

THE AMSTERDAM TREATY THE EUROPEAN UNION ON THE EVE OF 21st CENTURY*

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Introduction***

The Maastricht Treaty on European Union, which had been signed on 7 February 1992, marked a significant step towards a more integrated Europe. However, there were several problems during the ratification stage, so the Treaty could be effective as of 1 November 1993. Only a few years later, further treaty revision was on the agenda of the Union and the 1996 Intergovernmental Conference led to the signing of a new treaty in Amsterdam in June 1997.

The aim of the European leaders was to turn the 15-member Union from a basically "economic club" to a "global political power." In a new world order, with a unified Germany and democratic Central and Eastern European states, European affairs would be significantly transformed, as well. This meant deepening within the European Union, together with enlargement towards the East.

In a Union which was ready to embrace Central and Eastern Europe, one of the major problems was to achieve institutional reform. Thus, power-sharing among the Member States and voting procedures turned out to be critical matters. There were other important areas of discussion as well, such as, Justice and Home Affairs, employment and social policy, Common Foreign and Security Policy.

* See the content and list of abbreviations at the end of this study.

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After heated debates in Amsterdam, a new Treaty was agreed upon. Many people have regarded it as a modest product and claimed that the European leaders had to put the toughest issues aside in order to reach a compromise. Nevertheless, the Amsterdam Treaty deserves a great deal of attention if we would like to understand how the European Union will work in the future.

Since Turkey is the oldest Associate Member of the European Union, which aims to achieve full membership in the future, it is necessary for the Turkish scholars to analyse the contents of the Amsterdam Treaty carefully. Three young and dedicated research assistants, Münevver Cebeci, Rana İzci and Yonca Kaya Özer, who work at Marmara University EC Institute, have recently completed an in-depth analysis of the Treaty. Their work has been presented in this issue of Marmara Journal of European Studies. I believe it will provide a useful insight to all the researchers and students of European Affairs.

Section I: Freedom, Security and Justice

Chapter 1. Fundamental Rights and Non-Discrimination

The first and the most important amendment is made under the title: "General Principles Underlying the Union", in Article F of the TEU by the Amsterdam Treaty. In this amendment, it is stated that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law; principles which are common to the Member States.

The new fourth paragraph in the Preamble to the TEU is also declared as "Confirming their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961, and in the 1989 Community Charter on the Fundamental Social Rights of Workers."

Under the heading: "Action in the Event of a Breach by a Member State of the Principles on which the EU is Founded" two new articles are introduced. One of these articles is the new Art. Fa in the TEU which states that the Council, acting by unanimity on a proposal by one third of the Member States or by the Commission may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article F(1) (i.e., liberty democracy, respect for human rights and fundamental freedoms and the rule of law). For such determination, the

Council has to obtain the assent of the EP. Furthermore, these procedures may be started only after inviting the Government of the Member State concerned to submit its observations.

Here, the important terms are "serious" and "persistent". These terms are significant in the sense that the breach of the stated principles must be of a serious nature; i.e., engendering a serious harm; and must be persistent in the sense that the breach must show a continuity, and exceed a particular case and extend to a general type of behavior.

Upon a determination that such acts have been committed by the State in question, the Council is entitled to decide, acting by a qualified majority, to suspend some of the rights deriving from the application of the Treaty to the State, including the voting rights of the representatives of the government of that Member State in the Council. It is further stated that the Council, in doing so, should take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons. However, it should also be kept in mind that in any case, the Member States' obligations under the Treaty would be binding on that State; i.e., despite the suspension of its rights, the state has to fulfill all of its obligations under the Treaty.

The Council is also given the power to decide (acting by qualified majority) to vary or revoke measures taken under Article Fa(2) of the Amsterdam Treaty, in response to changes in the situation which led to their imposition.

In case of such a serious breach, the Council is entitled not to take into account the vote of the representative of the Member State concerned. Furthermore, abstentions also do not prevent the adoption of decisions referred to in the Article Fa (1) of the Amsterdam Treaty. A qualified majority is required for such a decision to be taken as the same proportion of the weighted votes of the members of the Council concerned. These provisions also apply in the event of voting rights being suspended pursuant to Article Fa (2).

The EP is also entitled to act by a two thirds majority of the votes cast, representing a majority of its members in such a case.

Article 236 of the TEC which had been repealed by the Maastricht Treaty is replaced by a new Article 236 in the Amsterdam Treaty. This article, in fact, reiterates the suspension procedure of the Article Fa in the TEU. The Council is again entitled to decide by qualified majority and, by way of derogation from Articles 148 and 189a (1), here; the term "qualified majority" refers to the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 148 (the respective votes of the Member States).

On “respect by any state applying to join the Union for the fundamental principles on which it is founded”; the Amsterdam Treaty makes a supplement to the first sentence of Article O of the TEU, calling that any European State which respects the principles set out in Article F (1) may apply to become a member of the Union. The remainder of the article remains unchanged.

On “the status of churches and non-confessional organizations”, the Conference made a declaration calling for the EU to respect and not prejudice the status under national law of churches and religious associations or communities in the Member States. The EU should equally respect the status of philosophical and non-confessional organizations.

Similarly, with regard to “the abolition of the death penalty”, the Conference declared that the Member States recalled that Protocol No. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 and which had been signed and ratified by a majority of Member States, provided for the abolition of the death penalty. Accordingly, they noted the fact that since the signing of Protocol No. 6 on 28 April 1983, the death penalty had been abolished in most of the Member States of the EU and had not been applied in any of them.

Under the heading “Non-discrimination”, a new article, Article 6a, is added by the Amsterdam Treaty to the TEC, which provides that the Council, acting unanimously, on a proposal from the Commission and after consulting the EP, might take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. These actions should not impair the other provisions of the Treaty.

The Conference also agreed on a Declaration to the Final Act regarding “persons with a disability”, calling that in drawing out measures under Article 100a (on harmonization of laws), the institutions of the EC should take into account the needs of persons with a disability.

With respect to “equality of men and women”, the Amsterdam Treaty supplements Article 2 of the TEC to the effect that the EC should also promote equality of men and women in addition to promoting the standard of living and a high level of employment etc. Furthermore, the Amsterdam Treaty adds a new paragraph to Article 3 of the TEU, requiring that in all activities referred to in Article 3, the EC should aim to eliminate inequalities, and to promote equality between men and women.

A new article, Article 213b, is inserted in the TEC by the Amsterdam Treaty in order to arrange for the protection of individuals with regard to the processing and free movement of personal data. Accordingly, from 1999, Community acts on this issue should apply to the institutions and bodies set up by or on the basis of the Trea-

ty. Pursuant to this provision, before the date referred to in paragraph one, the Council is entitled to establish an independent supervisory body responsible for monitoring the application of such Community acts to EC institutions and bodies and to adopt any other relevant provisions as appropriate.

Chapter 2. Progressive Establishment of An Area of Freedom, Security and Justice

On "the progressive establishment of an area of freedom, security and justice", the over-arching objectives of Treaty provisions on freedom, security and justice are determined by the amended form of Article B in the TEU. The fourth indent of Article B provides for the maintenance and the development of the EU as an area of freedom, security and justice. Accordingly, in the EU, the free movement of persons will be assured in conjunction with respect to external borders controls, immigration, asylum and the prevention and combating of crime.

