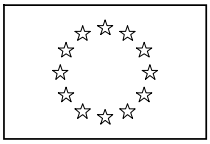

COMMISSION OF THE EUROPEAN COMMUNITIES

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ADAPTING THE INSTITUTIONS TO MAKE A SUCCESS OF ENLARGEMENT

Commission Opinion in accordance with Article 48 of the Treaty on European Union on the calling of a Conference of Representatives of the Governments of the Member States to amend the Treaties

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General introduction

The European Union is expanding. **It will be profoundly changed by enlargement, but must not be weakened by it.**

The number of Member States could almost double in the foreseeable future. The idea of an initial enlargement producing a Union of 20 Member States, on which the results of the previous Intergovernmental Conference were based, has been overtaken by events. Thirteen candidate countries are now engaged in the enlargement process.

The challenge of this process is to extend to our European neighbours the benefits of peace, solidarity and economic growth, which we currently enjoy, by welcoming them into an appropriate institutional framework. This will be the key to the success of the European venture.

The simple but fundamental question is **how** the Union is to operate effectively when it has 20, 25 or even 30 members. How can the institutions continue to perform the tasks conferred upon them by the Treaties? How, more fundamentally, will the Union maintain its decision-making capacity and its cohesion so that the process of furthering European integration can continue?

Today, the institutional framework is showing its limits and presents certain anomalies. It is not understandable to the European citizens. Because an enlarged Union risks to become weaker and less coherent it makes it imperative to re-examine, in depth, the composition of its institutions and bodies and modify the way they operate. The forthcoming Conference will be the last opportunity for the European Union to cure these weaknesses and prepare the institutions for the forthcoming enlargement.

At its meeting in Cologne on 3 and 4 June 1999, the European Council confirmed "its intention of convening a Conference of the Representatives of the Governments of the Member States early in 2000 to resolve the institutional issues left open in Amsterdam that need to be settled before enlargement" and called on the Presidency to draw up a report for the Helsinki European Council.

In the light of the Finnish Presidency's report (*Effective institutions following enlargement – Suggestions for the Intergovernmental Conference*), produced after consultation with the Member States, the European Parliament and the Commission,[1] the Helsinki European Council decided on 10 December 1999 that the Intergovernmental Conference would be convened in February 2000.

The Conference will examine "*the size and composition of the Commission, the weighting of votes in the Council..., as well as other necessary amendments to the Treaties arising as regards the European institutions in connection with the above issues and in implementing the Treaty of Amsterdam. The incoming Presidency will report to the European Council on*

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[1] *Adapting the institutions to make a success of enlargement*, contribution to preparations for the Intergovernmental Conference, Communication from the Commission presented on 10 November 1999 (COM (99)592).

progress made in the Conference and may propose additional issues to be taken on the agenda of the Conference."

In accordance with Article 48 of the Treaty on European Union, the Council asked the European Parliament and the Commission, on 17 December 1999, for an opinion on the convening of a Conference of Representatives of the Governments of the Member States with a view to amending the Treaties.

In this document, which constitutes **the Commission's opinion**, the Commission expresses its support for the convening of an Intergovernmental Conference to amend the Treaties.

This opinion has been produced following the guidelines laid down by the Commission in the contribution it approved on 10 November 1999 for the Helsinki European Council. It will serve as the basis for the positions to be taken by the Commission representatives during the Conference.

The Conference is scheduled to last eleven months. This Opinion submits to the Conference draft amendments to articles of the Treaty, in certain areas, when it was possible to take account of the progress of reflection. The Commission will in due course present other contributions to expand on some of the proposals contained in this opinion. In its concern that the Conference should bring about a thorough reform of the European institutions, the Commission undertakes to lend its full support to the Council Presidencies, which will be responsible for directing the proceedings.

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The Helsinki European Council asked the Portuguese Presidency to report to the European Council on the progress made in the Conference. It may suggest additional issues to be put on the Conference agenda.

The Commission notes that in the course of 2000 the European Council will, in any case, have to decide on the possible inclusion of a number of issues. Two matters, in particular, require consideration:

– as specified in the conclusions of the Cologne European Council, a body was created to draft a ***Charter of fundamental rights for the European Union***. No decision has yet been taken on whether this Charter could be incorporated into the Treaties and, if so, how;

– the Helsinki European Council adopted two reports by the Presidency on developing the Union's military and non-military crisis management capability as part of a strengthened common European policy on ***security and defence***. The Portuguese Presidency has been asked to present an overall report to the Feira European Council containing appropriate recommendations and proposals and an indication as to whether or not amendments are needed to the Treaties.

The Commission also sees considerable merit in the proposal that **the Treaties be divided into two separate parts** (the basic texts and the implementing texts of less fundamental importance).[2] The Treaty texts would become simpler and more readable, something which is widely felt to be necessary. Such a distinction would also make it possible to introduce a less cumbersome mechanism for amending the implementing instruments than that currently in place for Treaty revisions and one better suited to the prospect of a doubling of the number of Member States. The Commission has decided to examine the feasibility of recasting the Treaties along these lines and has asked the European University Institute in Florence to study the question. Depending on the results of this study, the Commission reserves the right to present proposals on this matter to the Conference.

[2] The Commission stressed in its opinion for the previous Intergovernmental Conference the need to make a distinction between provisions of a genuinely fundamental nature and those which are not, so that the latter could be amended "by a procedure which imposes fewer constraints than the one currently in force". The proposal was developed in the report by Jean-Luc Dehaene, Richard von Weizsäcker and David Simon ("The Institutional implications of enlargement" – presented to the European Commission on 18 October 1999).

Chapter 1. Role, operation and composition of the institutions and bodies of the European Union

1. INTRODUCTION

The composition of an institution is, or should be, no more than the logical consequence of an analysis of the role it plays within the Union and the need to ensure its effective operation.

The **role** of each institution is clearly defined in the Treaties. There is a consensus to the effect that the purpose of the Conference is not to alter the functions and powers of the institutions: the current institutional balance must be maintained. In any case, the Commission believes that the Conference should undertake general thinking on the democratic legitimacy of the European system, and in particular, on the nature of its executive so it must be assured that the amendments that the Conference approves, respond without ambiguity to a major democratisation of the institutional framework of the Union.

Moreover, enlargement requires changes in the way in which the institutions **operate** to ensure their effectiveness in a Union whose membership is set to double. The Treaties govern only the basic principles of the operation of the institutions. It is up to each institution to carry out the necessary internal reforms itself. Some have already embarked on this process of modifying their structures and working methods. In addition to these changes, the Conference will have to examine the extent to which Treaty amendments will be needed to complete the reform process.

The **composition** of the various institutions should be determined solely as a function of their role and the way they operate.

The present Opinion is based on the perspective of enlargement of the European Union to all the candidate States. It could be that all will not join at the same time and that the Conference will have to define, depending on the timetable of accession, the appropriate arrangements and eventual transitional provisions for the composition of the institutions and organs of the Union in the interim period. The timing could, for example, be the subject of declarations annexed to the Treaty drawn up by the Conference.

2. THE EUROPEAN PARLIAMENT

The European Parliament is the institution representing the peoples of the States, which together form the Community. Its role follows from the duties conferred upon it by the Treaties. The Treaty establishing the European Community designates it as **co-legislator** in many areas of activity. In other areas Parliament is required to give its assent or deliver advisory opinions. Together with the Council, it constitutes the budgetary authority. It exercises political control over the Commission.

The Conference is not seeking to alter the role or powers of the institutions. However, the Commission believes that where legislative decisions are concerned, a link should be established between qualified-majority voting and the co-decision procedure. This applies both to legislative decisions in areas currently subject to qualified-majority voting and to any future extension. The consequence of this approach would be to strengthen Parliament's role as co-legislator. **This question will be discussed in more detail in Chapter 2, Section 11 of this opinion.**

In regard to the **operation** of the European Parliament, the Commission believes this can be adapted to enlargement without any amendment of the Treaties, by alterations to its rules of procedure, to be introduced by Parliament itself. However, the regulations and general conditions governing the performance of the duties of the Members of the European Parliament should be established as a matter of urgency, in accordance with Article 190(5) of the EC Treaty.

The Treaty of Amsterdam has already partly settled the question of the **composition** of the European Parliament by stipulating explicitly in Article 189 of the EC Treaty that: "**the number of Members of the European Parliament shall not exceed seven hundred**". This figure, which was proposed by Parliament itself, satisfies two requirements: it ensures due representation of the people, while restricting the institution to a size compatible with the effective exercise of its duties. **The Commission proposes that this figure be retained**

Article 190(2) of the EC Treaty specifies the number of members of the European Parliament currently returned by each Member State. There are 626 members in all. If the number of members returned by new Member States were to be determined according to the system used to date, the upper limit of 700 members would probably be exceeded in the first wave of accessions. The system will therefore have to be re-examined, as anticipated by Parliament's resolution of 10 June 1992,[3] if the limit of 700 members is to be respected.

The Commission believes that it is for Parliament to propose new arrangements for allocating seats. The Commission offers the following ideas.

While complying with the limit of 700 members, a minimum level of representation of the population of each Member State must be ensured.

The current composition of the European Parliament was agreed by the Edinburgh European Council on 11 and 12 December 1992, on the basis of a Parliament proposal taking into account the unification of Germany and looking ahead to the accession of certain EFTA

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[3] De Gucht Report - Resolution A3-0186/92, OJ C 176, 13.07.1992, p. 72.

countries. The European Parliament proposal was based on a principle of digressive proportionality.[4] The same formula was used to determine the number of members to represent Austria, Finland and Sweden, although a slight modification was made to the number that would have resulted from the strict application of the formula.

This formula must now be re-examined:

– in theory, seats might be allocated among the Member States on a strictly proportional basis according to population. However, the Commission feels that this is not a realistic option at this stage of political integration of the Union.

– one option would be to produce a revised version of the formula on which the 1992 decision was based, maintaining the principle of digressive proportionality but starting from a lower minimum number of members and allocating fewer seats per capita and/or altering the population bands. It is important to remember, however, that the digressive proportionality element would reduce the parliamentary representation of the most populous Member States even more than in the past, because the formula, even after modification, will continue to benefit the other countries, particularly those with a medium-sized population.

