate their activities between themselves and with the operations of the existing financial instruments. The Council shall act unanimously on this proposal within a period of one year, after consulting the European Parliament and the Economic and Social Committee.

#### ARTICLE 130E<sup>1</sup>

After adoption of the decision referred to in Article 130d, implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting by a qualified majority on a proposal from the Commission and in co-operation with the European Parliament.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section and the European Social Fund, Articles 43, 126 and 127 remain applicable respectively.

### TITLE VI<sup>2</sup>

#### **Research and technological development**

#### ARTICLE 130F<sup>2</sup>

1. The Community's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level.
2. In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological development activities; it shall support their efforts to co-operate with one another, aiming notably, at enabling undertakings to exploit the Community's internal market potential to the full, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that co-operation.
3. In the achievement of these aims, special account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.

#### ARTICLE 130G<sup>2</sup>

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

- (a) implementation of research, technological development and demonstration programmes, by promoting co-operation with undertakings, research centres and universities;

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<sup>1</sup> See footnote on p. 121.

<sup>2</sup> Title VI consisting of Articles 130f, 130g, 130h, 130k, 130l, 130m, 130n, 130o, 130p and 130q, as added to Part three of the Treaty by Article 24 of the SEA.

- (b) promotion of co-operation in the field of Community research, technological development, and demonstration with third countries and international organizations;
- (c) dissemination and optimization of the results of activities in Community research, technological development, and demonstration;
- (d) stimulation of the training and mobility of researchers in the Community.

#### ARTICLE 130H<sup>1</sup>

Member States shall, in liaison with the Commission, co-ordinate among themselves the policies and programmes carried out at national level. In close contact with the Member States, the Commission may take any useful initiative to promote such co-ordination.

#### ARTICLE 130I<sup>1</sup>

1. The Community shall adopt a multiannual framework programme setting out all its activities. The framework programme shall lay down the scientific and technical objectives, define their respective priorities, set out the main lines of the activities envisaged and fix the amount deemed necessary, the detailed rules for financial participation by the Community in the programme as a whole and the breakdown of this amount between the various activities envisaged.

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

#### ARTICLE 130K<sup>1</sup>

The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary.

The Council shall define the detailed arrangements for the dissemination of knowledge resulting from the specific programmes.

#### ARTICLE 130L<sup>1</sup>

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

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

#### ARTICLE 130M<sup>1</sup>

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

#### ARTICLE 130N<sup>1</sup>

In implementing the multiannual framework programme, the Community may make provision for co-operation in Community research, technological development and demonstration with third countries or international organizations.

The detailed arrangements for such co-operation may be the subject of international agreements between the Community and the third parties concerned which shall be negotiated and concluded in accordance with Article 228.

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<sup>1</sup> See footnote <sup>2</sup> on p. 122.

#### ARTICLE 130o<sup>1</sup>

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

#### ARTICLE 130p<sup>1</sup>

1. The detailed arrangements for financing each programme, including any Community contribution, shall be established at the time of the adoption of the programme.
2. The amount of the Community's annual contribution shall be laid down under the budgetary procedure, without prejudice to other possible methods of Community financing. The estimated cost of the specific programmes must not in aggregate exceed the financial provision in the framework programme.

#### ARTICLE 130q<sup>1</sup>

1. The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt the provisions referred to in Articles 130i and 130o.
2. The Council shall, acting by a qualified majority on a proposal from the Commission, after consulting the Economic and Social Committee, and in co-operation with the European Parliament, adopt the provisions referred to in Articles 130k, 130l, 130m, 130n, and 130p (1). The adoption of these supplementary programmes shall also require the agreement of the Member States concerned.

### TITLE VII<sup>2</sup>

#### Environment

#### ARTICLE 130r<sup>2</sup>

1. Action by the Community relating to the environment shall have the following objectives:
  - (i) to preserve, protect and improve the quality of the environment;
  - (ii) to contribute towards protecting human health;
  - (iii) to ensure a prudent and rational utilization of natural resources.
2. Action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community's other policies.
3. In preparing its action relating to the environment, the Community shall take account of:
  - (i) available scientific and technical data;
  - (ii) environmental conditions in the various regions of the Community;
  - (iii) the potential benefits and costs of action or of lack of action;
  - (iv) the economic and social development of the Community as a whole and the balanced development of its regions.
4. The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.

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<sup>1</sup> See footnote <sup>2</sup> on p. 122.

<sup>2</sup> Title VII consisting of Articles 130r, 130s and 130t as added to Part three of the Treaty by Article 25 of the SEA.



5. Within their respective spheres of competence, the Community and the Member States shall co-operate with third countries and with the relevant international organizations. The arrangements for Community co-operation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 228.

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

#### ARTICLE 130s<sup>1</sup>

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall decide what action is to be taken by the Community.