Under a new title which will be inserted in the TEC, the Amsterdam Treaty includes new provisions on "free movement of persons, asylum and immigration". Article A under this title refers to the progressive establishment of an area of freedom, security and justice. Therefore, the Council is required to adopt, within five years after the entry into force of the Treaty, measures pursuant to Article 7a, in conjunction with directly related flanking measures with respect to external borders controls, asylum and immigration. The Council is further required to act in accordance with the provisions of Article B(2) and (3), C(1) (a) and (2) (a). The Council also has to adopt measures to prevent and combat crime in accordance with the provisions of Article K (3) (e) of the TEU.

The Council is also under the obligation to adopt other measures in the fields of asylum, immigration, judicial cooperation in civil matters, administrative cooperation, police and judicial cooperation in criminal matters, according to the provisions set out under this title and in the Treaty as a whole.

Further, a declaration on "the preservation of the level of security provided by the Schengen Acquis" is also adopted in the IGC, within which the Members agreed that measures to be adopted by the Council should provide at least the same level of protection and security as under the aforementioned provisions of the Schengen Convention. These measures will have the effect of replacing provisions on the abolition of checks at common borders contained in the 1990 Schengen Convention.

Article B provides for the adoption of measures with a view to ensuring, in compliance with Article 7a, the absence of any controls on persons, be they citizens of the EU or nationals of third countries, when crossing internal borders, by the Council

within a period of five years after the entry into force of the Treaty. The Council is required to adopt measures on the crossing of the external borders of the Member States which shall establish standards and procedures to be followed by Member States carrying out checks on persons at such borders and rules on visas for intended stays of no more than three months, within the same period of time.

Similarly, the Council is required to adopt measures setting out the conditions under which the nationals of third countries should have the freedom to travel within the territory of the Member States during a period of no more than three months.

The Member States also signed a Protocol on "external relations of the Member States with regard to crossing external borders", recording that they had agreed upon some provisions which should be annexed to the TEC. These stipulate that the provisions on measures on the crossing of external borders included in Article B (2) (a) under the new title should be taken without prejudice to the competence of the Member States to negotiate or conclude agreements with third countries as long as they respect EC law and other relevant international agreements.

The Member States also made a declaration to the Final Act on Article B (2) (b), stating that the Conference agreed that foreign policy considerations should be taken into account in the application of Article B (2) (b).

Measures on "asylum" pursuant to relevant conventions, on "status of refugees" and other relevant treaties, measures on refugees and displaced persons, measures on immigration policy and measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States are listed in Article C. These measures are to be adopted by the Council. Article C further provides that the latter two groups of measures should not prevent any Member State from maintaining or introducing in the areas concerned, national provisions which are compatible with the treaty and with international agreements. In some instances (which are fixed by the article), the five year period should not apply.

The Member States also made a declaration to the Final Act on Article C (3) (a), stating that they had agreed that Member States might negotiate and conclude agreements with third countries in the domains covered by Article C (3) (a) as long as such agreements respect Community law.

Article D under the same title provides that the Title in question should not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security. If one of the Member States is confronted with an emergency situation characterized by a sudden inflow of nationals from a third country, without prejudice to the internal laws

mentioned above, the Council may, acting by a qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned. The IGC also made a declaration on the responsibilities of Member States under Art D (1) to the effect that the Member States might take into account foreign policy considerations when exercising their responsibilities under Article D (1).

Article E provides the measures, in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article G in so far as is necessary for the proper functioning of the internal market. These measures are for improving and simplifying the system for cross-border service of judicial and extra-judicial documents, cooperation in the taking of evidence etc.; together with promotion of the compatibility of the rules applicable in Member States concerning the conflict of laws and jurisdiction, and the elimination of obstacles to the good functioning of civil proceedings.

A declaration is also made in this article, calling that measures adopted pursuant to this article should not prevent any Member State from applying its constitutional rules relating to freedom of the press and freedom of expression in other media.

Article F provides that the Council is entitled to take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered under the new title, as well as between those departments and the Commission. Furthermore, a declaration calls for consultations to be made with the UN High Commissioner for Refugees and other relevant international organizations on matters relating to asylum policy.

Article G sets out the decision-making procedure of the Council on this subject. Accordingly, in the five years transitional period after the entry into force of the Treaty, the Council shall act unanimously on a proposal from the Commission or on an initiative of a Member State and after consulting the EP. After this period, the Council shall only act upon proposals from the Commission. The Member States shall only submit their proposals to the Commission and, then, the Commission, after examining this request, can submit it as a proposal to the Council. The Council shall take its decision after consulting the EP and with unanimity. Derogations to the rules stated under Article G are: 1) the aforementioned Article B (2) (b) (i) and (iii) with which the Council is required to act by qualified majority from the entry into force of the Treaty, and 2) Article B (2) (b) (ii) and (iv) after five years from the entry into force of the Treaty, according to the procedure laid down by Article 189b.

Article H lays down the conditions under which the provisions of Article 177 shall apply to the new title. The conditions are :

- there has to be a question on the interpretation of the new title or on the validity or interpretation of acts of the institutions of the EC based on the title;
- this question has to be raised in a case pending before a court or a tribunal of a Member State against whose decision there is no judicial remedy under national law;
- the court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Article H (2) contains a clear prohibition that in any event, the Court of Justice *shall not* have jurisdiction to rule on any measure or decision taken pursuant to Article B (1) relating to the maintenance of law and order and the safeguarding of international security.

The Council, the Commission, or a Member State are entitled to request the Court of Justice to give a ruling on a question of interpretation of the new title or of acts of the institutions of the Community based on this title. The ruling given by the Court of Justice in response to such a request shall not apply to judgments of courts or tribunals of the Member States which have become *res judicata* (i.e., points or questions which were controversial and were finally settled by the court decisions).

Protocol Y on the position of the UK and Ireland

In the IGC, Member States of the EU agreed on Protocol Y which arranges the position of the UK and Ireland on progressive establishment of an area of freedom, security and justice.

According to the Amsterdam Treaty, a zone of freedom, security and justice shall come into force for European Union citizens within five years of the Treaty's ratification. However, opt-outs are provided for the UK, Ireland and Denmark. The Council shall adopt, within a period of five years, measures aimed at ensuring the free movement of persons, as well as other measures in the fields of external border controls, asylum, immigration, the rights of third country nationals, judicial cooperation in civil matters, administrative cooperation, and police and judicial cooperation in criminal matters. But the UK, Ireland and Denmark will be exempted from these measures. Protocol Y of the Amsterdam Treaty arranges this derogation for the UK and Ireland.

The provisions of Protocol Y which shall be annexed to the TEC and the TEU aim at settling certain questions relating to the UK and Ireland with regard to Protocol X on the application of certain aspects of Article 7a of the TEC to the UK and to Ireland. This Protocol Y has 8 articles :

In Article 1 of Protocol Y, it is stated that subject to Article 3 of this Protocol, the UK and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to the related Title of the TEC.