– another option would be a linear reduction in the number of seats allocated by the formula used until now. The enlargement process would then have the same relative impact on the distribution of the number of members. The factor for the reduction would have to be calculated on each new accession, as a function of the ratio of the 700-member limit to the theoretical total number of members that would result from application of the current formula for both current Member States and the accession countries.

Finally, the Commission believes that **the Union would greatly benefit from having a number of members of the European Parliament elected on European lists, presented to all European voters throughout the Union**. The voters would then have to vote twice: once on a national list and once for the group of members on these European lists. The number of members to be elected on the national list would then be calculated after deducting a proportional number of seats required to constitute the "European" contingent.

Organising the European elections in this way would encourage the development of Europe-wide political parties and produce members who could claim to represent a European constituency rather than a purely national one. The provisions of the Treaty relating to European political parties require practical application.

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[4] The allocation of seats by Member State proposed by the European Parliament was based on the following formula: 6 seats to be allocated to each Member State regardless of population, plus an additional seat per 500 000 inhabitants for the number of inhabitants between 1 and 25 million, an additional seat per million inhabitants for the number of inhabitants between 25 and 60 million, and an additional seat for every two million inhabitants above 60 million. However, this formula has not been strictly applied.

Commission proposals to the Conference:

- the upper limit of 700 for members of the European Parliament should be retained;
- the European Parliament should be asked to work out a method of allocating members among the Member States that takes account of this upper limit;
- consideration should be given to the possibility of electing a number of members on Union-wide lists.

3. THE COUNCIL

The Council is the institution in which the Governments of the Member States making up the Union are represented.

From the outset the Council has been the Community legislator. With the Treaties of Maastricht and Amsterdam, this is a role it came to share with the European Parliament. It is the most important institution in determining and implementing the common foreign and security policy and police and judicial co-operation in criminal matters. The Council, together with the European Parliament, is the budgetary authority.

The Council has a representative from every Member State. The new wording in the Maastricht Treaty of the provision in question (the present Article 203 of the EC Treaty), i.e. that the Council shall be made up of "a representative of each Member State at ministerial level, authorised to commit the government of that Member State", also allows individual Member States, however organised, to meet the requirements of its internal constitutional requirements. Enlargement poses however important difficulties for the functioning of the Council and will require substantial changes for dealing with a series of concrete questions.

The Council has carried out a detailed examination of its **operation** in the context of enlargement, based on a report tabled by the Secretary-General of the Council in March 1999. At its meeting in Helsinki (9-10 December 1999), the European Council approved a number of these recommendations, which do not require any amendment of the Treaties. However, it is quite possible that the Conference might discuss more radical changes, which will require changes to the Treaties.

4. THE COMMISSION

a. The Commission's role and operation

The European Commission is without doubt the most original component of the institutional framework set up by the Treaties. No other international organisation or arrangement of co-operation between counties has an institution like it. It is not an intergovernmental structure, yet it is not an elected body either. It was set up to defend the European interest on a fully independent basis. It is collectively accountable to the European Parliament.

On this last point it should be borne in mind that the Treaty of Amsterdam entrusted the President with the task of exercising political guidance over the work of the Commission; the Members of the Commission are chosen by common accord with the nominee for President. These new responsibilities of the President were reflected in the **political undertaking given by the Members of the present Commission to resign if asked to do so by the President. The Commission proposes that this undertaking be formally incorporated in the Treaty** in order to reinforce the collective political accountability of the Commission.

Under the Treaties, the Commission has a variety of different roles. **It is the driving force behind European integration**, since it alone has the right to initiate Community legislation. It is the "**guardian of the Treaties**". The Commission is the **Community's executive**, taking enforcement action, implementing the budget and managing Community policies and programmes. It acts as the Community's representative and speaks on the Community's behalf in international negotiations.

The Commission operates according to the principle of **collective responsibility**, which means that, regardless of the Member State of which they are nationals, **all Members of the Commission play an equal part in the preparation of proposals and the taking of decisions**. All Commission Members then bear collective responsibility for these decisions.

Managing collective responsibility within a 20-member Commission already slows proceedings down in certain respects (as in the Council, discussions often involve going round the table so that all the Members can have their say) and makes for a heavy administrative workload. The Commission takes thousands of decisions a year, some 200 or so each week. The Commission is currently undertaking important reforms to its organisation. These will provide through a modernisation of its working methods and the procedure for maintaining real collective decision-making, while providing for a broader use of habilitation in defined areas under conditions fixed by the Commission. Such reform should be already considered, independently of the future composition of the Commission. Such reform will be necessary when the present number of Commissioners increases.

Collective responsibility is, in effect, what essentially gives **Commission decisions their legitimacy**, since, the Commission, although it is politically responsible before the European Parliament, is not an elected body, which is different from other types of executives.

In the enlarged Union, the Commission's task of maintaining coherence and unity will be more difficult, but at the same time more necessary as its capacity for action must be safeguarded.

b. The composition of the Commission

From the outset, the Commission was designed as an institution to safeguard the collective interest and this is how it continues to operate. This is why, far from giving Commissioners the status of national government representatives, which is the job of the members of the Council, the Treaty actually stipulates that Members of the Commission must "in the general interest of the Community, be completely independent in the performance of their duties" and may "neither seek nor take instructions from any government" (Article 213(2) EC).

The number of Commissioners has a direct bearing on the Commission's ability to operate as a collective body. Article 213 of the EC Treaty states the following: "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." From the very beginning the Commission has always been made up of two Members from each of the larger Member States and one Member from each of the other Member States.

After the 13 countries currently applying for membership have joined, **the existing system would produce a Commission with 35 Members**, which is almost four times as many as when it was first set up.

The Commission believes, however, that the key issue is deciding whether in the future the Commission will have to be made up of one national from each Member State, regardless of the number of Member States, or whether there are good reasons for opting for an alternative solution.

The Commission is of the view that this issue needs to be looked at afresh, since the forthcoming enlargement is not just about adding four or five countries, but involves virtually doubling the number of Member States. The issue must be addressed and resolved now, as there is little likelihood of subsequently departing from whatever solution is agreed on at the next Intergovernmental Conference, even if the solution is put forward as provisional.

If there are to be fewer Commissioners than Member States, the arrangements for appointing them now need to be worked out.

If the Commission is to be made up of a national from each Member State regardless of the number of Member States, then the issue to be addressed is the Commission's ability to operate effectively with 28 Members or maybe even more, if further European countries come in line for membership. This option would call for major decisions to be taken on **the structure of Commission proceedings and the powers of the President**.

<u>Option 1. The Commission is composed of fewer members than the future number of Member States.</u>

In its contribution of 10 November 1999 for the Helsinki European Council, the Commission made the point that the current way in which the Commission operates, "with new powers vested in its President to give political orientation directives and decision-making by the College on the basis of a simple majority of the Members, creates an important balance which is likely to be disturbed if the number of Commissioners is increased". It held the view that in the context of enlargement it would be essential to "preserve the **collective responsibility, efficiency** and **decision-making methods** of an Institution whose job is to

represent the public interest in a fully independent way and to arbitrate between different Treaty goals".

This position takes account of the fundamental difference between the Commission and national governments as regards their roles and working methods; the cohesiveness of national governments comes from shared political affiliation or coalition interests and is backed up by a parliamentary majority enabling them to push through their political programmes. This is why national governments can have as many ministers as they like without their ability to act being undermined. The institutional set-up of the European Union as it currently stands clearly rules out anything like this. What gives the Commission its cohesiveness and legitimacy is its operation as a collective body.

If this collective operation is to be maintained, **the future Treaty will have to stabilise the number of Commissioners at its current level and lay down rules governing their appointment**.

Here a number of alternatives have been suggested, such as leaving it for the President to form a Commission taking account of the co-operation arrangements certain Member States already have with their neighbours outside the Treaty. This last solution does not appear satisfactory, in particular as it raises tensions between Member States each time a new Commission is appointed,

In this scenario, the only possible solution is to provide in the Treaty **a system of rotation that would treat all Member States strictly equally on the basis of a pre-set order**. The rotation order should ensure that the composition of the Commission is balanced geographically and from the viewpoint of the relative size of countries.

In a 28-member Union with the number of Commissioners restricted to 20, no nationality would be absent for two successive terms of office. Each country would be able to propose a Commissioner for 5 out of 7 Commissions.

Option 2. Commission made up of one national from each Member State with its structure overhauled to maintain its efficiency

The Presidency report to the Helsinki European Council maintains that having one Commissioner from each Member State is the best way of safeguarding the Commission's legitimacy.

Indeed, it is undeniable that the presence in the College of a personality from each Member State makes dialogue with the citizens of the Union easier as they will more easily understand the role the Commission plays in European integration. This perception should not lead, however, to the consideration of a Commission comprised like the Council as yet another system of representation for the Member States.

If the Conference were to go for this option, **there would at the same time need to be a major restructuring of the Commission**. Various ideas were mooted at the last Intergovernmental Conference. Despite their numerous differences, the ideas put forward share certain points in common, and all significantly affect the Commission's operation as a collective body. In this scenario, the following notably would have to be considered:

- significantly increasing the President's power to allocate or not allocate portfolios and departments to Members of the Commission. The result would be that some Commissioners might be given special responsibilities only on an *ad hoc* basis. The choice would be for the President;

- the possibility that the Commissioners co-ordinate and oversee the work of certain other colleagues who would be answerable to them. It would be logical to provide in the Treaty specific powers to this end for Vice Presidents whose number could be higher than the one the Treaty provides at present;

- giving more power to direct policy to the President, who would then have a casting vote in Commission discussions, the power to oppose any initiatives he or she deemed inappropriate and the power to remove Commission Members from office.

- new rules allowing Commissioners to take, in the name of the Commission or under its responsibility, decisions of daily management.

However viewed, these restructuring measures seem to be dictated by the need to counteract the watering-down effect of increasing the number of Commissioners and to ensure that in a wider Union a Commission made up in the same way as the Council would keep its distinctive role of identifying and promoting the general interest.