The Council shall, under the conditions laid down in the preceding subparagraph, define those matters on which decisions are to be taken by a qualified majority.

#### ARTICLE 130t<sup>1</sup>

The protective measures adopted in common pursuant to Article 130s shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

### PART FOUR

#### Association of The Overseas Countries and Territories

##### ARTICLE 131

The Member States agree to associate with the Community the non-European countries and territories which have special relations with Belgium, Denmark,<sup>2</sup> France, Italy, the Netherlands and the United Kingdom.<sup>3</sup> These countries and territories (hereinafter called the 'countries and territories') are listed in Annex IV to this Treaty.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

In accordance with the principles set out in the Preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

##### ARTICLE 132

Association shall have the following objectives:

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to this Treaty.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the Community, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.

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<sup>1</sup> See footnote <sup>2</sup> on p. 124.

<sup>2</sup> The term 'Denmark' was added by Article 2 of the Greenland Treaty.

<sup>3</sup> First sentence, with the exception of the term 'Denmark', as amended by Article 24(1) of the Act of Accession DK/IRL/UK in the version resulting from Article 13 of the AD AA DK/IRL/UK.

5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 136.

#### ARTICLE 133

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be completely abolished in conformity with the progressive abolition of customs duties between Member States in accordance with the provisions of this Treaty.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be progressively abolished in accordance with the provisions of Articles 12, 13, 14, 15 and 17.

3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialization or produce revenue for their budget.

The duties referred to in the preceding subparagraph shall nevertheless be progressively reduced to the level of those imposed on imports of products from the Member State with which each country or territory has special relations. The percentages and the timetable of the reductions provided for under this Treaty shall apply to the difference between the duty imposed on a product coming from the Member State which has special relations with the country or territory concerned and the duty imposed on the same product coming from within the Community on entry into the importing country or territory.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff when this Treaty enters into force.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

#### ARTICLE 134

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 133(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

#### ARTICLE 135

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be governed by agreements to be concluded subsequently with the unanimous approval of Member States.

#### ARTICLE 136

For an initial period of five years after the entry into force of this Treaty, the details of and procedure for the association of the countries and territories with the Community shall be determined by an Implementing Convention annexed to this Treaty.

Before the Convention referred to in the preceding paragraph expires, the Council shall, acting unanimously, lay down provisions for a further period, on the basis of the experience acquired and of the principles set out in this Treaty.

#### ARTICLE 136A<sup>1</sup>

The provisions of Articles 131 to 136 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to this Treaty.

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<sup>1</sup> Article added by Article 3 of the Greenland Treaty.

## PART FIVE

### Institutions of The Community

#### TITLE I

#### Provisions governing the institutions

##### CHAPTER 1

##### THE INSTITUTIONS

###### Section 1

###### The European Parliament

###### ARTICLE 137

The European Parliament, which shall consist of representatives of the peoples of the States brought together in the Community, shall exercise the advisory and supervisory powers which are conferred upon it by this Treaty.

###### ARTICLE 138

*(Paragraphs 1 and 2 lapsed on 17 July 1979 in accordance with Article 14 of the Act concerning the election of the representatives of the European Parliament)*

*[See Article 1 of that Act which reads as follows:*

1. The representatives in the European Parliament of the peoples of the States brought together in the Community shall be elected by direct universal suffrage.]

*[See Article 2 of that Act which reads as follows:*

2. The number of representatives elected in each Member State is as follows:

Belgium	...	...	...	...	...	...	...	...	24
Denmark	...	...	...	...	...	...	...	...	16
Germany	...	...	...	...	...	...	...	...	81
Greece	...	...	...	...	...	...	...	...	24
Spain	...	...	...	...	...	...	...	...	60
France	...	...	...	...	...	...	...	...	81
Ireland	...	...	...	...	...	...	...	...	15
Italy	...	...	...	...	...	...	...	...	81
Luxembourg	...	...	...	...	...	...	...	...	6
Netherlands	...	...	...	...	...	...	...	...	25
Portugal	...	...	...	...	...	...	...	...	24
United Kingdom	....	...	...	...	...	...	...	...	81.] <sup>1</sup>

3. The European Parliament shall draw up proposals for elections by direct universal suffrage in accordance with a uniform procedure in all Member States.<sup>2</sup>

The Council shall, acting unanimously, lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements.

<sup>1</sup> Number of representatives as fixed by Article 10 of the Act of Accession ESP/PORT.

<sup>2</sup> See also Article 7 (1) and (2) of the Act concerning the election of the representatives of the European Parliament.

#### ARTICLE 139

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.<sup>1,2</sup>

The European Parliament may meet in extraordinary session at the request of a majority of its members or at the request of a majority of its members or at the request of the Council or of the Commission.

#### ARTICLE 140

The European Parliament shall elect its President and its officers from among its members.