Supporting Article 1 of the protocol, Article 2 states that any provision of the related Title of the TEC, any measures adopted pursuant to that Title, provisions of any international agreement concluded by the Community pursuant to that Title, and any decision of the Court of Justice interpreting any such provision or measure shall not be binding upon or applicable in the UK or Ireland. Additionally, any such provision, measure or decision shall not in any way affect the competencies, rights and obligations of those states and the *acquis communautaire*, and shall not form part of Community law as they apply to the UK or Ireland.

Article 3 is an exception to this protocol. It sets the condition for taking part in the adoption and application of any measure pursuant to the related Title of the TEC.

According to Article 3, if the UK or Ireland wishes to take part in the adoption and application of any proposed measure pursuant to the related Title of the TEC, within three months after such a proposal or initiative has been presented to the Council, it may notify this situation to the President of the Council in writing and that State shall then be entitled to do so.

Again, according to Article 3, if a measure referred to in the first paragraph can not be adopted after a reasonable period of time with the UK or Ireland taking part, the Council may adopt such measure without the participation of the UK or Ireland. In such a case, Article 2 of this protocol is applied.

As to Article 4, the UK or Ireland may notify their intention to the Council and to the Commission that they wish to accept a measure at any time after the adoption of such measure by the Council pursuant to the relevant Title of the TEC. In that case, the procedure in the third paragraph of Article 5a of the TEC, which is related to the procedure that a Member State with the intention to join the cooperation is required to follow, shall apply.

Article 5 of this protocol provides that if the UK or Ireland do not notify the Council that they wish to be bound by a measure adopted pursuant to the relevant Title of the TEC, they shall not bear the financial consequences of that measure except for the administrative costs entailed for the institutions.

Article 6 of this protocol provides that if the UK and Ireland are bound by a measure adopted pursuant to the relevant Title of the TEC, the relevant provisions of Amsterdam Treaty shall apply to these States in relation to that measure.

Article 7 provides that Articles 3 and 4 shall be without prejudice to the Schengen Protocol which integrates the *Schengen Acquis* into the framework of the EU.

Article 8 provides that if Ireland no longer wishes to be covered by this Protocol, it may notify the President of the Council in writing. Then, normal Treaty provisions will apply to Ireland.

Protocol X on the application of certain aspects of Article 7a of the TEC to the UK and to Ireland

The Member States of the EU agreed on Protocol X which is on the application of certain aspects of Article 7a of the TEC to the UK and to Ireland, by taking into consideration the existence for many years of special travel arrangements between the UK and Ireland. This protocol which settles certain questions relating to the UK and Ireland shall be annexed, like Protocol Y, to the TEC and to the TEU. This Protocol consists of 3 articles and a declaration to the Final Act which is made by Ireland.

Article 1 of this Protocol gives the UK the right to exercise controls at its frontiers with other Member States on persons which seek to enter the UK, as it may deem necessary. However, these controls have to be done with the purposes of :

1. verifying the right to enter the UK of citizens of States which are contracting parties to the Agreement on the European Economic Area (EEA) and of their dependants exercising rights conferred by Community law, as well as citizens of other States on whom such rights have been conferred by an agreement to which the UK is bound; and
2. determining whether or not to grant other persons permission to enter the UK.

This right stated in the article can also be exercised in the territories for whose external relations the UK is responsible. This is a derogation from Article 7a of the TEC which provides for the establishment of an internal market without internal frontiers, from other provisions of the Amsterdam Treaty and of the TEU, from the measures adopted under these Treaties, or from international agreements concluded by the Community, or by the Community and its Member States, with one or more third States.

The UK and Ireland are seeking to establish the Common Travel Area which will provide free movement of the persons between themselves. This protocol, via Article 2, permits the UK and Ireland to continue making arrangements which provide for the establishment of the Common Travel Area between themselves. As long as they maintain such arrangements, the provisions of Article 1 shall be valid for Ireland with the same terms and conditions as for the UK. Nothing in Article 7a, in any other provision of the Treaties referred to above, or in any measure adopted under them shall prejudice any such arrangements.

Article 3 of this protocol provides the same right to the other Member States. According to this article, other Member States shall be entitled to exercise, at their frontiers or at any point of entry into their territory, controls on persons seeking to enter their territory from the UK or any territories whose external relations are under its responsibility, or from Ireland as long as the provisions of Article 1 apply to Ireland. This case is also a derogation from Article 7a or from any other provisions of the treaties or any measure adopted under them.

Ireland made a declaration to the Final Act about its intention to exercise its right under Article 3 of Protocol Y to take part in the adoption of measures pursuant to the relevant Title of the TEC to the maximum extent compatible with the maintenance of its Common Travel Area with UK. According to Ireland, its participation in Protocol X shows its wish to establish the Common Travel Area with the UK.

Position of Denmark

There are two parts in the Amsterdam Treaty with regard to the special position of Denmark.

The First part deals with the Protocol Integrating the Schengen Acquis into the framework of the European Union. Accordingly, a new additional fourth paragraph reading as "taking into the account the special position of Denmark" will be inserted into the introductory part of the said Protocol. Moreover, a new article, Article Ba, which deals with the rights and obligations of Denmark in relation to the other signatories of the Schengen Agreements will be inserted in the said Protocol. New Article Ba provides;

"Following the determination referred to in Article B (1), second subparagraph, Denmark shall maintain the same rights and obligations in relation to the other signatories (parties) to the Schengen agreements, as before the said determination with regard to those parts of the Schengen Acquis that are determined to have legal base in (new Title TEC).

With regard to those parts of the Schengen Acquis that are determined to have legal base in Title VI of the TEU, Denmark shall continue to have the same rights and obligations as the other signatories (parties) to the Schengen agreements."

Protocol Z on the Position of Denmark which shall be annexed to the Treaty establishing the European Community and to the Treaty on European Union, appears in the second part.

Protocol Z on the Position of Denmark

As is stated in the introductory part, this protocol has been prepared to underline the special position of Denmark concerning certain problems raised by Denmark

concerning the Treaty on European Union. Danish objections arose against the provisions on Citizenship, Economic and Monetary Union, Defence Policy, and Justice and Home Affairs.

On 30 October 1992, Denmark published a document which is entitled "Denmark in Europe". This document is known as the Unilateral Declaration of Denmark which is to be attached to the Danish Act of the Treaty on European Union, and other Member States will take cognizance. The Edinburgh meeting of the European Council in December 1992 reached agreement on the Danish demands. The set of arrangements reached at Edinburgh apply exclusively to Denmark and not to other existing or acceding Member States¹. With this agreement, the provisions on union citizenship were clarified, and Denmark's decisions on not participating in the third stage of the Economic and Monetary Union and not being involved in decisions and actions of the Union which have defence implications were recognized².

This Protocol contains 7 articles and two parts. The first 5 articles are laid down in the Part 1 while the rest are in Part 2.

Under Protocol Z, Article 1 provides that Denmark shall not take part in the adoption by the Council of proposed measures pursuant to the relevant Title of the TEC. Moreover, qualified majority is defined with reference to the relevant articles. The article also describes the voting procedure in case of absence of Denmark as "unanimity of the members of the Council".

Article 2 lists the decisions, provisions and measures which are *not binding* upon or not *applicable* in Denmark and which *can not affect* the competences, rights and obligation of Denmark and the *acquis communautaire*, as follows :

- the provisions of the relevant Title of the TEC,
- measures adopted pursuant to that Title,
- provisions of any international agreement concluded by the Community pursuant to that Title,
- decisions of the Court of Justice interpreting any such provision or measure.