Commission proposals to the Conference:

- the composition of the Commission should be reviewed, with the number of Commissioners set at 20, with a system of rotation institutionalised in the Treaty while respecting the strict equality between the Member States, or at one Member per Member State combined with measures fundamentally reorganising the Commission;

- the undertaking given by the Members of the present Commission to resign if asked to do so by the President should be formally incorporated in the Treaty.

5. THE EUROPEAN UNION'S JUDICIAL SYSTEM

a. The Court of Justice and the Court of First Instance

The Court of Justice is essential to the European Union: its duty is to ensure that the law is observed in the interpretation and application of the Treaty (Article 220).

In the Commission's view the Conference will need to examine the composition and operation of the Court of Justice and the Court of First Instance to cope not only with enlargement, but also with the strain the Community judicial system is currently under.

The time it takes for cases to be dealt with by the Court of Justice and the Court of First Instance, as revealed by their own statistics, is proof that these bodies are just about reaching maximum capacity. With enlargement they will not be equipped to cope with their increased workload within acceptable time scales. This is a worrying state of affairs in a Community based on the rule of law, a mere 10 years since the Court of First Instance was set up and with enlargement just round the corner.

As stated in the Court of Justice/Court of First Instance discussion paper on the future of the Community judicial system, which was released on 10 May 1999 for the Intergovernmental Conference, the caseload, which has always been heavy, has mushroomed since the Amsterdam Treaty. The Community judicial system is being called on to exercise new specialised powers that have been or are to be conferred on it by the Treaties.

The implications of this go without saying: the structures that were originally designed for six Member States will have to be overhauled, possibly quite thoroughly, to enable the Community judicial system to deal with all the work required. The overhaul of the system will have to take due account of certain important considerations, such as securing effective judicial review, maintaining quality and consistency in judicial practice and ensuring that it is complied with throughout the Union.

In order to have the benefit of an independent expert opinion on the future of the Community judicial system, the Commission has asked a reflection group, chaired by Mr Ole Due, former President of the Court of Justice, to report on the various alternatives for dealing with the set of issues involved. The group's report, which is to be produced in conjunction with the Court of Justice and the Court of First Instance, is to be submitted to the Commission at the end of January.

On this basis the Commission will at a later stage be submitting a contribution dedicated to this specific issue. It will be necessary to review the Court's present jurisdiction notably to enable it to hear cases concerning the issue of Community intellectual property rights to confer on it full jurisdiction to hear cases concerning such rights generally.

b. Protecting the Community's financial interests

The Commission is convinced that the Community must urgently equip itself with truly effective means of combating fraud and defending the Community's financial interests.

The creation of OLAF is undoubtedly a major step forward in detecting offences. However, criminal prosecution requires co-operation with fifteen judicial orders applying different substantive and procedural rules. The problem is that **fraud often goes across borders**, while national police and judicial authorities can only act on their own territory; moreover, traditional judicial assistance and police co-operation arrangements are cumbersome and mostly ill-suited to effectively fighting cross-border fraud. Furthermore, experience has shown the difficulties involved in actually getting cases to court where administrative investigations point to grounds for criminal prosecution.

The Commission therefore suggests supplementing the current provisions by a legal basis allowing the establishment of a system of rules related to:

– the offences involved and the penalties they carry;

– the provisions of necessary procedures for prosecuting such cases;

– the provisions governing the tasks and the role of a European Public Prosecutor responsible for the investigation on the whole of the European territory for fraud and its prosecution before national courts.

National courts, in upholding Community law, would thus apply to this specific category of offence the same rules incorporated into the national judicial order, just as today they already apply the rules of Community law in all the areas of the EC Treaty.

Commission proposal to the Conference:

- Supplement the current provisions relating to protecting the Community's financial interests by a legal basis in view of setting up a system of rules relating to criminal proceedings in cross border fraud, notably by the establishment of a European Public Prosecutor.

6. THE COURT OF AUDITORS

The Court of Auditors was established by the Treaty of 22 July 1975. It looks into the legality and regularity of revenue and expenditure and the soundness of financial management. As the Communities' budget is implemented by the Commission (Article 274 EC), the role of the Court of Auditors consists essentially of monitoring the Commission's activities.

The role of the members of the Court of Auditors is to direct the audit activities of the Court's staff, to draw up annual and special reports and to deliver opinions to the other institutions. These reports and opinions are adopted by a majority of members. Members of the Court of Auditors must be completely independent in the performance of their duties and may neither seek nor take instructions from any government.

The Court of Auditors currently has fifteen members. They are appointed for a six-year term and may be re-appointed. Although the Treaty does not stipulate that the Court of Auditors must be made up of a national of each Member State, this has always been the case in practice. As a result, the number of members of the Court of Auditors has always increased with each new accession, though without any in-depth assessment of its tasks and requirements.

The Commission feels that the time has come to break with this tradition in order to preserve the institution's effectiveness. Although the Community budget increases with each stage of enlargement, this does not lead to a corresponding increase in the need for audits or for reports. The Commission does not believe it is necessary to increase the number of Court members.

The nature of the duties of the members of the Court argues more for the number to remain unchanged or even to be reduced, given that there is no really convincing argument in favour of the appointment of a national of each Member State.

In the Commission's view, **the number of Members of the Court of Auditors could be fixed at twelve**. The Commission's proposal is to appoint members of the Court of Auditors using a rota system, which will only work if members' terms are not renewable.

Commission proposals to the Conference:

- the number of members of the Court of Auditors should be fixed at twelve;
- the six-year term of office should be non-renewable.

7. THE ECONOMIC AND SOCIAL COMMITTEE

The Economic and Social Committee was established by the EEC Treaty to involve the various categories of economic and social interests in the creation of the common market. The Economic and Social Committee is consulted by the other institutions where the Treaty so requires, particularly as part of the legislative procedure. The Committee may deliver opinions in other cases at the request of the other institutions or on its own initiative.

The original task of the Economic and Social Committee was to complement the consultative role of the Community's Parliamentary Assembly, which in those days consisted of delegates from the national parliaments. The situation is obviously quite different now that the European Parliament is elected by direct universal suffrage and enjoys extensive powers as a co-legislator. In this context, and taking into account the evolution of the Union, the Commission recommends that the Conference should re-examine the role of the Committee and adapt its composition and tasks. In the future, the Economic and Social Committee will have to establish itself as the framework for the consultation between the social and economic partners.

The Commission feels that the Committee should be more representative of the various components of civil society of the European Union as a whole and of its different geographical aspects. This supposes that one has to reflect on the representation of civil society and on the means to supplement the representation by category referred to in the Treaty (Article 257). One should also examine the designation of representatives by the Member States.

The reformed Economic and Social Committee could act as a relay vis-à-vis civil society. There would need to be a rethink of its role regarding legislative opinions, and the texts of the Treaty would have to be adapted to allow the Committee to judge for itself whether it should issue an opinion on proposals. The European institutions would still be able to ask the Committee for an opinion.

At present the Committee has 222 members appointed for four years; their term of office is renewable. Seats are shared out among the Member States (each one having between 6 and 24 members). If the number of members were extrapolated on the basis of the current allocation of seats, a Union of 28 Member States would mean an Economic and Social Committee of around 370 members. The Commission considers that the total number of Committee members should be set at a level, which would allow it to continue to operate effectively. This supposes a freeze on the number of the members around its current level.

Commission proposals to the Conference:

- the Economic and Social Committee should be more representative of civil society of the European Union;
- re-examine, in consequence, the unique distribution of seats by Member State and by socio-economic category;
- to allow the Committee to judge for itself whether it should pronounce itself on legislative matters;
- Fix the number of its members around its current level.

8. THE COMMITTEE OF THE REGIONS

The Committee of the Regions is an advisory committee made up of representatives of regional and local authorities. It was set up by the Treaty of Maastricht and currently has 222 members.

The Committee's mission is to represent at European level the interests of regional and local authorities and to promote integration between regions of Europe. In the enlarged Union co-operation between regions will become even more important, as will evaluation of the regional impact of proposed legislation. Hence the continuing importance of the Committee's advisory role

Contrary to the situation of the Economic and Social Committee, distribution of seats by Member State is still appropriate for the Committee of the Regions, in view of its role of representing the interests of the regional and local authorities of the Member States. It is desirable that the members of the Committee remain linked to these collectivities by a political mandate.

However, the number of seats allocated to each Member State should now be reviewed, as they do not adequately reflect the size and population of the regions concerned. Extrapolation of the system currently used would, in a 28-member Union, provide a Committee of the Regions of around 370 members, with only 142 for the seven countries most populous which account for over 70% of the Union's total population.

It would therefore be desirable, without weakening the present efficiency of the Committee, to make sure there is a division and a balanced presence of the regional and local authorities of the present and future Member States. The Commission believes that the composition of the Committee of the Regions should be determined in the same way as for the European Parliament. In the opinion delivered at its session on 15 and 16 September 1999,[5] the numbers envisaged by the Committee of the Regions are a third or half of the number of MEPs for each Member State. Since the members of the Committee of the Regions have alternates, the Commission's view is that the number of members should not exceed one third of the number of MEPs (a maximum therefore of 233 members).

Commission proposals to the Conference:

- the number of members of the Committee of the Regions should be limited to one third of the number of MEPs;
- the distribution key between Member States should be the same as that used for Parliament.

[5] Opinion 52/99 - Local and regional government at the heart of Europe.

Chapter 2. An effective decision-making process

9. INTRODUCTION

Enlargement will affect not only the operation and composition of each institution but also the **decision-making process of the Union.** Already today, the decision-making process of the Union is not always very efficient. The present provisions are the result of successive amendments to the treaties, but are not always very coherent. Rationalisation is certainly necessary.

This rationalisation, necessary today, is even more important in the perspective of enlargement. Decision-making in a Union of 28 members is clearly not the same thing as decision-making in a Union of 15. The Union will inevitably become less homogeneous; the economic, cultural and political differences between the Member States will be more pronounced than ever before in the history of European integration.