Members of the Commission may attend all meetings and shall, at their request, be heard on behalf of the Commission.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its members.

The Council shall be heard by the European Parliament in accordance with the conditions laid down by the Council in its rules of procedure.

#### ARTICLE 141

Save as otherwise provided in this Treaty, the European Parliament shall act by an absolute majority of the votes cast.

The rules of procedure shall determine the quorum.

#### ARTICLE 142

The European Parliament shall adopt its rules of procedure, acting by a majority of its members.

The proceedings of the European Parliament shall be published in the manner laid down in its rules of procedure.

#### ARTICLE 143

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

#### ARTICLE 144

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the members of the European Parliament, the members of the Commission shall resign as a body. They shall continue to deal with current business until they are replaced in accordance with Article 158.

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<sup>1</sup> First paragraph as amended by Article 27 (1) of the Merger Treaty.

<sup>2</sup> As regards the second sentence of this Article see also Article 10 (3) of the Act concerning the election of the representatives of the European Parliament.

Section 2

The Council

ARTICLE 145

To ensure that the objectives set out in this Treaty are attained, the Council shall, in accordance with the provisions of this Treaty:

- ensure co-ordination of the general economic policies of the Member States;
- have power to take decisions.
- confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.<sup>1</sup>

ARTICLE 146

*(Article repealed by Article 7 of the Merger Treaty)*

*[See Article 2 of the Merger Treaty, which reads as follows:*

The Council shall consist of representatives of the Member States. Each Government shall delegate to it one of its members.

The office of President shall be held for a term of six months by each member of the Council in turn, in the following order of Member States:

- for a first cycle of six years: Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, Netherlands, Portugal, United Kingdom,
- for the following cycle of six years: Denmark, Belgium, Greece, Germany, France, Spain, Italy, Ireland, Netherlands, Luxembourg, United Kingdom, Portugal.]<sup>2</sup>

ARTICLE 147

*(Article repealed by Article 7 of the Merger Treaty)*

*[See Article 3 of the Merger Treaty, which reads as follows:*

The Council shall meet when convened by its President on his own initiative or at the request of one of its members or of the Commission.]

ARTICLE 148

1. Save as otherwise provided in this Treaty, the Council shall act by a majority of its members.
2. Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as follows:

Belgium	...	...	...	...	...	...	...	...	5
Denmark	...	...	...	...	...	...	...	...	3
Germany	...	...	...	...	...	...	...	...	10
Greece	...	...	...	...	...	...	...	...	5
Spain	...	...	...	...	...	...	...	...	8
France	...	...	...	...	...	...	...	...	10
Ireland	...	...	...	...	...	...	...	...	3
Italy	...	...	...	...	...	...	...	...	10
Luxembourg	...	...	...	...	...	...	...	...	2
Netherlands	...	...	...	...	...	...	...	...	5
Portugal	...	...	...	...	...	...	...	...	5
United Kingdom	...	...	...	...	...	...	...	...	10

<sup>1</sup> Third indent added by Article 10 of the SEA.

<sup>2</sup> Second paragraph as amended by Article 11 of the Act of Accession ESP/PORT.

For their adoption, acts of the Council shall require at least:

- fifty-four votes in favour where this Treaty requires them to be adopted on a proposal from the Commission,
- fifty-four votes in favour, cast by at least eight members, in other cases.<sup>1</sup>

3. Abstentions by members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

#### ARTICLE 149<sup>2</sup>

1. Where, in pursuance of this Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal.

2. Where, in pursuance of this Treaty, the Council acts in co-operation with the European Parliament, the following procedure shall apply:

- (a) The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall adopt a common position.
- (b) The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.

If, within three months of such communication, the European Parliament approves this common position or has not taken a decision within that period, the Council shall definitively adopt the act in question in accordance with the common position.

- (c) The European Parliament may within the period of three months referred to in point (b), by an absolute majority of its component members, propose amendments to the Council's common position. The European Parliament may also, by the same majority, reject the Council's common position. The result of the proceedings shall be transmitted to the Council and the Commission.

If the European Parliament has rejected the Council's common position, unanimity shall be required for the Council to act on a second reading.

- (d) The Commission shall, within a period of one month, re-examine the proposal on the basis of which the Council adopted its common position, by taking into account the amendments proposed by the European Parliament.

The Commission shall forward to the Council, at the same time as its re-examined proposal, the amendments of the European Parliament which it has not accepted, and shall express its opinion on them. The Council may adopt these amendments unanimously.

- (e) The Council, acting by a qualified majority, shall adopt the proposal as re-examined by the Commission.

Unanimity shall be required for the Council to amend the proposal as re-examined by the Commission.

- (f) In the cases referred to in points (c), (d) and (e), the council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.
- (g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.

3. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures mentioned in paragraphs 1 and 2.