In the third article, it is stated that Denmark is only responsible for the administrative costs which are entailed for the institutions in relation to the activities under the Title stated in the First Article.

1 Church and Phinnemore, *European Union and European Community*, Harvester Wheatsheaf, New York, 1994.

2 Bainbridge, *The Penguin Companion to European Union*, Penguin Books, London, 1995.

Article 4 contains an exception to Articles 1, 2, and 3 on visa policy. According to this article;

“Article 1, 2, and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.”

Article 5 is on the relation between Schengen Acquis and the position of Denmark. After the Council has decide on a proposal or an initiative to build upon the Schengen Agreement Denmark is given 6 months to decide whether it will implement it in its national law or not. It is also stated that if Denmark decides to implement the decision, it will clearly create a new international obligation for it with a reference to Article A of the Protocol integrating the Schengen Acquis into the framework of European Union. The second paragraph of the article deals with the question if Denmark does not decide in favour of implementation with a reference to Article A of the above mentioned Protocol. In such a case, Member States referred to in Article A in the Protocol integrating the Schengen Acquis into the framework of European Union, are given the responsibility to consider appropriate measures to be taken.

Article 6, clarifies the special position of Denmark with reference to articles J.3 (1) and J.7, concerning Common Foreign and Security Policy. Accordingly it is stated that Denmark does not take part in elaboration and implementation of decisions and actions of the Union which have defence implications and Denmark shall not be obliged to contribute to the financing of operational expenditures related to those measures. However, it is also explicitly stated that Denmark will not prevent closer cooperation among states.

In the Article 7, it is stated that Denmark has always an opportunity to avail itself of the Protocol. The only condition is to inform the Member States in accordance with its constitutional requirements. It is further stated that when Denmark decides to do so, all relevant measures which are in force then, taken within the framework of the European Union, will also be applied by Denmark.

Title VI of the TEU

Provisions on the police and judicial cooperation in criminal matters

Police and judicial cooperation

Under the relevant Title of the TEU, there were 10 articles whereas the Amsterdam Treaty proposes 14 articles. Some of these articles are new and the rest are the amended articles of the former Title of the TEU. The Amsterdam Treaty also proposes 4 Declarations to the Final Act on K.2, K.3 (e), K.6 (2) and K.10 and J.14.

The Article K of the TEU which provides "Cooperation in the fields of justice and home affairs shall be governed by the following provisions", is still valid. In the new article K.1, the objective of the Union is defined as "to provide citizens with a high level of safety within an area of freedom, security and justice". Two requirements are also proposed for the achievement of this objective; developing common action among the Member State in the fields of police and judicial cooperation in criminal matters and preventing and combatting racism and xenophobia. In the new article K.1, the ways and means are also defined to meet the above mentioned requirements. These can be listed as :

- preventing and combatting crime, organized crime and terrorism,
- preventing and combatting trafficking in persons and offences against children,
- preventing and combatting illicit drug trafficking, and illicit arms trafficking,
- preventing and combatting corruption and fraud.

These ways are to be realized as the Article provides;

- through closer cooperation between judicial and other competent authorities in the Member States both directly and through Europol in accordance with the provisions of Articles K.3 (a) to (d) and K.4,
- through closer cooperation between police forces, customs authorities and other competent authorities in accordance with the provision of the Articles K.2 and K.4 and,
- through approximation where necessary of rules on criminal matters in the Member States in accordance with the provisions on Article K.3 (e).

The new Article K.2 of the TEU comprises two paragraphs. In the first paragraph, the actions which are covered by the common action are listed in four subparagraphs. These are;

- operational cooperation between the competent authorities (They include the police, customs and other specialized law enforcement services of the Member States in relation to the prevention, detection, and investigation of criminal offences);
- the collection, storage, processing, analysis and exchange of relevant information. Such information includes information held by law enforcement agencies on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data;

- cooperation and joint initiatives in training, the exchange of liaison officers, secondments, the use of equipment, and forensic research;
- the common evaluation of particular investigative techniques in relation to the detection of serious forms of organized crime.

How the Council can foster cooperation through Europol is the main theme of the second paragraph, in particular, the question of what could be done in the 5 years after the Amsterdam Treaty enters into force, is defined. Accordingly, ways and means to foster cooperation are listed as follows;

- enabling Europol to facilitate and supporting the preparation, and encouraging the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States. The actions taken by the competent authorities include operational actions of joint teams comprising representatives of Europol in a support capacity;
- adopting measures which allow Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise. The said specific expertise may be put at the disposal of other Member States to assist them in investigating cases of organized crime;
- promoting a research, documentation and statistical network on cross-border crime.

There is a Declaration to the Final Act on Article 2 which is on the judicial review of action in the field of police cooperation, including activities of Europol under Article K.2. This Declaration provides "Action in the field of police cooperation under Article K.2, including activities of Europol, shall be subject to appropriate judicial review by the competent national authorities in accordance with rules applicable in each Member State".

The areas which common action on judicial cooperation in criminal matters shall cover are listed and clarified in the new article K.3. These shall include :

- a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to the proceedings and the enforcement of decisions;
- b) facilitating extradition between Member States;
- c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;
- d) preventing conflicts of jurisdiction between Member States;

e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organized crime, terrorism and drug trafficking.

There is also a Declaration to the Final Act on Article K.3 (e). This declaration provides that the provisions which are listed in this part of the Article shall not constitute an obligation to adopt them for those Member States whose legal system does not provide for minimum sentences.

The New Article K.4 deals with the operation of the competent authorities of a Member State in the territory of another Member State. Competent authorities are referred in Articles K.2, for instance, police, customs and other specialized law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences in K.2 (a) and K.3 (competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions in K.3 (a)). Such kind of operation must be in liason and in agreement with the authorities of that State. The Article also states that it is the Council which decides the necessary conditions and the limitations under which specified competent authorities may operate.

Article K.5, which is the amended form of former Article K.2 of the TEU, comprises only one paragraph while the former has two paragraphs. In this article it is provided that there is no conflict between the obligations of the Member States with regard to maintenance of law and order and safeguarding their internal security under this Title. The above mentioned obligations of the Member States remain still valid.

Article K.6, which is the amended form of Article K.3 of the TEU, contains four paragraphs while the former article has two paragraphs. Moreover, there are some differences in the wording of Article K.6. This article deals with the coordination of action which is far beyond the traditional coordination. In the first paragraph it is stated that Member States should inform and consult each other in the Council in order to coordinate their action in the areas referred under this Title. Establishing collaboration between the relevant departments of their administration is another requirement to be met by the Member States within this context.

The second paragraph of the Article K.6 provides for the contribution of the Council to the pursuit of the objective of the Union through taking measures and promoting cooperation. In the subparagraphs under Article K.6 (2), measures which the Council may take and the appropriate ways through which Council can establish and foster cooperation are specified. Accordingly the Council may;

“a) adopt common positions defining the approach of the Union to a particular matter;

b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States; framework decisions shall be binding and shall not entail direct effect; the Council, acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;

c) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the High Contracting Parties”.