It is therefore essential that we preserve the effectiveness of the decision-making process which has helped to make the Union what it is today. In other words, a process which ensures that the Union's decisions reflect the political will of the representatives of a large majority of the Union's citizens while at the same time avoiding the need for unanimity in most fields, thereby combining legitimacy with a degree of flexibility. If the Union were to become less effective and less well equipped to act, the integration process would come to a halt. The new Member States would be joining a Union that was incapable of action and that was likely to be eventually replaced by other forms of integration capable of overcoming the inertia of a structure that had been ill-prepared for enlargement.

A firm commitment is therefore needed for reforming the decision-making process, in the sense of the arrangements for reaching decisions within the Council, considered from the point of view of the legitimacy of its decisions and the Union's capacity to act. In this respect, enlargement should not have any impact on the European Parliament.

This would mean that unanimity would be required only when there are serious and lasting reasons for doing so and that decision-making procedures will be made more coherent. It is also important to enhance the legitimacy of decisions taken by qualified majority, so that they are genuinely representative of the balance between the different Member States. Finally, the provisions on closer co-operation must be made more operational to enable certain Member States to go beyond the level of integration common to all members, within the institutional framework of the Union.

10. LIMITING THE USE OF UNANIMITY

The vast majority of decisions that have to be taken by the Council now require the approval of a qualified majority of the Member States. However, despite the amendments to the Treaties introduced by the Single European Act, the Maastricht Treaty and the Treaty of Amsterdam, a significant number of Council decisions still require unanimity, in some cases in conjunction with the co-decision procedure. Except, of course, in the cases where the Council decides by simple majority, the Commission proposes that the Conference limits the exceptions of unanimity and confirms that qualified majority is the general rule for decision-making in the Council.

It is essential that this principle be applied. When unanimity is required, the risk of deadlock increases exponentially with the number and diversity of the participants. A decision by qualified majority currently requires the support of at least 8 to 12 Member States.

The scope of qualified-majority voting has been progressively extended with each successive enlargement of the Union. However, this evolution has never followed any predetermined logic. This was true of the framing of the Treaty on European Union and the Treaty of Amsterdam. The Dutch Presidency tried to introduce logical criteria in Amsterdam, but the debate rapidly degenerated into a case by case approach. The result is neither fully coherent nor suited to the needs of an effective Union.

It is absolutely essential that during the next Conference clear and simple criteria be formulated so that the debate can focus on large categories of decision rather than individual cases. In this respect, the Presidency's report to the Helsinki European Council has shown the way.

For the purpose of defining these categories, the Commission proposes as a starting point the principle that, leaving aside cases where the Council decides by simple majority, **qualified-majority voting should be the rule and unanimity the exception[6]. It is therefore important to consider the categories of decision for which serious and lasting reasons warrant maintaining unanimity**, in the knowledge that unanimity in an enlarged Europe will make decision-making extremely difficult and, in the case of some policies, will mean the end of any serious prospect of deepening European integration.

The Commission has identified **five categories of provisions** for which serious and lasting reasons warrant making an exception to the general rule of qualified-majority voting. A list of provisions of the EC Treaty that would remain subject to unanimity by virtue of these criteria is given in Annex 1.[7] An indicative list of provisions of the EC Treaty, which would as a result require decision-making in the Council by qualified majority, is given in Annex 2.

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6 The Commission does not exclude the possibility to have recourse to a form of reinforced qualified majority, in certain cases, in a transitional manner.

7 The Commission has so far confined its analysis to the EC Treaty. Annexes 1 and 2 to this Opinion do not, therefore, include the legal bases of the Treaty on European Union, nor those provided for in the ECSC and Euratom Treaties, nor the other pieces of primary legislation (acts of accession, protocols). The Commission intends to present its proposals for the other pieces of primary legislation to the Conference at a later date.

(i) **Council decisions which must be adopted by the Member States in accordance with their constitutional rules**

A small number of provisions stipulate unanimous decision-making by the Council and adoption by the Member States, in accordance with their respective constitutional requirements. These decisions enter into force only after ratification by the Parliaments of the Member States. It would seem to be right to ensure unanimous agreement on such decisions between the Governments of the Member States at Community level before national ratification procedures are started. Article 269 EC on the system of own resources is an example of such provisions.

(ii) **Essential institutional decisions and decisions affecting the institutional balance**

Certain fundamental rules relating to the organisation and operation of the institutions, particularly those underpinning the institutional balance, are, where no direct provision is made in the Treaties, decided by the Council acting unanimously. These are undoubtedly provisions where there is a case for retaining unanimity. Examples are Article 290 EC on the languages of the institutions and Article 202 EC on the exercise of implementing powers by the Commission (comitology procedure).

Similarly, an essential provision for the institutional balance is Article 250(1) of the EC Treaty, which stipulates that the Council may not adopt an act constituting an amendment to a Commission proposal unless it is acting unanimously.[8]

(iii) **Decisions in the fields of tax and social security not related to the proper functioning of the internal market.**

Because they reflect the fundamental views of the national government on matters of economic and social policy, and solidarity, **tax** and **social security** heavily influence voters' domestic political choices. On a general level, this justifies maintaining the unanimity requirement for decisions by the Council in these fields. The Commission does not propose a global extension to qualified majority voting.

However, certain aspects of these two fields are inseparable from **the proper functioning of the internal market** and, in particular, the four fundamental freedoms (free movement of goods, persons, services and capital). Because of insufficient progress in the *acquis communautaire*, there are still serious impediments to the working of the internal market, as it notably results from the case law of the Court. On several occasions, the national measures, which unduly restrict the exercise of the internal market, have been regularly declared incompatible with the Treaty. It is unsatisfactory for the public to have to take legal action in order to obtain recognition of rights secured by the Treaties. At the same time, it is far from ideal for the Member States if Community law in this area is developed on an ad hoc basis by judgements of the Court of Justice rather than via the political process.

Nor do the annexes include those provisions of the EC Treaty that specify a decision "by common accord" of the Governments of the Member States and which, by their very nature, require their unanimous agreement, namely appointment of the Governing Council of the ECB (Article 112(2) EC), nomination of the Commission (Article 214(2) EC; the second paragraph of Article 215 EC), appointment of the members of the Court of Justice and Court of First Instance (Articles 223 and 225(3) EC), determination of the seat of the institutions (Article 289 EC).

8 As Article 250 EC is not strictly speaking a legal base, it does not appear in Annex 1.

A common approach is called for to remove such obstacles to the proper functioning of the internal market, particularly when these obstacles lead to discrimination, double taxation or tax avoidance. **The effectiveness requirement demands qualified-majority voting on these tax questions** in so far as it is necessary for the proper functioning of the internal market. **It is not therefore the intention to move towards general harmonisation of national systems, tax bases and tax rates.** The principle of subsidiarity is applicable in any event.

In addition, qualified-majority voting should be applied when legislation has already been harmonised, in order to simplify and modernise existing rules and ensure they are applied more uniformly. This applies in particular to the common VAT system and the movement of and controls on goods subject to excise duty.

The Commission proposes the adoption of the same approach for **social security**, where co-ordination of national legislation has existed for several decades (Regulation No 1408/71). For reasons of effectiveness, it should be possible to update this Regulation by qualified majority.

Finally, the Commission is firmly committed to fighting fraud, which has become an increasing problem with the removal of tax frontiers for goods and the liberalisation of capital movements. Qualified-majority voting should therefore also apply to measures aimed at preventing tax avoidance and tax fraud.

The approach advocated by the Commission requires a careful examination of the Treaty provisions concerned and their **redrafting** in order to identify within these articles the decisions, which should be subject to a qualified majority and those, which require unanimity. The Commission will present detailed proposals to this effect in due course.

(iv) Parallel internal and external decisions

Article 300 EC provides for parallelism between the type of majority applicable to internal legal bases and the decision-making procedure for the conclusion of international agreements. If the internal legal basis requires unanimity for a particular field, the Council will likewise be required to act unanimously when concluding agreements relating to this field. The Commission believes there is a case for maintaining this parallelism. However, the strict parallelism does not seem necessary when international agreements require the adoption of additional implementing measures. This applies to the case of co-operation agreements concluded in the framework of the ACP-EC Conventions, where a simplification of the decision-making methods for the adoption of internal rules of procedure would be desirable.

(v) Derogation's from common Treaty rules

The rules in the Treaty apply to all institutions and all Member States, as does the *acquis communautaire* developed on this basis. The derogations from this *acquis*, provided for by the Treaty in a number of highly exceptional cases, represent a retrograde step in terms of the objectives of the Union. The Commission believes it is right that such exceptions, which include the possibility, provided for in Article 88 EC, for the Council to declare a state aid measure that is in theory contrary to the Treaty compatible with the internal market, should continue to be subject to unanimity in the Council.

Commission proposals to the Conference:

- decision-making by qualified majority should be the rule;
- the categories of provision should be determined for which serious and lasting reasons warrant maintaining unanimity, by way of exception to the general rule of qualified-majority voting.

11. DECISION-MAKING PROCEDURES

The changes proposed in the previous section will have to be supplemented by a comprehensive review of decision-making procedures with a view to eliminating certain anomalies from the Treaty. It is vital for the smooth operation of the enlarged Union to ensure that provisions governing the various areas of activity are consistent, and it is important for European citizens that the decision-making structures should be simple and logical, and consequently easily understood. The review should focus on the links between qualified-majority voting and the co-decision procedure, and on elimination of the co-operation procedure, and should emphasise the European Parliament's participation in certain policies covered by the Treaty.

a. Link between qualified-majority voting and the co-decision procedure for legislative decisions

The European Parliament's participation in exercising legislative power by co-decision with the Council reinforces the democratic nature of Community action.[9] In many respects, co-decision in legislative matters would seem to be a necessary companion to decisions by qualified majority, since by its nature this type of decision will inevitably place some Member States in a minority. This is why, pursuant to the Maastricht and Amsterdam Treaties, today legislative decisions mainly depend on both qualified-majority voting and co-decision. A two-pronged effort is needed to eliminate certain anomalies and improve the consistency of decision-making procedures.

First of all, there are still four provisions in the Treaty (Articles 18, 42, 47 and 151 EC) where the co-decision procedure co-exists with unanimity. Making qualified-majority voting the rule would bring this situation to an end and would restore the usefulness of co-decision.