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<sup>1</sup> Paragraph 2 as amended by Article 14 of the Act of Accession ESP/PORT.

<sup>2</sup> Article as replaced by Article 7 of the SEA.

#### ARTICLE 150

Where a vote is taken, any member of the Council may also act on behalf of not more than one other member.

#### ARTICLE 151

*(Article repealed by Article 7 of the Merger Treaty)*

*[See Articles 5 and 4 of the Merger Treaty, which reads as follows:*

*Article 5:*

The Council shall adopt its rules of procedure.

*Article 4:*

A committee consisting of the Permanent Representatives of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council.]

#### ARTICLE 152

The Council may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

#### ARTICLE 153

The Council shall, after receiving an opinion from the Commission, determine the rules governing the committees provided for in this Treaty.

#### ARTICLE 154

*(Article repealed by Article 7 of the Merger Treaty)*

*[See Article 6 of the Merger Treaty, which reads as follows:*

The Council shall, acting by a qualified majority, determine the salaries, allowances and pensions of the President, Judges, Advocates-General and Registrar of the Court of Justice. It shall also, again by a qualified majority, determine any payment to be made instead of remuneration.]

### Section 3

#### **The Commission**

#### ARTICLE 155

In order to ensure the proper functioning and development of the common market, the Commission shall:

- ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied;
- formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary;
- have its own power of decision and participate in the shaping of measures taken by the Council and by the European Parliament in the manner provided for in this Treaty;
- exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter.

## ARTICLE 156

*(Article repealed by Article 19 of the Treaty)*

[See Article 18 of the Merger Treaty, which reads as follows:

The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Communities.]

## ARTICLE 157

*(Article repealed by Article 19 of the Treaty)*

[See Article 10 of the Merger Treaty, which reads as follows:

1. The Commission shall consist of seventeen members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.<sup>1</sup>

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

Only nationals of Member States may be members of the Commission.

The Commission must include at least one national of each of the Member States, but may not include more than two members having the nationality of the same State.

2. The members of the Commission shall, in the general interest of the Communities, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body.

They shall refrain from any action incompatible with their duties.

Each Member State undertakes to respect this principle and not to seek to influence the members of the Commission in the performance of their tasks.

The members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the member concerned, be according to the circumstances, either compulsory retired in accordance with the provisions of Article 13<sup>2</sup> or deprived of his right to a pension or other benefits in its stead.]

## ARTICLE 158

*(Article repealed by Article 19 of the Treaty)*

[See Article 11 of the Merger Treaty, which reads as follows:

The members of the Commission shall be appointed by common accord of the Governments of the Member States.

Their term of office shall be four years. It shall be renewable.]

## ARTICLE 159

*(Article repealed by Article 19 of the Treaty)*

[See Article 12 of the Merger Treaty, which reads as follows:

Apart from normal replacement, or death, the duties of a member of the Commission shall end when he resigns or is compulsorily retired.

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<sup>1</sup> First subparagraph of paragraph 1 as amended by Article 15 of the Act of Accession ESP/PORT.

<sup>2</sup> Article 13 of the Merger Treaty. See Article 160 below.



The vacancy thus caused shall be filled for the remainder of the member's term of office. The Council may, acting unanimously decide that such a vacancy need not be filled.

Save in the case of compulsory retirement under the provisions of Article 13,<sup>1</sup> members of the Commission shall remain in office until they have been replaced.]

#### ARTICLE 160

*(Article repealed by Article 19 of the Treaty)*

[See Article 13 of the Merger Treaty, which reads as follows:

If any member of the Commission 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 or the Commission, compulsory retire him.]

#### ARTICLE 161

*(Article repealed by Article 19 of the Treaty)*

[See Article 14 of the Merger Treaty, which reads as follows:

The President and the six Vice-Presidents of the Commission shall be appointed from among its members for a term of two years in accordance with the same procedure as that laid down for the appointment of members of the Commission. Their appointments may be renewed.<sup>2</sup>

The Council, acting unanimously, may amend the provisions concerning Vice-Presidents.<sup>3</sup>

Save where the entire Commission is replaced, such appointments shall be made after the Commission has been consulted.

In the event of retirement or death, the President and the Vice-Presidents shall be replaced for the remainder of their term of office in accordance with the preceding provisions.]

#### ARTICLE 162

*(Article repealed by Article 19 of the Treaty)*

[See Articles 15 and 16 of the Merger Treaty, which read as follows:

*Article 15:*

The Council and the Commission shall consult each other and shall settle by common accord their methods of co-operation.

*Article 16:*

The Commission shall adopt its rules of procedure so as to ensure that both it and its departments operate in accordance with the provisions of the Treaties establishing the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community, and of this Treaty. It shall ensure that these rules are published.