In the third and fourth paragraphs, the voting procedure is the main theme. The third paragraph defines the votes which must be in favour (at least 62 votes in favour, cast by at least 10 members) in cases where the Council is required to act by qualified majority while the fourth paragraph deals with the voting procedure for the procedural issues (majority of its members) on the Council is required to act.

There is also a declaration to the Final Act on Article K.6 (2) which provides for the publication of the initiatives for measures referred to in Article K.6 (2) and acts adopted by the Council in the Official Journal of the European Communities.

New Article K.7 deals with the jurisdiction of the Court of Justice within the third pillar of the Union. In the paragraphs from 1 to 4, the areas in which the Court of Justice shall have jurisdiction to give preliminary rulings on the validity and interpretation of framework decisions, and decisions, on the interpretation of conventions established under this Title and on the validity and interpretation of the measures implementing them, and the appropriate procedures on giving preliminary rulings with regard to the positions of the Member States, are defined. In the second paragraph, it is provided that any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings when the Member States makes a declaration at the time of the signing of the this Treaty or any time thereafter. The third paragraph defines the preliminary ruling procedure between Court of Justice and any court or tribunal of the Member State which makes a declaration pursuant to the second paragraph. In such a case;

a) any court or tribunal of that state against whose decisions there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement, or,

b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the interpretation or validity of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement.

Moreover, the fourth paragraph provides for an obligation for any Member State to submit statements of case or written observations to the Court in cases which arise under paragraph 3 whether or not it has made a declaration pursuant to paragraph 2.

The fifth paragraph specifies the areas where the Court of Justice has no jurisdiction whereas the sixth and seventh paragraphs again deal with the areas where the Court of Justice has jurisdiction. These areas are :

- reviewing the validity or proportionality of operations carried out by the police or,
- other law enforcement agencies of a Member State or,
- the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

The sixth paragraph provides that, other than by preliminary rulings, the Court of Justice has jurisdiction to review the legality of the decision and framework decisions on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or any rule of law relating to its application, or misuse of powers. Such kinds of actions can be brought by a Member State or the Commission.

The seventh paragraph deals with the jurisdiction of the Court on any dispute between Member States with regard to the interpretation or the application of acts under Article K.6 (2) (The provisions of this Article also specify the situation where the Court of Justice has jurisdiction whenever such dispute can not be settled by the Council within six months of its being referred to the Council by one of its members.) and of conventions established under Article K.6 (2) (d).

Article K.8, which is the amended form of former Article K.4 of the TEU, contains two paragraphs while the former is composed of three paragraphs. In this Article, the role of the Coordinating Committee, its structure and its tasks are explained with regard to its relationship with the Council and the Commission.

Article K.9, which is the amended form of former Article K.5 of the TEU, clearly states that common positions under this Title will be defended by the Member States within the international fora. A special link between provisions on police and justice

cooperation in criminal matters and the provisions on Common Foreign and Security policy is established in the second part of the Article through the statement which provides "The provisions of Articles J.8 and J.9 shall apply as appropriate to matters falling under this Title".

New Article K.10 also comprises a provision on Article J.14 of Common Foreign and Security Policy. It, further, establishes a relation between two Titles by providing "Agreements referred to in Article J.14 may cover matters falling under this Title". There is, also, a Declaration to the Final Act relating to Article J.14 and K.10 which tries to eliminate the possible anxieties of the Member States about the transfer of their competences to the Union. In this declaration it is stated that provisions of the said articles and agreements which result from them do not imply any transfer of competences from Member States to the Union.

The Article K.11 which is the amended form of former article K.6 of the TEU, emphasizes the role of the Parliament in the third pillar. It has three paragraphs. In the first paragraph, a time limit is set for the Parliament in cases where its answer is necessary for issues on which the Council consults it. The second paragraph deals with the information on the discussions in the areas under this Title provided by the Presidency of the Council and the Commission to the Parliament on a regular basis. Finally, the third paragraph provides, "The European Parliament may ask questions of the Council or may recommendations to it. Each year, it shall hold a debate on the progress made in the areas referred to in this Title".

With the introduction of Article K.12, Article K.7 of the TEU is repealed. In the first paragraph of Article K.12, the conditions under which closer cooperation among Member States is possible are listed, and how such a closer cooperation may be authorized is defined. These conditions for such a proposed cooperation are such that it:

- 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.

In the second paragraph of Article K.12, the role of the Council, Commission and The European Parliament in granting such authorization and the relevant voting procedure (qualified majority) are defined. The first subparagraph of Article K.12 (2) provides for the procedure of granting such a right by the Council as follows; "the authorization 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 inviting the Commission to present its opinion; the request shall also be forwarded to the European Parliament". Moreover, the Council's action in case of an objection of a Mem-

ber State against such an authorization by qualified majority on the grounds of important and stated reasons of national policy, and the relevant voting procedure in such a case are laid down in the second subparagraph. Third subparagraph restates how the votes of the members of the Council shall be weighted in accordance with article 148 (2) of the TEC.

If a Member State is in favour of closer cooperation, it has to follow a certain procedure. This procedure is defined in the third paragraph. Simply, the procedure operates as such; it starts with the notification by any Member State of its intention to the Council and to the Commission. Then the Commission gives its opinion to the Council within three months of receipt of that notification. The Council, then, decides on the request within the four months of the date of the notification.

The roles of the Commission and the Council within this procedure and the necessary time limits for the notification process are also given in this paragraph. The fourth paragraph provides that Articles K.1 to 13 shall apply to the closer cooperation mentioned in Article K.12, However, if K.12 or the related articles provide for another procedure, this requirement will not apply. The provisions of the TEC concerning the Court of Justice of ECs, and the exercise of those powers are to apply to paragraphs 1, 2, and 3.

With the fifth paragraph, the relation between the Schengen Acquis and the Article K.12 is clarified by stating "This article is without prejudice to the provisions of the Protocol integrating the Schengen Acquis into the framework of the Union".

Article K.13, which is the amended form of former Article K.8 of the TEU, consists of four subparagraphs. The first paragraph provides that provisions which are contained in the following articles of the TEC shall apply to the provisions relating to the areas referred in this Title. These provisions are :

- Articles 137, 138, 138(e), 139-142 (which include the provisions governing The European Parliament),
- Articles 146, 147, 148(e), 150 to 153 (which include the provisions on the Council)
- Articles 157 to 163 (which include provisions on the Commission),
- Articles 191a (which includes general principles for transparency) and 217 (which includes languages of the institutions)

The second, third, and fourth paragraphs deal with the operational and administrative expenditures and the budgetary procedure for the issues under this Title.

Article K.14, which is the amended form of former Article K.9 of the TEU, provides for the role of the Council in the decision making process in the areas referred

in this Title, taking into account the role of the Commission, European Parliament and Member States and the role of the Council in determination of the relevant voting conditions. The consultation of the European Parliament is inserted into the article by the Amsterdam Treaty.

Protocol integrating the *Schengen Acquis* into the framework of the EU

In the IGC, the contracting parties to the Amsterdam Treaty agreed on a Protocol integrating the Schengen Acquis into the framework of the EU. This Protocol is taken up in this Treaty under Title VI of the TEU: *Provisions on police and judicial cooperation in criminal matters*.