Secondly, decisions of a legislative nature adopted by a qualified majority must be associated with the co-decision procedure. This link will result in an extension of the scope of co-decision. It is believed, for the reasons of efficiency, that the Parliament will have to establish internal procedures with a fixed deadline allowing legislative decisions to be taken quickly. In addition, it will be necessary to define what is a legislative act. It is roughly defined here as rules of general scope, based directly on the Treaty and which determine the fundamental principles or general guidelines for any Community action, and the essential aspects to be implemented. The chosen solution for the writing of Article 37 in annex could be useful as a basis of reflexion to which the Commission will contribute during the course of the Conference.

The **current provisions** of the Treaty would all have to be reviewed. This extension of the scope of co-decision would, for instance, affect certain aspects of the common commercial policy, the common agricultural policy and common fisheries policy. Since they are legislation, the **common commercial policy rules**, such as basic anti-dumping and anti-subsidy rules, trade barrier defence arrangements and regulations laying down general import and export rules should be adopted by co-decision. The same applies to the legislative aspects of the **common agricultural policy and common fisheries policy**. As it said at the

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[9] Commission report under Article 189b(8) of the Treaty on the scope of the codecision procedure (SEC(96) 1225, 3 July 1996).

last Intergovernmental Conference, the Commission considers that the vast majority of measures adopted in this area are strictly concerned with management and do not qualify as legislation. On the other hand co-decision should be applied to a number of fundamental measures concerning the formulation and direction of the common agricultural policy and common fisheries policy.[10]

With a view to **qualified-majority voting becoming the rule**, it will have to be considered whether the provisions which require unanimity are, by reason of their legislative nature, suitable for the co-decision procedure. **The Commission has set out in Annex 2 (heading A) the provisions which might be concerned.**

In this context Article 67(2) of the EC Treaty should be mentioned. This particular provision provides that five years after the entry into force of the Amsterdam Treaty (i.e. after 1 May 2004) the Council can, acting unanimously, extend the co-decision procedure to all or some of the areas covered by Title IV of the EC Treaty. At this stage, the Commission is not proposing that the five-year period be shortened. However, if qualified-majority voting were the rule and a link established with co-decision, **decisions would have to be taken automatically by the co-decision procedure for all Title IV matters.**

b. Extending the scope of Article 133 to all services, investment and intellectual property rights

Under Article 133(5) of the EC Treaty the Council can, acting unanimously, extend the mechanisms of the common commercial policy to international negotiations and agreements on services and intellectual property. In the Commission's view this provision will not be suitable in future when there are twice as many Member States. With qualified-majority voting the rule, some changes would be needed to this part of Article 133, but the essential aspects of this complicated and uncertain decision-making procedure would be retained. The Commission would prefer a substantial amendment of the scope of Article 133 by extending it to services, investment and intellectual property rights. Article 133 EC should be redrafted accordingly.

c. Elimination of the co-operation procedure

In the Commission's view the **co-operation procedure** (Article 252 EC) which was the forerunner of co-decision should be eliminated. The Treaty of Amsterdam replaced the co-operation procedure by co-decision throughout the EC Treaty with the exception of certain provisions relating to economic and monetary union (Articles 99(5); 102(2); 103(2) and 106(2) of the EC Treaty. There is no longer any need to maintain this distinction between the provisions of EMU and the other provisions of the EC Treaty. In addition, the co-operation procedure should be eliminated for the sake of clarity and simplicity of the Treaties. The provisions in question should provide for co-decision where they concern the adoption of acts of a legislative nature. The Conference should consult the European Central Bank on institutional changes in the monetary area.

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[10] Commission report under Article 189b(8) of the Treaty on the scope of the codecision procedure (SEC(96) 1225, 3 July 1996, p. 12).

d. Competence of the European Parliament

In non-legislative matters, the European Parliament's participation in the decision-making process takes various forms, including assent. However, with respect **to certain provisions for the implementation of the policies of the Union, the Treaty currently does not provide for any action by Parliament**. The Commission considers this situation should be rectified.

Extending co-decision to legislative matters in the field of the common commercial policy would mean extending the consultation procedure under Article 300(3) of the EC Treaty to trade agreements with one or more States or international organisations. It would moreover be necessary to make sure that agreements with important economic and commercial implications worldwide could only be concluded following the assent of the European Parliament.

If it is to exercise this role in full knowledge of the facts, the European Parliament must be kept regularly informed of the progress of negotiations between the Community and one or more States or international organisations. This would require an adjustment of Article 133(3) of the Treaty.

Commission proposals to the Conference:

- a link should be established between qualified-majority voting and the co-decision procedure for all decisions of a legislative nature;
- the scope of Article 133 should be extended to all services, investment and intellectual property rights;
- the co-operation procedure should be eliminated;
- provision should be made for consultation of the European Parliament to be mandatory before commercial agreements are concluded between the Community and one or more States, or international organisations and assent of the Parliament before the conclusion of agreements with important economic and commercial implications worldwide.

12. DETERMINING THE QUALIFIED MAJORITY IN THE COUNCIL

a. The current system and the outlook

The **Council** represents the democratically elected Governments of the Member States, answerable to the national Parliaments.

Article 205 of the EC Treaty provides that, "Save as otherwise provided in this Treaty, the Council shall act by a majority of its members". But the authors of the original treaties took account of the fact that **the Member States were not demographically comparable**. The qualified-majority system based on distinctions between Member States was accordingly provided for to avert the risk of paralysis that is inherent in unanimity and to strengthen the democratic representativeness of Council decisions.

The authors of the Treaty opted for a system of **weighted votes** reflecting the population of the Member States, with a heavy correction for the less populous Member States so that the individuality of each country could be taken into account. The qualified majority threshold – the minimum number of votes required as a percentage of the total – was set at an intermediate level between the simple majority of the number of votes and unanimity. It has always been just above 70%**.** The effect of successive enlargements has been to preserve the original balance more or less, except as regards the democratic representativeness of decisions taken by qualified majority.[11]

The qualified majority has always represented a large **majority in terms of population** of the Member States supporting the decision. With the successive additions of nine new members, the threshold required for a qualified majority has risen slightly. The deliberate imbalance originally sought has also increased, to the detriment of the most populous Member States. The minimum population required for a qualified majority has thus passed

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[11] ***Evolution of the qualified majority in terms of the number of votes and of representativeness of the population: 1958-1995***

a	*b*	*c*	*d*	*e*	*f*	*g*	*h*
1958	6	17	12 (70.59%)	3	67.70%	2	34.83%
1973	9	58	42 (72.41%)	5	70.62%	2	12.31%
1981	10	63	45 (71.43%)	5	70.13%	2	13.85%
1986	12	76	54 (71.05%)	7	63.29%	3	12.12%
1995	15	87	62 (71.26%)	8	58.16%	3	12.05%

a- Year.
b- Number of Member States of the Community or Union.
c- Total votes.
d- Qualified majority (votes and percentage).
e- Minimum number of Member States required for a qualified majority.
f- Minimum population required for a qualified majority.
g- Minimum number of Member States required for a blocking minority.
h- Minimum population represented by a combination of votes constituting the smallest blocking minority.

from 67% (six Member States) to 70% (nine and ten Member States) and now 58% (fifteen Member States).

The effect of weighting the votes has been that the qualified majority always represents **at least half the Member States**.

Regarding the **blocking minority**, a qualified-majority Council decision can be blocked either by the three most populous Member States acting together or by a group of the less populous Member States representing, since 1973, between 12% and 13% of the total population.

Extrapolation (table, Annex 3) shows that, if the current system of weighting of votes of members of the Council is preserved, most of the parameters would remain fairly stable, with a regular decline in the representativeness of a qualified-majority decision in population terms.

When the Union reaches 28 Member States with a qualified-majority threshold of 102 out of 144 votes (70.83%), a decision might be taken by qualified majority, in an extreme situation, by a combination of States representing 51,35% of the total Union population. In a Union of 27 members[12] and with a qualified majority threshold at 95 out of 134 votes (70.90%), the percentage would be 50.20%. With a threshold of 94 out of 134 votes (70.15%), a decision could be taken by qualified majority by a combination of States representing only 46.41% of the Union population. True, in these extreme and probably theoretical cases, the agreement of 23 out of 27 or 28 Member States will be needed. But this decline in representativeness in terms of population is the **arithmetical outcome of enlargement if the current system of weighting and calculating the qualified majority are preserved as they stand**. The reason is that only three of the thirteen current applicant countries have a larger population than the average of the existing Member States.

b. Preserving the legitimacy of Council decisions in an enlarged Union

To offset the effects of enlargement, a simpler system more closely reflecting the relative weight of the Member States will have to be established.

Option 1. Re-weighting the votes of the Member States

If the relative weightings of the votes of the Member States are unchanged, the arrival of thirteen new countries, only three of which have a population in excess of the average of the existing Member States, will amplify the imbalances that have gradually emerged between populous and less populous Member States as each round of enlargement has its effect.

Re-weighting is consequently expressly mentioned in the Protocol on the Institutions with the prospect of enlargement of the European Union, annexed to the Amsterdam Treaty.

Two parameters need to be considered: the **number of votes** given to each member of the Council and the **threshold**, meaning the minimum number of votes, expressed as a percentage of the total, required for a decision. To define these parameters, **the objective must be to avoid making decision-making more difficult and to ensure that the**

[12] With all the countries that have opened or are due to open negotiations at the start of 2000.

qualified majority of Member States represents a percentage of the Union's total population that is close to the original balance.

To **avoid making decision-making more difficult**, **the threshold should be stabilised**, once and for all in the Treaty, eventually at less than the present level, in the range of 71%. The only decision to be taken at each accession thereafter would be the new parameter – the number of votes given to the acceding country.

To restore the representativeness of the qualified majority and reinstate the original balance, the **relative weight of the votes of the most populous Member States should be increased**. Re-weighting should have the effect that the qualified majority represents at least two thirds or so of the Union's total population.

But it should be noted that this re-weighting would no longer guarantee that a decision taken by qualified majority would involve at least half the total number of Member States, as is the case today. It might then be desirable to write into the Treaty a provision that a decision taken by qualified majority must be supported by at least half the Member States. This would effectively codify what has already been the arithmetical consequence of weightings ever since the original Treaties.