#### ARTICLE 163

*(Article repealed by Article 19 of the Treaty)*

[See Article 17 of the Merger Treaty, which reads as follows:

The Commission shall act by a majority of the number of members provided for in Article 10.<sup>4</sup>

A meeting of the Commission shall be valid only if the number of members laid down in its rules of procedure is present.]

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<sup>1</sup> Article 13 of the Merger Treaty. See Article 160 below.

<sup>2</sup> First paragraph as amended by Article 16 of the Act of Accession ESP/PORT.

<sup>3</sup> Second paragraph added by Article 16 of that Act.

<sup>4</sup> Article 10 of the Merger Treaty. See Article 157 above.

Section 4  
**The Court of Justice**

ARTICLE 164

The Court of Justice shall ensure that in the interpretation and application of this Treaty the law is observed.

ARTICLE 165

The Court of Justice shall consist of thirteen Judges.<sup>1</sup>

The Court shall sit in plenary session. It may, however, form Chambers, each consisting of three or five judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes.

Whenever the Court of Justice hears cases brought before it by a Member State or by one of the institutions of the Community or, to the extent that the Chambers of the Court do not have the requisite jurisdiction under the Rules of Procedure, has to give preliminary rulings on questions submitted to it pursuant to Article 177, it shall sit in plenary session.<sup>2</sup>

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Judges and make the necessary adjustments to the second and third paragraphs of this Article and to the second paragraph of Article 167.

ARTICLE 166

The Court of Justice shall be assisted by six Advocates-General.<sup>3</sup>

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in Article 164.

Should the Court of Justice so request, the Council may, acting unanimously, increase the number of Advocates-General and make the necessary adjustments to the third paragraph of Article 167.

ARTICLE 167

The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the Governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Seven and Six Judges shall be replaced alternately.<sup>4</sup>

Every three years there shall be a partial replacement of the Advocates-General. Three Advocates-General shall be replaced on each occasion.<sup>4</sup>

Retiring Judges and Advocates-General shall be eligible for reappointment.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected

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<sup>1</sup> First paragraph as amended by Article 17 of the Act of Accession ESP/PORT.

<sup>2</sup> Third paragraph as amended by Article 1 of the Council Decision of 26 November 1974 (*Official Journal of the European Communities*, No L 318, 28 November 1974). [*Treaty Series No. 15 (1979)*, Cmnd 7460].

<sup>3</sup> First paragraph as amended by Article 18 of the Act of Accession ESP/PORT.

<sup>4</sup> Second and third paragraphs as amended by Article 19 of the Act of Accession ESP/PORT.

#### ARTICLE 168

The Court of Justice shall appoint its registrar and lay down the rules governing his service.

#### ARTICLE 168A<sup>1</sup>

1. At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 177.
2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.
3. The Members of that court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.
4. That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.

#### ARTICLE 169

If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter, after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

#### ARTICLE 170

A Member State which considers that another Member State has failed to fulfil an obligation under this Treaty may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under this Treaty, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

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<sup>1</sup> Article added by Article 11 of the SEA.

#### ARTICLE 171

If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

#### ARTICLE 172

Regulations made by the Council pursuant to the provisions of this Treaty may give the Court of Justice unlimited jurisdiction in regard to the penalties provided for in such regulations.

#### ARTICLE 173

The Court of Justice shall review the legality of acts of the Council and the Commission other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, 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.

#### ARTICLE 174

If the action is well founded, the Court of Justice shall declare the act concerned to be void.

In the case of a regulation, however, the Court of Justice shall, if it considers this necessary, state which of the effects of the regulation which it has declared void shall be considered as definitive.

#### ARTICLE 175

Should the Council or the Commission, in infringement of this Treaty, fail to act, the Member States and the other institutions of the Community may bring an action before the Court of Justice to have the infringement established.

The action shall be admissible only if the institution concerned has first been called upon to act. If within two months of being so called upon, the institution concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution of the Community has failed to address to that person any act other than a recommendation or an opinion.

#### ARTICLE 176

The institution whose act has been declared void or whose failure to act has been declared contrary to this Treaty shall be required to take the necessary measures to comply with the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 215.

#### ARTICLE 177

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

#### ARTICLE 178

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article 215.

#### ARTICLE 179

The Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

#### ARTICLE 180

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 169;
- (b) measures adopted by the Board of Governors of the Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 173;
- (c) measures adopted by the Board of Directors of the Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 173, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank.

#### ARTICLE 181

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 Community, whether that contract be governed by public or private law.

#### ARTICLE 182

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of this Treaty if the dispute is submitted to it under a special agreement between the parties.

#### ARTICLE 183

Save where jurisdiction is conferred on the Court of Justice by this Treaty, disputes to which the Community is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

#### ARTICLE 184

Notwithstanding the expiry of the period laid down in the third paragraph of Article 173, any party may, in proceedings in which a regulation of the Council or of the Commission is in issue, plead the grounds specified in the first paragraph of Article 173, in order to invoke before the Court of Justice the inapplicability of that regulation.