The Schengen Acquis³, which is formed by the Agreement signed by some Member States of the EU in Schengen on 14 June 1985 on the gradual abolition of checks at their common borders and the Convention signed in Schengen on 19 June 1990 implementing the Agreement of June 1985 as well as related agreements and the rules adopted on the basis of these agreements, did not exist in the framework of the EU. It operated outside the EU, between its contracting parties as a separate formation.

Through this Protocol, the Schengen Acquis will become an important part of *acquis communautaire*.

In the preamble to the Protocol, the contracting parties to the Amsterdam Treaty (Member States of the EU) note that the Schengen Acquis is aimed at enhancing European integration and enabling the EU to develop more rapidly into an area of freedom, security and justice.

Another important point in the preamble is that the provisions of the Schengen Acquis can not be applied if there is a conflict with Community law. In other words, if they are incompatible with the Union and Community law then the applicability of the provisions of the Schengen Acquis can not be maintained. The contracting parties confirm this point in the preamble to the Protocol.

Ireland and the United Kingdom of Great Britain and Northern Ireland did not sign the above mentioned agreements, thus they are not parties to the Schengen Acquis. This situation is taken into account by the contracting parties in the preamble to this Protocol. However, according to the Contracting Parties, provision should be made to allow those Member States to accept some or all of the provisions thereof.

3 *The Agreements and the related accession protocols, decisions and declarations which form the Schengen Acquis is listed in a detailed way in the annex to the analysis of this Protocol.*

Moreover, the Contracting Parties recognize the necessity of making use of the provisions of the TEU and of the TEC, relating to closer cooperation between some Member States. However, those provisions should only be used as a last resort.

The Republic of Iceland and the Kingdom of Norway which are not members to the EU but members of the European Economic Area, confirmed their intention to become bound by the provisions mentioned above. This situation entails the maintenance of a special relationship with those States on the basis of the Agreement signed in Luxembourg on 19th December 1996. Therefore, the Contracting Parties take into account this need.

In the light of the facts mentioned above, the Contracting Parties to the Amsterdam Treaty agreed on the provisions of this Protocol which shall be annexed to the Amsterdam Treaty.

The Protocol incorporating the Schengen Acquis into the framework of the EU consists of seven articles and three declarations to the Final Act on three of these articles.

Article A of the Protocol, first of all, lists the signatory States to the Schengen Agreements. These States are;

The Kingdom of Belgium,
The Kingdom of Denmark,
The Federal Republic of Germany,
The Hellenic Republic,
The Kingdom of Spain,
The French Republic,
The Italian Republic,
The Grand Duchy of Luxembourg,
The Kingdom of the Netherlands,
The Republic of Austria,
The Portuguese Republic,
The Republic of Finland, and,
The Kingdom of Sweden.

These States are authorized to establish closer cooperation among themselves within the scope of the Schengen Acquis and they are obliged to conduct this cooperation within the institutional and legal framework of the EU and with respect for the relevant provisions of the TEU and of the TEC.

Article B consists of two paragraphs and its first paragraph has four subparagraphs.

The first subparagraph of paragraph (1) sets the date when the Schengen Acquis shall apply to the 13 Member States referred to in Article A. According to this subparagraph, the Schengen Acquis, including the decisions of the Executive Committee which have been adopted before the date of entry into force of this Protocol, shall immediately apply to the 13 Schengen States from the date of entry into force of this Protocol without prejudice to the provisions of the second paragraph. The important point here is that the Executive Committee which was established by the 1990 Implementation Convention will be substituted by the Council from the same date.

In the second subparagraph, it is stated that the Council is held responsible to take measures necessary for the implementation of this paragraph acting by unanimity of its Members referred to in Article A. This responsibility includes the determination of the legal basis for the provisions or decisions forming the Schengen Acquis in conformity with the relevant provisions of the TEC and of the TEU.

With respect to the position of the Court of Justice of European Communities, it is stated that it will exercise the powers conferred upon it by the relevant applicable provisions of the TEC and the TEU. On measures or decisions relating to the maintenance of law and order and safeguarding of internal security, the Court of Justice shall not have any jurisdiction in any event.

In the fourth subparagraph of paragraph (1), it is stated that the provisions or decisions forming the Schengen Acquis shall be regarded as acts based on Title VI of the TEU which arranges cooperation in the fields of Justice and Home Affairs, as long as the measures referred to above have not been taken and without prejudice to the second subparagraph of Article D.

The second paragraph of Article B is related to the application of the provisions of paragraph (1) to the Member States which have signed accession Protocols to Schengen from the dates decided by the Council. However, there is a condition that the provisions of paragraph (1) shall apply to those States, from the dates decided by the Council acting with the unanimity of its members. This can be done only if the conditions for the accession of any of those States to the Schengen Acquis are not met before the date of the entry into force of this Protocol.

This Protocol also involves a Declaration to the Final Act on Article B. The Council is held responsible by this Declaration to adopt all the necessary measures referred to in Article B on the date of entry into force of the Amsterdam Treaty. With the aim of its achievement, the necessary preparatory work shall be undertaken in due time, for completion prior to that date.

A new Article Ba will be inserted in this Protocol. Since this article deals with the rights and obligations of Denmark with respect to the Schengen agreements, and

since Denmark's special position in the EU is arranged by the part "Position of Denmark" in the Amsterdam Treaty, Article Ba is taken up in this part of the Amsterdam Treaty and not in the Protocol integrating the Schengen Acquis into the framework of the EU.

Again, because of the special position of Denmark in the EU, a new additional fourth paragraph which reads as "taking into account the special position of Denmark" will be inserted in the preamble to this Protocol.

Article C of the Protocol arranges the special position of Ireland and the United Kingdom of Great Britain and Northern Ireland.

This article is designed about to allow the acceptance of some or all of the provisions of the Schengen Acquis by Ireland and the United Kingdom of Great Britain and Northern Ireland although they are not parties to this Acquis. Therefore, those States which are not bound by the Schengen Acquis may request to take part in some or all of the provisions of this acquis, at any time.

The institution which has the competence to decide on the request is the Council. The Council shall do this with the unanimity if its members referred to in Article A and of the representative of the Government of the State concerned.

Article D consists of two paragraphs and the first paragraph has two subparagraphs :

In the first subparagraph of paragraph (1), it is stipulated: "proposals and initiatives to build upon the Schengen Acquis shall be subject to the relevant provisions of the Treaties".

Within the scope of the first subparagraph, the second subparagraph of paragraph (1) arranges the authorization, referred to in Articles 5a of the TEC or K.12 of the TEU, to be granted to Ireland or the United Kingdom to establish closer cooperation between themselves and with the other Member States within the fields of Justice and Home Affairs.

According to Article K.12 of the TEU, which will replace the former Article K.7⁴ of the TEU, Member States which intend to establish closer cooperation between themselves, may be authorized by the Council to make use of the institutions, procedures and mechanisms laid down by the Treaties within the third pillar.

Therefore, if either of these two States wishes to take part in the areas of closer cooperation within the third pillar, the authorization, within the context of Articles 5a of the TEC or K.12 of the TEU, shall be deemed to have been granted to the Member

⁴ *The former Article K.7 of the TEU will be repealed.*

States referred to in Article A and to Ireland or the UK even if either of Ireland or the UK or both have not notified the President of the Council in writing within a reasonable period that they wish to take part.