Option 2. Double simple majority

Whilst recognising its merits, the Commission underlines the complexity for the understanding of the citizens on re-weighting of votes. It is therefore preferable to include in the Treaty, in a clear and definitive way, the conditions for decision-making of the Council. This will provide for a readable, simple and democratic decision-making process in the Council. The Commission recommends to foresee that **decisions of qualified majority voting will be taken if** :

- **it had the support of a simple majority of Member States;**[13]

- **it represented a majority of the total population of the Union.**

Redefining the qualified majority in this way would be a token of transparency in relation to Europe's citizens.

This double majority is radically different from certain proposals examined by the preceding Intergovernmental Conference, whereby the qualified majority would require both a qualified majority of the population and a qualified majority of the number of votes expressed. The Commission considers that those proposals run counter to the general objective of simplicity and transparency and would, in addition, make decision-making far more complex and difficult.

The effect of the double simple majority would be to directly take account of the relative weight of the Member States in terms of population, which would be to the benefit of the most populous Member States. Their weight would by definition be maintained upon successive enlargements. Coupled with the obligation to combine at least half the Member

[13] But the Commission considers that the rule in the second subparagraph of Article 205(2), whereby a decision by qualified majority requires the votes of **at least two thirds** of the Member States if it is not taken on a Commission proposal, should be maintained.

States, the method would make it impossible for a few Member States with large populations to take a decision against a majority of smaller Member States. This latter condition puts all the Member States on an equal footing, irrespective of their size in demographic terms.

The practical difficulties of the double simple majority lie chiefly in the actual calculation of the qualified majority. There would have to be a definition of the population figures to be used: what reference year, what review intervals?

But, the double simple majority has the **advantage** of simplicity and transparency. Moreover, the system would not have to be modified with each new accession.

Commission proposals to the Conference:

- whilst recognising the merits of the system of re-weighting of votes, which would ensure that the qualified majority represents about two thirds of the Union's population, with no possibility for a decision to be taken by a minority of Member States, the Commission recommends to foresee in the Treaty that a decision taken by qualified majority requires the simple majority of Member States representing a majority of the Union's total population

13. CLOSER CO-OPERATION

The Amsterdam Treaty incorporated in the Treaties general provisions permitting the Member States, under certain conditions, to establish closer co-operation between themselves by making use of the institutions, procedures and mechanisms laid down by the Treaties (Articles 43 to 45 and 40 of the Treaty on European Union; Article 11 of the EC Treaty). There is no provision for closer co-operation in the field of common foreign and security policy, which does, however, provide for "constructive abstention" (second paragraph of Article 23(1) TEU).

The character of the forthcoming enlargement justifies making these new provisions as practicable as possible. The greater diversity within a larger Union must not be allowed to stand in the way of the wishes of some members to make use of the Union's institutional framework to cooperate more closely together.

The Commission does not recommend amending the basic conditions laid down in Article 11(1) of the EC Treaty and Article 43(1) of the Treaty on European Union. It considers it essential to preserve the Community "acquis" and the common basis for Community policies already developed by the fifteen Members. The provisions on closer co-operation should not be used to ease the requirements on future Member States. In some areas it will be necessary to agree on transition periods so that the new Member States can gradually apply the full *'acquis'* of the Union. On the other hand there can be no compromise on the content of this *'acquis'* or on the need to achieve this convergence. This lies at the very heart of the enlargement process.

On the other hand, the Commission proposes making two changes to the **formal conditions currently laid down by the Treaties** for the establishment of closer co-operation. The need to resort to arrangements for closer co-operation could increase with enlargement. We must ensure that Member States wishing to cooperate more closely together do not do so **outside** the institutional framework laid down by the Treaties, as happened for example with the Schengen Agreement before the Treaty offered them an alternative.

The first change relates to the minimum number of Member States needed to set up closer co-operation within the Union's institutional framework. The Treaty as it stands states that closer co-operation must concern at least a majority of Member States (Article 43(1)), which at the moment means a minimum of eight. **The Commission believes that the threshold of one third of Member States should be foreseen after enlargement.** The basic conditions governing closer co-operation are, in fact, strict enough to prevent such initiatives becoming too numerous and leading to excessive fragmentation of the Union – bearing in mind that the agreement of a qualified majority of Member States must be obtained for the establishment of this closer co-operation.

The second change consists of putting an end to the right of a Member State to request a unanimous decision in the European Council if it is opposed to the decision by a qualified majority of Member States authorising closer co-operation. In the larger Union such a veto would present too great an obstacle to the - essential - implementation of the mechanism for closer co-operation.

In addition to these two amendments, the Commission is proposing that in future the Treaty should allow increased co-operation in the field of common foreign and security policy. The

minimum number of Member States should be fixed at one third of all Member States and the basic conditions governing such co-operation should be defined without prejudice to the integration already achieved in this area.

Commission proposals to the Conference :

- Member States should no longer be able to refer authorisation to establish closer co-operation to the European Council for a unanimous decision (deletion of the second subparagraph of Article 11(2) of the EC Treaty and of the second subparagraph of Article 40(2) of the EU Treaty);
- fix the minimum number at one third of Member States needed to establish closer co-operation under the Treaty.
- it should be possible in certain circumstances to establish closer co-operation in the field of common foreign and security policy.

CONCLUSION

The Union must improve the way it works. It must equip itself to take up the challenge of enlargement. By embarking on genuine in-depth reform of its institutions, it has to demonstrate that it has the political will to face up to the responsibilities which it intends to take on in opening its doors to new Member States.

The new commitments recently entered into with the applicant countries impose the need for a deep-seated and durable adaptation of the Union's institutional architecture.

The institutional structure that will emerge both from this Intergovernmental Conference and from current work on the review of the way the institutions operate must be strong enough to avert the risk of paralysis of Community activity and at the same time flexible enough to allow continued progress towards our goal of European integration. **What the Conference decides will set the framework for the political Europe of tomorrow.**

The Commission will fight the dangerous illusion that major institutional reforms can wait for a subsequent Conference. A second Conference would risk delaying the enlargement which the reform is to prepare for.

The plan is to conclude this Conference at the end of 2000. It cannot allow itself to conclude with unanswered questions. We have a duty to achieve results: the Union's credibility depends on this. That duty is also incumbent on us because of the hopes that our citizens are placing in this European area of peace and solidarity that they wish to share and understand better. **The reform, which the Conference will decide on, must be an opportunity for real dialogue with the people**.

The European institutions, and above all the Member States, should engage in this dialogue. The Commission will devote all the resources it can to launching a genuine debate on institutional reform and the future of Europe.

The Helsinki European Council determined ground rules for involving the European Parliament closely and concretely in the proceedings of this Conference. **It is the Commission's wish that consultations with Parliament's President and Members should be as open and as constructive as possible** throughout the negotiations. It will welcome the proposals made by Parliament in this co-operative and open-minded spirit.

In the same spirit, **the Commission will play its part in the necessary process of explanation and dialogue with the national Parliaments**.

The chief purpose of the reform that is being launched is to strengthen the structures of an enlarged Europe. There will be **regular exchanges of views with the applicant countries** in existing forums, as agreed at the Helsinki European Council. The member countries of the European Economic Area will also be briefed on the progress of negotiations.

Draft articles

	EC Treaty articles
THE EUROPEAN PARLIAMENT	189, 190
THE COMMISSION	215, 213, 217, 219
THE COURT OF AUDITORS	247
THE ECONOMIC AND SOCIAL COMMITTEE	257, 258, 259, 262
THE COMMITTEE OF THE REGIONS	263
DECISION-MAKING PROCEDURES	37, 67, 133, 300
CLOSER CO-OPERATION	43 TEU, 40 TEU, 11

THE EUROPEAN PARLIAMENT

Current text of EC Treaty

ARTICLE 189

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

The number of Members of the European Parliament shall not exceed seven hundred.

ARTICLE 190

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.

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

Belgium	25
Denmark	16
Germany	99
Greece	25
Spain	64
France	87
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Austria	21
Portugal	25
Finland	16
Sweden	22
United Kingdom	87.

Draft amendment

ARTICLE 189

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

The number of Members of the European Parliament shall not exceed seven hundred.

ARTICLE 190

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.

2. **The European Parliament shall consist of:**

a) [...] representatives elected on lists presented for the entire territory of the Community;

b) [...] representatives elected in each of the Member States, distributed as follows:

Belgium	**[...]**
Denmark	**[...]**

etc.

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3 to 5. (...)

In the event of amendments to this paragraph, the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the States brought together in the Community.

3 to 5. (...)

THE COMMISSION

Current text of EC Treaty

ARTICLE 215

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

The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President.

Save in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced.

Draft amendment

ARTICLE 215

A Member of the Commission shall resign if asked to do so by the President. Apart from normal replacement or death, the duties of a Member of the Commission shall end when he resigns, voluntarily or **at the request of the President or when** compulsorily retired.

The vacancy thus caused shall be filled for the remainder of the Member's term of office by a new Member. **This new Member, nominated by common accord by the President and the governments of the Member States, shall be** appointed by common accord of the governments of the Member States. The Council may, acting unanimously, decide that such a vacancy need not be filled.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in Article 214(2) shall be applicable for the replacement of the President.

Save **in the case of resignation at the request of the President or** in the case of compulsory retirement under Article 216, Members of the Commission shall remain in office until they have been replaced.

Membership of the Commission - Option 1

Current text of EC Treaty	Draft amendment
ARTICLE 213	ARTICLE 213
1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.	1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.
The number of Members of the Commission may be altered by the Council, acting unanimously.	**(*deleted*)**
Only nationals of Member States may be Members of the Commission.	**(*deleted)***
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.	**The Commission shall consist of a national of each of the Member States in turn, in the following order of Member States: .....** **(*If this list is amended on the occasion of future accessions, the order of the Member States will have to be established in such a way as to ensure a balanced membership both in geographical terms and in terms of the size of the Member States.***
2. (...)	2. (...)

Membership of the Commission - Option 2

Current text of EC Treaty

ARTICLE 213

1. The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

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. (...)