#### ARTICLE 185

Actions brought before the Court of Justice shall not have suspensory effect. The Court of Justice may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

#### ARTICLE 186

The Court of Justice may in any cases before it prescribe any necessary interim measures.

#### ARTICLE 187

The judgments of the Court of Justice shall be enforceable under the conditions laid down in Article 192.

#### ARTICLE 188

The Statute of the Court of Justice is laid down in a separate Protocol.

The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.<sup>1</sup>

The Court of Justice shall adopt its rules of procedure. These shall require the unanimous approval of the Council.

### CHAPTER 2

#### PROVISIONS COMMON TO SEVERAL INSTITUTIONS

#### ARTICLE 189

In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions.

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

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

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

Recommendations and opinions shall have no binding force.

#### ARTICLE 190

Regulations, directives and decisions of the Council and of the Commission shall state the reasons on which they are based and shall refer to any proposals or opinions which were required to be obtained pursuant to this Treaty.

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<sup>1</sup> Second paragraph as inserted by Article 12 of the SEA.

ARTICLE 191

Regulations shall be published in the Official Journal of the Community. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following their publication.

Directives and decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

ARTICLE 192

Decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the Government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

THE ECONOMIC AND SOCIAL COMMITTEE

ARTICLE 193

An Economic and Social Committee is hereby established. It shall have advisory status.

The Committee shall consist of representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public.

ARTICLE 194

The number of members of the Committee shall be as follows

Belgium ... ..	12
Denmark ... ..	9
Germany ... ..	24
Greece ... ..	12
Spain ... ..	21
France ... ..	24
Ireland ... ..	9
Italy ... ..	24
Luxembourg ... ..	6
Netherlands ... ..	12
Portugal ... ..	12
United Kingdom ... ..	24 <sup>1</sup>

The members of the Committee shall be appointed by the Council, acting unanimously, for four years. Their appointments shall be renewable.

The members of the Committee shall be appointed in their personal capacity and may not be bound by any mandatory instructions.

<sup>1</sup> First paragraph as amended by Article 21 of the Accession ESP/PORT

#### ARTICLE 195

1. For the appointment of the members of the Committee, each Member State shall provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals.

The composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity.

2. The Council shall consult the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern.

#### ARTICLE 196

The Committee shall elect its chairman and officers from among its members for a term of two years.

It shall adopt its rules of procedure and shall submit them to the Council for its approval, which must be unanimous.

The Committee shall be convened by its chairman at the request of the Council or of the Commission.

#### ARTICLE 197

The Committee shall include specialized sections for the principal fields covered by this Treaty.

In particular, it shall contain an agricultural section and a transport section, which are the subject of special provisions in the Titles relating to agriculture and transport.

These specialized sections shall operate within the general terms of reference of the Committee. They may not be consulted independently of the Committee.

Sub-committees may also be established within the Committee to prepare on specific questions or in specific fields, draft opinions to be submitted to the Committee for its consideration.

The rules of procedure shall lay down the methods of composition and the terms of reference of the specialized sections and of the sub-committees.

#### ARTICLE 198

The Committee must be consulted by the Council or by the Commission where this Treaty so provides. The Committee may be consulted by these institutions in all cases in which they consider it appropriate.

The Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than ten days from the date which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee and that of the specialized section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.



## TITLE II

### Financial provisions

#### ARTICLE 199

All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

The revenue and expenditure shown in the budget shall be in balance.

#### ARTICLE 200

1. The budget revenue shall include, irrespective of any other revenue, financial contributions of Member States on the following scale:

Netherlands	...	...	...	...	...	...	7.9
Germany	...	...	...	...	...	...	28
France	...	...	...	...	...	...	28
Italy...	...	...	...	...	...	...	28
Luxembourg	...	...	...	...	...	...	0.2
Netherlands	...	...	...	...	...	...	7.9

2. The financial contributions of Member States to cover the expenditure of the European Social Fund, however, shall be determined on the following scale:

Belgium	...	...	...	...	...	...	8.8
Germany	...	...	...	...	...	...	32
France	...	...	...	...	...	...	32
Italy...	...	...	...	...	...	...	20
Luxembourg	...	...	...	...	...	...	0.2
Netherlands	...	...	...	...	...	...	7

3. The scales may be modified by the Council, acting unanimously.

#### ARTICLE 201

The Commission shall examine the conditions under which the financial contributions of Member States provided for in Article 200 could be replaced by the Community's own resources, in particular by revenue accruing from the common customs tariff when it has been finally introduced.

To this end, the Commission shall submit proposals to the Council.