The second paragraph of Article D of this Protocol states: "the relevant provisions of the Treaties referred to in the first subparagraph of paragraph 1 shall apply even if the Council has not adopted the measures referred to in Article B(1), second subparagraph."

The Protocol integrating the Schengen Acquis into the framework of the EU has also a declaration to the Final Act on Article D.

Especially when Ireland and the United Kingdom of Great Britain and Northern Ireland accept some or all of the provisions of the Schengen Acquis in accordance with Article C, a need for all efforts to be made by the contracting parties of the Amsterdam Treaty will arise in order to make action among all Member States possible in the domains of that Acquis. Owing to this fact, the contracting parties of the Amsterdam Treaty declare that they undertake to make all efforts in order to reach this aim mentioned above.

Article E meets the need, which is stated in the preamble of this Protocol, to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway on the basis of the Agreement signed in Luxembourg on 19th December on 1996. According to this article, these States shall be associated with the implementation and development of the Schengen Acquis on the basis of the above-mentioned Agreement. To that effect, an agreement with these States is to be concluded. Accordingly, appropriate procedures shall be agreed in this agreement which will be concluded with these States by the Council, acting by the unanimity of its Members mentioned in Article A. Such an agreement shall also include some provisions which bind Iceland and Norway to contribute to any financial consequences resulting from the implementation of this Protocol.

The second paragraph of Article E mentions a separate Agreement which shall be concluded with the above-mentioned countries by the Council. The aim of concluding this Agreement is to establish rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen Acquis which apply to these States.

A declaration to the Final Act on Article E is added to this Protocol and this declaration sets the date when the Agreements referred to in Article E may enter into force. Accordingly, it is agreed by the contracting parties that the Agreements in question may enter into force on the same date as the date of entry into force of this Protocol. To reach this end all necessary steps shall be taken.

Article F deals with the integration of the Schengen Secretariat into the General Secretariat of the Council. To be able to provide this, the Council shall adopt the necessary modalities acting by a qualified majority.

Article G is related to the situation of the admission of new Member States into the EU with respect to the Schengen Acquis. According to this article, all States which are candidates for admission into the EU must accept in full the Schengen Acquis and the measures taken by the institutions within its scope. In the accession negotiations, this shall be strictly observed and the eligibility of the candidate States as to the EU membership shall be examined in the light of this fact.

An Annex to the Protocol Integrating the Schengen Acquis into the Framework of the EU is also adopted by the contracting parties. This Annex reads as follows :

Schengen Acquis

1. The Agreement, signed in Schengen on 14 June 1985, between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders.

2. The Convention, signed in Schengen on 19 June 1990, between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Grand Duchy of Luxembourg and the Kingdom of Netherlands, implementing the Agreement on the gradual abolition of checks at their common borders, signed in Schengen on 14 June 1985, with related Final Act and common declarations.

3. The Accession Protocols and Agreements to the 1985 Agreement and the 1990 Implementation Convention with Italy (signed in Paris on 27 November 1990), Spain and Portugal (both signed in Bonn on 25 June 1991), Greece (signed in Madrid on 6 November 1992), Austria (signed in Brussels on 28 April 1995) and Denmark, Finland and Sweden (all signed in Luxembourg on 19 December 1996), with related Final Acts and declarations.

4. Decisions and declarations adopted by the Executive Committee established by the 1990 Implementation Convention, as well as acts adopted for the implementation of the Convention by the organs upon which the Executive Committee has conferred decision making powers."

Protocol to the Treaty establishing the European Community on asylum for nationals of EU Member States

The Member states agreed on the adoption of a *Protocol to the Treaty establishing the European Community on asylum for nationals of EU Member States*. In

the introductory part of the protocol, significant references to certain Articles of the TEU and TEC and to Conventions are made with regard to human rights, the question of asylum, jurisdiction of the Court of Justice of the European Communities, the question of extradition of national of Member States, and the status of refugees. The Conference notes that provisions concerning this Protocol, which shall be annexed to the TEC, will respect the following Articles and Conventions :

- The European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4 1950,
- The provisions of Article F(2) of the TEU which provides "the Union shall respect fundamental rights guaranteed by the European Convention for the protection of Human Rights and Fundamental Freedoms signed in Rome on November 1 1950",
- Article O of the TEU which appears in the Final Provisions, and provides for the procedure to be followed when any European State applies for membership of the EU,
- The principles set out in Article F(1). This Article provides "The Union shall respect to the national identities of the Member States, whose systems of government are founded on the principles of democracy",
- Article 236 of the TEC (This Article, which dealt with amending the Treaty, was repealed by the TEU. However, it is argued that it was not totally repealed but its substance was actually transferred to Article N⁵. The Amsterdam Treaty introduces a new Article 236 with a different content to be inserted in the TEC, with corresponding amendments to be made to the ECSC and EAEC Treaties.)
- The provisions of Part Two of the TEC which is on the foundations of the Community
- The European Convention on Extradition of 13 December 1957,
- The Finality and objectives of the Convention relating to the Status of Refugees of 28 July 1951,

Under Sole Article of the Protocol, the Member States are regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, applications for asylum made by a

national of a Member State may be taken into consideration or be declared admissible for processing by another Member State only under certain conditions :

“a) if the Member State of which the applicant is a national proceeds after the entry into force of this Treaty, availing itself of the provisions of Article 15 the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;

b) if the procedure referred to Article Fa(1) of the TEU, has been initiated and until the Council takes a decision in respect thereof;

c) if the Council, acting on the basis of Article Fa(1) of the TEU, has determined, in respect of the Member State of which the applicant is a national, the existence of a serious and persistent breach by that Member State of the principles mentioned in Article F(1);

d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State, in that case the Council shall be immediately informed;

the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision making power of the Member State”.

There is also a declaration to the Final Act on the rights of Member States concerning necessary organizational measures that they have to take in order to fulfil their obligation under this Protocol. This Declaration clarifies that the Protocol does not prejudice the afore-mentioned right of each Member State.

There is also a Declaration made by Belgium concerning the point (d) of the sole Article of this Protocol. Belgium states that it made such a declaration in accordance with its obligations under the 1951 Geneva Convention and the 1967 New York Protocol. Belgium declares that “it shall in accordance with the provision set out in point (d) of the sole article of this Protocol carry out an individual examination of any asylum request made by a national of another Member State”.

Another declaration concerning subparagraph (d) of the sole Article of the Protocol on asylum for nationals of EU Member States makes references to the Resolution of the Ministers of the Member States of the European Communities responsible for immigration of 30 November / 1 December 1992 on manifestly unfounded applications for asylum and of the resolution of the Council of 9/10 March 1995 on minimum guarantees for asylum procedures.

Section II. The Union and the Citizen

Chapter 3. Employment

The issue of *Employment* is regulated in the Amsterdam Treaty under Chapter 3 of Section II on *the Union and the Citizen*. This Chapter can be analysed in four points :

First of all, the Amsterdam Treaty amends Article B of the TEU. This article, which sets the objectives of the Union, is amended by adding "a high level of employment" as a Community objective to the first paragraph of this article. Therefore, promoting "a high level of employment" will become one of the objectives of the Community for the first time.