ARTICLE 217

The Commission may appoint a Vice-President or two Vice-Presidents from among its Members.

Draft amendment

ARTICLE 213

1. The Commission shall consist of **a national of each of the Member States**, who shall be chosen on the grounds of his general competence and whose independence is beyond doubt.

(deleted)

(deleted)

(deleted)

2. (...)

ARTICLE 217

The President shall determine the political orientations of the Commission.

The President may appoint Vice-Presidents from among the Members of the Commission, with responsibility for co-ordination and management of the Commission's activities in a specific area.

The President may entrust to Members of the Commission, for the duration of their term of office or part thereof, specific tasks or missions, with administrative departments to support them if necessary.

ARTICLE 219

The Commission shall work under the political guidance of its President.

The Commission shall act by a majority of the number of Members provided for in Article 213.

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

ARTICLE 219

(deleted following reformulation of Article 217).

The Commission shall act by a majority of the number of Members provided for in Article 213.**Where votes are evenly divided, the President shall have a casting vote.**

A meeting of the Commission shall be valid only if the number of Members laid down in its Rules of Procedure is present.

THE COURT OF AUDITORS

Current text of EC Treaty

ARTICLE 247

1. The Court of Auditors shall consist of 15 Members.

2. 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.

3. 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.

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 number for a term of three years. The President may be re-elected.

4. to 9. (...)

Draft amendment

ARTICLE 247

1. The Court of Auditors shall consist of **twelve** members.

2. 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.

3. The Members of the Court of Auditors shall be appointed for a term of six years by the Council, acting **by qualified majority**(*) after consulting the European Parliament.

Members shall be eligible for reappointment every three years. There shall be a partial replacement of the Members.

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

4. to 9. (...)

(*) Consequence of qualified-majority voting becoming the general rule.

THE ECONOMIC AND SOCIAL COMMITTEE

Current text of EC Treaty

ARTICLE 257

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 258

The number of members of the Economic and Social 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
Austria	12
Portugal	12
Finland	9
Sweden	12
United Kingdom	24

Draft amendment

ARTICLE 257

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

The Committee shall consist of representatives of the various categories **of civil society.**

ARTICLE 258

The Economic and Social Committee shall consist of (….) members.

(*deletion of distribution by Member State)*

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 may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.

The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

ARTICLE 259

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

The members of the Committee shall be appointed by the Council, acting **by qualified majority(*) .** Their appointments shall be renewable.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of the Community.

The Council, acting by a qualified majority, shall determine the allowances of members of the Committee.

ARTICLE 259

The Member States and organisations representing civil society at the European level may present candidates for membership of the Committee. The Council, acting by a qualified majority on a proposal from the Commission after consulting the European Parliament, shall determine detailed rules for the designation of members of the Committee.

The Council, after consulting the Commission, shall appoint the members of the Committee, taking account of the need to ensure adequate representation of the various categories of **civil society and to ensure geographical balance**.

(*) Consequence of qualified-majority voting becoming the general rule.

ARTICLE 262

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. It may issue an opinion on its own initiative in cases in which it considers such action 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 one month from the date on 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 specialised section, together with a record of the proceedings, shall be forwarded to the Council and to the Commission.

The Committee may be consulted by the European Parliament.

ARTICLE 262

The Committee shall give its opinion on a legislative proposal from the Commission or on any other question where it considers such action appropriate(**). The Committee may also be consulted by the European Parliament, the Council or by the Commission.

The European Parliament, 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 one month from the date on 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 specialised section, together with a record of the proceedings, shall be forwarded **to the European Parliament,** to the Council and to the Commission.

(*deleted*)

(**) The treaty provisions providing for mandatory consultation will have to be adapted.

THE COMMITTEE OF THE REGIONS

Current text of EC Treaty

ARTICLE 263

A Committee consisting of representatives of regional and local bodies, hereinafter referred to as 'the Committee of the Regions', and is hereby established with advisory status.

The number of members of the Committee of the Regions shall be as follows:

Belgium	12
Denmark	9
Germany	24
Greece	12
Spain	21
France	24
Ireland	9
Italy	24
Luxembourg	6
Netherlands	12
Austria	12
Portugal	12
Finland	9
Sweden	12
United Kingdom	24

The members of the Committee and an equal number of alternate members shall be appointed for four years by the Council acting unanimously on proposals from the respective Member States. Their term of office shall be renewable. No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of Community..

Draft amendment

ARTICLE 263

A Committee consisting of representatives of regional and local bodies, hereinafter referred to as 'the Committee of the Regions', and is hereby established with advisory status.

The number of members of the Committee provided for in respect of each Member State shall be one third of the number of representatives elected to the European Parliament in each Member State, rounded up to the next whole number where necessary.

The members of the Committee and an equal number of alternate members shall be appointed for four years by the Council acting **by a qualified majority**[(*)] on proposals from the respective Member States. Their term of office shall be renewable. No member of the Committee shall at the same time be a Member of the European Parliament.

The members of the Committee may not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the general interest of Community.

(*) consequence of qualified majority voting becoming the general rule.

DECISION-MAKING PROCEDURES

Current text of EC Treaty

ARTICLE 37

1. (...)

2. (...)

On a proposal from the Commission and after consultation of the European Parliament, the Council acting by qualified majority voting make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. (...)

4. (...)

Draft amendment

ARTICLE 37

1. (...)

2. (...)

The Council shall, acting in accordance with the procedure referred to in Article 251, adopt the measures of a fundamental nature relating to

a) any common market organisation ;
b) the application of the provisions of the Chapter relating to rules on competition, to production of and trade in agricultural products;
c) the setting up of one or more guidance and guarantee funds;
d) veterinary and phytosanitary fields, protection of animal welfare, animal feed and seeds;
e) rural development in the agricultural sector and structural actions in the fisheries sector;
f) the quality of agricultural products;
g) the community rules for fisheries and aquaculture.

Measures which are of general political importance for the conception and orientation of the common agricultural policy or common fisheries policy and have important budgetary implications shall be deemed to be of a fundamental nature.

The measures referred to in this paragraph shall be adopted and reviewed in a pluriannual perspective.

3. (...)

4. (...)

ARTICLE 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

— the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council;

— the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this Title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

4. By derogation from paragraph 2, measures referred to in Article 62(2)(b) (ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting in accordance with the procedure referred to in Article 251.

ARTICLE 67

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.

2. After this period of five years:

– the Council shall act **in accordance with the procedure referred to in Article 251**;

— the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to **...** adapting the provisions relating to the powers of the Court of Justice.

3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b) (i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

(*deleted*)

ARTICLE 133

1. 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 liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

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

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with 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.

The relevant provisions of Article 300 shall apply.

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

5. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on services and intellectual property insofar as they are not covered by these paragraphs.

ARTICLE 133

1. 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 **relating to trade in goods and services, investment and intellectual property**, the achievement of uniformity in measures of liberalisation, export policy and rights to protect trade such as those to be taken in the event of dumping or subsidies.

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

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with 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. **The Commission shall regularly inform the European Parliament of the conduct of such negotiations.**

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority. **The procedure referred to in Article 251 shall apply to the adoption of instruments of general scope defining the principal components of the common commercial policy to be implemented.**

(*deleted*)

ARTICLE 300

1. (...)

2. (...)

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

(…)

4. to 7. (...)

ARTICLE 300

1. (...)

2. (...)

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

(…)

4. to 7. (...)

CLOSER CO-OPERATION

Current text of treaties

ARTICLE 43 TEU

1. Member States which intend to establish closer co-operation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the co-operation:

(a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;

(b) respects the principles of the said Treaties and the single institutional framework of the Union;

(c) is only used as a last resort, where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein;

(d) concerns at least a majority of Member States;

(e) does not affect the ' acquis communautaire` and the measures adopted under the other provisions of the said Treaties;

(f) does not affect the competences, rights, obligations and interests of those Member States which do not participate therein;

(g) is open to all Member States and allows them to become parties to the co-operation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;

(h) complies with the specific additional criteria laid down in Article 11 of the Treaty establishing the European Community and Article 40 of this Treaty, depending on the area concerned, and is authorised by the Council in accordance with the procedures laid down therein.

2. (...)

Draft amendment

ARTICLE 43 TEU

1. Member States which intend to establish closer co-operation between themselves may make use of the institutions, procedures and mechanisms laid down by this Treaty and the Treaty establishing the European Community provided that the co-operation:

(a) is aimed at furthering the objectives of the Union and at protecting and serving its interests;

(b) respects the principles of the said Treaties and the single institutional framework of the Union;

(c) is only used as a last resort, where the objectives of the said Treaties could not be attained by applying the relevant procedures laid down therein;

(d) concerns at least **one third of** Member States;

(e) does not affect the ' acquis communautaire` and the measures adopted under the other provisions of the said Treaties;

(f) does not affect the competences, rights, obligations and interests of those Member States which do not participate therein;

(g) is open to all Member States and allows them to become parties to the co-operation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;

(h) complies with the specific additional criteria laid down in Article 11 of the Treaty establishing the European Community and Article 40 of this Treaty, depending on the area concerned, and is authorised by the Council in accordance with the procedures laid down therein.[*]

2. (...)

[*] A new Article will have to be envisaged to authorise closer co-operation in the common foreign and security policy and to determine the conditions applicable to it.

ARTICLE 40 TEU

1. Member States which intend to establish closer co-operation between themselves may be authorised, subject to Articles 43 and 44, to make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the co-operation proposed:

(a) respects the powers of the European Community, and the objectives laid down by this Title;

(b) has the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority at the request of the Member States concerned and after inviting the Commission to present its opinion; the request shall also be forwarded to the European Parliament.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

(...)

3. to 5. (...)

ARTICLE 40 TEU

1. Member States which intend to establish closer co-operation between themselves may be authorised, subject to Articles 43 and 44, to make use of the institutions, procedures and mechanisms laid down by the Treaties provided that the co-operation proposed:

(a) respects the powers of the European Community, and the objectives laid down by this Title;

(b) has the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority at the request of the Member States concerned and after inviting the Commission to present its opinion; the request shall also be forwarded to the European Parliament.

(*deleted*)

(...)

3. to 5. (...)