After consulting the European Parliament on these proposals the Council may, acting unanimously, lay down the appropriate provisions, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

#### ARTICLE 202

The expenditure shown in the budget shall be authorized for one financial year, unless the regulations made pursuant to Article 209 provide otherwise.

In accordance with conditions to be laid down pursuant to Article 209, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 209.

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

#### ARTICLE 203<sup>1</sup>

1. The financial year shall run from 1 January to 31 December.
2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If within this period the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

- (a) The Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;

- (b) With regard to the proposed modifications:

—where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;

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<sup>1</sup> Text as amended by Article 12 of the Treaty amending Certain Financial Provisions.

- where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;
- where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the European Parliament has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.

8. However, the European Parliament, acting by a majority of its members and two-thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States;

and

- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget, established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its members and three-fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

#### ARTICLE 204<sup>1</sup>

If at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 209; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorize expenditure in excess of one-twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision by the Council shall be suspended until the European Parliament has taken its decision. If within the said period the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

#### ARTICLE 205

The Commission shall implement the budget, in accordance with provisions of the regulations made pursuant to Article 209 on its own responsibility and within the limits of the appropriations.

The regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 209, transfer appropriations from one chapter to another or from one sub-division to another.

#### ARTICLE 205A<sup>2</sup>

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

#### ARTICLE 206<sup>3</sup>

1. A Court of Auditors is hereby established.
2. The Court of Auditors shall consist of twelve members.<sup>4</sup>
3. The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

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<sup>1</sup> Text as amended by Article 13 of the Treaty amending Certain Financial Provisions.

<sup>2</sup> Article added by Article 14 of the Treaty amending Certain Financial Provisions.

<sup>3</sup> Text excepting paragraph 2, as amended by Article 15 of the Treaty amending Certain Financial Provisions.

<sup>4</sup> Paragraph 2 as amended by Article 20 of the Act of Accession ESP/PORT.

4. The members of the Court of Auditors shall be appointed for a term of six years by the Council acting unanimously after consulting the European Parliament.

However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only.

The members of the court of Auditors shall be eligible for reappointment.

They shall elect the President of the Court of Auditors from among their numbers for a term of three years. The President may be re-elected.

5. The members of the Court of Auditors shall in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

6. The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

7. Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 8.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement members of the Court of Auditors shall remain in office until they have been replaced.

8. A member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

9. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

10. The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors.

#### ARTICLE 206A<sup>1</sup>

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent does not preclude such examinations.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

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<sup>1</sup> Article added by Article 16 of the Treaty amending Certain Financial Provisions.

3. The audit shall be based on records and, if necessary, performed on the spot in the institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The institutions of the Community and the national audit bodies or, if these do not have the necessary powers, the competent national departments shall forward to the Court of auditors, at its request, any document or information necessary to carry out its task.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Communities*.

The Court of Auditors may also, at any time submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community.

It shall adopt its annual reports or opinions by a majority of its members.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

#### ARTICLE 206B<sup>1</sup>

The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 205A and the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors.

#### ARTICLE 207

The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article 209.

The financial contributions provided for in Article 200 (1) shall be placed at the disposal of the Community by the Member States in their national currencies.

The available balances of these contributions shall be deposited with the Treasuries of Member States or with bodies designated by them. While on deposit, such funds shall retain the value corresponding to the parity, at the date of deposit, in relation to the unit of account referred to in the first paragraph.

The balances may be invested on terms to be agreed between the Commission and the Member State concerned.

The regulations made pursuant to Article 209 shall lay down the technical conditions under which financial operations relating to the European Social Fund shall be carried out.

#### ARTICLE 208

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

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<sup>1</sup> Article added by Article 17 of the Treaty amending Certain Financial Provisions.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

#### ARTICLE 209<sup>1</sup>

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:

- (a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Communities' own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- (c) lay down rules concerning the responsibility of authorizing officers and accounting officers and concerning appropriate arrangements for inspection.

### PART SIX

#### General and Final Provisions

#### ARTICLE 210

The Community shall have legal personality.

#### ARTICLE 211

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission

#### ARTICLE 212

*(Article repealed by Article 24 of the Merger Treaty)*

[See Article 24 (1) of the Merger Treaty, which reads as follows:

1. The officials and other servants of the European Coal and Steel Community, the European Economic Community and the European Atomic Energy Community shall, at the date of entry into force of this Treaty, become officials and other servants of the European Communities and form part of the single administration of those Communities.

The Council shall, acting by a qualified majority on a proposal from the Commission and after consulting the other institutions concerned, lay down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other services of those Communities.]

#### ARTICLE 213

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

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<sup>1</sup> Text as amended by Article 18 of the Treaty amending Certain Financial Provisions.

#### ARTICLE 214

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

#### ARTICLE 215

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

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

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

#### ARTICLE 216

The seat of the institutions of the Community shall be determined by common accord of the Governments of the Member States.