ARTICLE 11 EC

1. Member States which intend to establish closer co-operation between themselves may be authorised, subject to Articles 43 and 44 of the Treaty on European Union, to make use of the institutions, procedures and mechanisms laid down by this Treaty, provided that the co-operation proposed:

(a) does not concern areas which fall within the exclusive competence of the Community;

(b) does not affect Community policies, actions or programmes;

(c) does not concern the citizenship of the Union or discriminate between nationals of Member States;

(d) remains within the limits of the powers conferred upon the Community by this Treaty; and

(e) does not constitute a discrimination or a restriction of trade between Member States and does not distort the conditions of competition between the latter.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

If a member of the Council declares that, for important and stated reasons of national policy, it intends to oppose the granting of an authorisation by qualified majority, a vote shall not be taken. The Council may, acting by a qualified majority, request that the matter be referred to the Council, meeting in the composition of the Heads of State or Government, for decision by unanimity.

(...)

3. à 5. (...)

ARTICLE 11 EC

1. Member States which intend to establish closer co-operation between themselves may be authorised, subject to Articles 43 and 44 of the Treaty on European Union, to make use of the institutions, procedures and mechanisms laid down by this Treaty, provided that the co-operation proposed:

(a) does not concern areas which fall within the exclusive competence of the Community;

(b) does not affect Community policies, actions or programmes;

(c) does not concern the citizenship of the Union or discriminate between nationals of Member States;

(d) remains within the limits of the powers conferred upon the Community by this Treaty; and

(e) does not constitute a discrimination or a restriction of trade between Member States and does not distort the conditions of competition between the latter.

2. The authorisation referred to in paragraph 1 shall be granted by the Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.

(*deleted*)

(...)

3. to 5. (...)

Annex 1

List of provisions on which unanimous votes would continue to be taken, by way of derogation from the principle of qualified-majority voting

1) Council Decisions which have to be adopted by the Member States in accordance with their constitutional requirements

- additional rights for European citizens (Article 22 EC);
- uniform procedure for elections to the European Parliament (Article 190(4) EC);
- provisions relating to the own resources system (Article 269 EC).

2) Essential institutional decisions and those affecting the institutional balance(*)

- adapting the provisions relating to the powers of the Court in the area of freedom, security and justice (Article 67(2) EC)
- measures and Community financial assistance in the event of severe difficulties (Article 100(1) and part of (2) EC)
- provisions replacing the Protocol on the excessive deficit procedure (Article 104(14) EC)
- amending the Statute of the ESCB (Article 107(5) EC)
- setting the rate at which the euro is substituted for a national currency (Article 123(5) EC)
- laying down the principles and rules governing the conferring of implementing powers (Article 202 EC)
- increasing the number of members of the Court of Justice and of Advocates-General (Articles 221 and 222 EC) (**)
- composition of the Court of First Instance (Article 225(2) EC)(**)
- determining the classes of action or proceeding to be heard by the Court of First Instance (Article 225(2) EC)
- amending Title III of the Statute of the Court of Justice (second paragraph, Article 245 EC) (**)
- approving the Rules of Procedure of the Court of Justice and the Court of First Instance (third paragraph, Article 245 and Article 225(4) EC)(**)
- the languages of the institutions (Article 290 EC)

(*) Decisions on changing the number of Members of the Commission (Article 231(1) EC) and on not replacing a Member of the Commission (second paragraph of Article 215 EC) will have to be reviewed in the light of the rules governing the composition of the Commission.

(**) The eventual application of qualified majority voting for provisions relating to the composition of the Court of Justice (Articles 221, 222 and 225 (2) EC amending Title 111 of the Statute of the Court and approving the rules of procedure of the Court of First Instance (Articles 245 and 225 (4) will be re-examined in the eventual contribution of the Commission on the Court of Justice.

- taking of measures to attain one of the objectives of the Community where the Treaty has not provided the necessary powers (Article 308 EC)

3) Decisions in fields of taxation and social security not related to the proper functioning of the internal market

- harmonisation of legislation concerning certain forms of taxation (redrafting of Articles 93 and 95 EC)

- harmonisation of legislation for social security (redrafting of first indent of Article 137(3) EC)

4) Parallel internal and external decisions

- agreements on the exchange rates of the euro against foreign currencies (Article 111(1) EC)

- association of overseas countries and territories (Article 187 EC)

- conclusion of agreements requiring internal unanimity (Article 300(2) EC)

- association agreements (Articles 300(2) and 310 EC)

5) Derogation's from the common rules of the Treaty

- introduction of restrictions on the movement of capital between Member States and non-member countries (Article 57(2) EC)

- derogation from the standstill clause in relation to transport (Article 72 EC)

- compatibility of aid with the common market (Article 88(2) EC)

Annex 2

Effects of applying the principle of qualified-majority voting

The legal bases in respect of which the Council would henceforth take decisions by qualified majority

A. legislative measures (to be decided on by the co-decision procedure)[*]

- measures to combat discrimination on grounds of sex, race etc. (Article 13 EC)
- facilitation of the exercise of the rights to move and reside freely (Article 18 EC), *already a co-decision matter*
- co-ordination of the legislation on social security for workers (Article 42 EC), *already a co-decision matter*[**]
- taking up and pursuing activities as self-employed persons, amending the existing legislative principles (Article 47(2) EC, *already a co-decision matter*
- measures to establish the area of freedom, security and justice (Article 67 EC), *redrafting of the Article so that, after the transitional period of five years, the co-decision procedure will automatically apply to general legislative rules in all the areas of Title IV*
- principles of the regulatory system for transport which would be liable to have an effect on the standard of living in certain areas, operation of facilities (Article 71(2) EC)
- measures in the social policy field (Articles 137(3) and 139(2) EC), *unless the provisions relating to social security are redrafted*
- certain environment policy provisions (Article 175(2) EC)
- Structural Funds and the Cohesion Fund (Article 161 EC) and other specific actions to bring about economic and social cohesion (third paragraph, Article 159 EC)
- Financial Regulation (Article 279 EC)

B. Other measures

- extension of the application of the common commercial policy to all services, to investments and to intellectual property rights (Article 133 EC), *redrafting of the Article so that qualified majority voting will apply directly to these fields and so that co-decision will apply to general unilateral rules of a legislative nature in the field of commercial policy*
- culture (Article 151 EC) *already a co-decision matter*

(*) Article 94 EC can be removed when the articles on taxation have been redrafted, as it is no longer used for anything except tax harmonisation (the two other exceptions to the application of Article 95 EC referred to in the second paragraph of Article 94, the free movement of persons and workers' rights and interests, are governed by other Treaty provisions).

(**) This provision should be redrafted to cover not only all migrant workers but all European citizens who exercise their right to move and reside freely within the Union.

- industrial policy (Article 157 EC)

- arms, munitions and war material (Article 296 EC)

C. Institutional provisions

- right to vote in elections to the European Parliament and municipal elections (Article 19 EC)

- conferring on the ECB specific tasks relating to prudential supervision (Article 105(6) EC)

- external representation in the context of EMU (Article 111(4) EC)

- measures required for the introduction of the euro (Article 123(4) EC)

- assigning to the Commission tasks in connection with social policy (Article 144 EC)

- approval of the regulations governing the performance of their duties by Members of the European Parliament (Article 190(5) EC)

- laying down the order in which the office of President of the Council is held (Article 203 EC)

- appointment of the Secretary-General and Deputy Secretary-General of the Council (Article 207(2) EC)

- appointment of members of the Court of Auditors (Article 247(3) EC)

- appointment of members of the Economic and Social Committee (Article 258 EC)

- appointment of members of the Committee of the Regions (Article 263 EC)

D. Provisions which will require partial redrafting to distinguish between matters decided by qualified majority and those which will still be decided by unanimous vote

- harmonisation of legislation on certain forms of taxation (redrafting of Articles 93 and 95 EC)

- measures in the social security field (redrafting of the first indent of Article 137(3) EC)

Annex 3

Extrapolation of the present system on the composition of the European Parliament and the Commission and for the weighting of votes in the Council

Extrapolation of the present system on the composition of the European Parliament and the Commission and for the weighting of votes in the Council

Member State	Population (million inhabitants)	Population (%)	EP Seats	Council Votes	Commission
Belgium	10,213	1,87%	25	5	1
Denmark	5,313	0,97%	16	3	1
Germany	82,038	15,04%	99	10	2
Greece	10,533	1,93%	25	5	1
Spain	39,394	7,22%	64	8	2
France	58,966	10,81%	87	10	2
Ireland	3,744	0,69%	15	3	1
Italy	57,612	10,56%	87	10	2
Luxembourg	0,429	0,08%	6	2	1
Netherlands	15,760	2,89%	31	5	1
Austria	8,082	1,48%	21	4	1
Portugal	9,980	1,83%	25	5	1
Finland	5,160	0,95%	16	3	1
Sweden	8,854	1,62%	22	4	1
United Kingdom	59,247	10,86%	87	10	2
TOTAL	**375,325**		**626**	**87**	**20**
Bulgaria	8,230	1,51%	21	4	1
Cyprus	0,752	0,14%	6	2	1
Estonia	1,446	0,27%	7	3	1
Hungary	10,092	1,85%	25	5	1
Latvia	2,439	0,45%	10	3	1
Lithuania	3,701	0,68%	15	3	1
Malta	0,377	0,07%	6	2	1
Poland	38,667	7,09%	64	8	2
Czech Republic	10,290	1,89%	25	5	1
Romania	22,489	4,12%	44	6	1
Slovakia	5,393	0,99%	16	3	1
Slovenia	1,978	0,36%	9	3	1
Turkey	64,385	11,80%	89	10	2
TOTAL	**545,564**	**100 %**	**963**	**144**	**35**

Note statistique: Based on Eurostat figures for 1999, except for Malta (1998) and Turkey (national figures – IMF) Estimate: Germany, United Kingdom and Turkey. Provisional: France and Ireland

Attention:

1. This table is only for illustrative purposes. It in no way commits the Commission.
2. For the purpose of clarification, it should be noted that the current population figures are different to those at the time of the decision on the number of seats in the European Parliament and the number of votes in the Council.