#### ARTICLE 217

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

#### ARTICLE 218

*(Article repealed by the second paragraph of Article 28 of the Merger Treaty)*

*[See the first paragraph of Article 28 of the Merger Treaty, 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 laid down in the Protocol annexed to this Treaty. The same shall apply to the European Investment Bank.]

#### ARTICLE 219

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

#### ARTICLE 220

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

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



#### ARTICLE 221

Within three years of the entry into force of this Treaty, Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 58, without prejudice to the application of the other provisions of this Treaty.

#### ARTICLE 222

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

#### ARTICLE 223

1. The provisions of this Treaty shall not preclude the application of the following rules:
  - (a) No Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;
  - (b) Any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the common market regarding products which are not intended for specifically military purposes.
2. During the first year after the entry into force of this Treaty, the Council shall, acting unanimously, draw up a list of products to which the provisions of paragraph 1 (b) shall apply.
3. The Council may, acting unanimously on a proposal from the Commission, make changes in this list

#### ARTICLE 224

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

#### ARTICLE 225

If measures taken in the circumstances referred to in Articles 223 and 224 have the effect of distorting the conditions of competition in the common market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in this Treaty.

By way of derogation from the procedure laid down in Articles 169 and 170, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 223 and 224. The Court of Justice shall give its ruling *in camera*.

#### ARTICLE 226

1. If, during the transitional period, difficulties arise which are serious and liable to persist in any sector of the economy or which could bring about serious deterioration in the economic situation of a given area, a Member State may apply for authorization to take protective measures in order to rectify the situation and adjust the sector concerned to the economy of the common market.
2. On application by the State concerned, the Commission shall, by emergency procedure, determine without delay the protective measures which it considers necessary, specifying the circumstances and the manner in which they are to be put into effect.

3. The measures authorized under paragraph 2 may involve derogations from the rules of this Treaty, to such an extent and for such periods as are strictly necessary in order to attain the objectives referred to in paragraph 1. Priority shall be given to such measures as will least disturb the functioning of the common market.

#### ARTICLE 227

1. This Treaty shall apply to the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic and the United Kingdom of Great Britain and Northern Ireland.<sup>1</sup>

2. With regard to Algeria and the French overseas departments, the general and particular provisions of this Treaty relating to:

- the free movement of goods;
- agriculture, save for Article 40 (4);
- the liberalization of services;
- the rules on competition;
- the protective measures provided for in Articles 108, 109 and 226;
- the institutions,

shall apply as soon as this Treaty enters into force.

The conditions under which the other provisions of this Treaty are to apply shall be determined, within two years of the entry into force of this Treaty, by decisions of the Council acting unanimously on a proposal from the Commission.

The institutions of the Community will, within the framework of the procedures provided for in this Treaty, in particular Article 226, take care that the economic and social development of these areas is made possible.

3. The special arrangements for association set out in Part Four of this Treaty shall apply to the overseas countries and territories listed in Annex IV to this Treaty.

This Treaty shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.<sup>2</sup>

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

5. <sup>3</sup> Notwithstanding the preceding paragraphs:

- (a) This Treaty shall not apply to the Faeroe Islands. The Government of the Kingdom of Denmark may, however, give notice, by a declaration deposited by 31 December 1975 at the latest with the Government of the Italian Republic, which shall transmit a certified copy thereof to each of the Governments of the other Member States, that this Treaty shall apply to those Islands. In that event, this Treaty shall apply to those Islands from the first day of the second month following the deposit of the declaration.
- (b) This Treaty shall not apply to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus.
- (c) This Treaty shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

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<sup>1</sup> Paragraph (1) as amended by Article 24 of the Act of Accession ESP/PORT.

<sup>2</sup> Second subparagraph of paragraph 3 added by Article 26 (2) of the Act of Accession DK/IRL/UK.

<sup>3</sup> Paragraph 5 added by Article 26 (3) of the Act of Accession DK/IRL/UK, modified by Article 15 (2) of the AD AA DK/IRL/UK.

#### ARTICLE 228

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or an international organization such agreements shall be negotiated by the Commission. Subject to the powers vested in the Commission in this field, such agreements shall be concluded by the Council, after consulting the European Parliament where required by this Treaty.

The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236.

2. Agreements concluded under these conditions shall be binding on the institutions of the Community and on Member States.

#### ARTICLE 229

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations, of its specialized agencies and of the General Agreement on Tariffs and Trade.

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

#### ARTICLE 230

The Community shall establish all appropriate forms of co-operation with the Council of Europe.

#### ARTICLE 231

The Community shall establish close co-operation with the Organization for European Economic Co-operation, the details to be determined by common accord.

#### ARTICLE 232

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

#### ARTICLE 233

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

#### ARTICLE 234

The rights and obligations arising from agreements concluded before the entry into force of this Treaty between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of this Treaty.

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