Secondly, The Amsterdam Treaty, amends Article 2 of the TEC which arranges the tasks of the Community. As in the amendment in Article B of the TEU, the statement "promoting throughout the Community a high level of employment and social protection" is added to Article 2 of the TEC as a Community task. Again, for the first time, "promoting throughout the Community *a high level of employment* and social protection" has become one of the Community tasks.

Thirdly, Article 3 of the TEC, which arranges activities of the Community, as amended under Chapter 3 of the Amsterdam Treaty. Amendment is made by adding another indent before (i) to Article 3. This new indent sets a new Community activity on "the promotion of the coordination between *employment* policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment". Therefore, the promotion of the coordination between employment policies of the Member States to provide a high level of employment, has also become one of the activities of the Community for the first time.

Fourthly, a new title on Employment is inserted after Title VI of the TEC by the Amsterdam Treaty. In other words, this new title which is brought about by the Amsterdam Treaty and consists of 5 articles, is placed between the Title "Economic Monetary Policy" and the Title "Common Commercial Policy".

In Article 1 under This new title, the importance of developing a coordinated strategy for employment and of promoting a skilled, trained and adaptable workforce, and labour markets responsive to economic change, are emphasized. With a view to achieving the objectives defined in Article B of the TEU and in Article 2 of this Treaty, Article 1 determines that Member States and the Commission shall work together.

In Article 2 which consist of two paragraphs, the tasks of Member States with respect to employment are stated. In the first paragraph, Member States are required to contribute to the achievement of the objectives stated in Article 1 through their em-

ployment policies which are consistent with the broad guidelines of the economic policies of the Member States and of the Commission adopted pursuant to Article 103 (2) which deals with establishment of guidelines for economic policies.

With respect to the second paragraph of this Article, promoting employment shall be a matter of common concern for all Member States, and they shall provide the coordination of their action within the Council in accordance with the provisions of Article 4 of the this Title.

While Article 1 arranges both the Community's and the Member States' tasks with respect to promoting employment, Article 2 and 3 arrange the tasks of Member States and the Community separately.

Article 3 which determines the duties of the Community on employment consists of 2 paragraphs.

In the first paragraph, it is stated that by respecting the competences of the Member States the Community shall provide cooperation between Member States and support and complement their action to be able to contribute to the aim of a high level of employment.

According to the second paragraph, the Community shall take into account the objective of a high level of employment in its policies and its activities.

Article 4 of this new Title regulates the procedure for the implementation of a coordinated strategy for employment by the Community institutions and the Member States.

According to this Article, the European Council, on the basis of a joint annual report by the Council and the Commission shall adopt conclusions each year on the employment situation in the Community. In the light of these conclusions, Council, acting by a qualified majority on a proposal from the Commission and after consulting the Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 6 of this Title, shall each year draw up guidelines which shall be consistent with the guidelines adopted pursuant to Article 103(2).

These guidelines shall be taken into account by the Member States when they take measures to implement their employment policies. On these measures each Member State shall present an annual report to the Council and the Commission, to inform these institutions about implementation of its employment policy.

The Council by examining these reports and by taking the views of the Employment Committee into consideration shall each year examine the implementation of the employment policies of the Member States. As a result of that examination, the

Council, acting by a qualified majority on a recommendation from the Commission, may make a recommendation to Member States on their employment policies.

Finally, the Council and the Commission shall make a joint annual report in the light of the results of that examination to the European Council about the Community's employment situation.

Article 5 of this new Title states that the Council may adopt incentive measures to encourage cooperation between Member States and to support their action in the field of employment by acting in accordance with the procedure referred to in Article 189b, which deals with conciliation and veto procedures and after consulting the Economic and Social Committee and the Committee of the Regions. Those measures shall include initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences but shall not include harmonization of the laws and regulations of the Member States.

A declaration to the Final Act on incentive measures referred to in Article 5 of the new Title on Employment was also made in the IGC. According to this declaration, the incentive measures shall always specify three important points :

The grounds of the incentive measures shall be based on an objective assessment of their need and the existence of an added value at Commission level. *Their duration* shall not exceed five years and *the maximum amount for their financing* shall reflect the incentive nature of such measures.

Another declaration to the Final Act on Article 5 states that any expenditure under this Article will fall within Heading 3 of the financial perspectives.

Article 6 of this new Title envisages the establishment of an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The Council is held responsible for establishing an Employment Committee after consulting the European Parliament.

Article 6 also sets the tasks of the Committee as :

- monitoring the employment situation and employment policies in the Member States and the Community; and
- formulating opinions at the request of either the Council or the Commission or on its own initiative, and contributing to the preparation of the Council proceedings referred to in Article 4 without prejudice to Article 151 which deals with Coreper; Secretary General and Secretariat; Rules of procedure.

The Committee shall consult the social partners in fulfilling its mandate. As to its members; the Member States and the Commission shall each appoint two members of the Committee.

Chapter 4. Social Policy

The social policy of the EU was regulated in the TEC under Chapter 1 of Title VIII which deals with Social Policy, Education, Vocational Training and Youth. Chapter 1 of Title VIII has 8 articles: 117, 118, 118a, 118b, 119, 120, 121, 122. They have all together formed the social provisions of the TEC and set the social conditions in the EC.

Additionally, the Protocol on Social Policy was annexed to the TEC by the Maastricht Treaty. This Protocol, with the aim of continuing along the path laid down in the 1989 Community Charter of the Fundamental Social Rights of Workers, was agreed on by 11 Member States (i.e. except the United Kingdom of Great Britain and Northern Ireland). To implement the 1989 Social Charter on the basis of the *acquis communautaire*, 11 Member States have adopted among themselves an Agreement which is annexed to this Protocol.

In the Amsterdam Treaty, social policy is reregulated under Chapter 4. The re-regulation of social policy in the EU is made by way of amending Chapter 1 of Title VIII in the light of the Social Agreement which is annexed to the Protocol on Social Policy. In other words, Chapter 1 of Title VIII is reformed both by combining some of its articles with relevant articles of the Social Agreement and by replacing some of its articles by the relevant articles of the Social Agreement with some amendments or by adding new articles in the light of the above-mentioned Agreement. Therefore, Chapter 4 in the Amsterdam Treaty consists of the amended form of Articles 117, 118, 118a, 118b, 119 and 120 of the TEC; and new Articles 118c and 119a which did not exist in the TEC. Article 121 of the TEC which deals with implementation of common measures, particularly on social policy, and Article 122 of the TEC which deals with a separate chapter on social developments in Commission's annual report to the European Parliament, remain unchanged.

Protocol (No. 14) on social policy annexed to the TEC and the Agreement on the social policy attached to the Protocol by the Maastricht Treaty shall be repealed by the Treaty of Amsterdam.

In the light of the above-mentioned facts, Chapter 4 of the Amsterdam Treaty which reregulates the social policy is examined below :

Article 117 of the TEC which is the first article of Chapter 1 of Title VIII, is amended by the Amsterdam Treaty in the light of Article 1 of the above-mentioned Social Agreement. When the amended form of Article 117 of the TEC is examined, it can be seen that it is formed by the combination of Article 117 of the TEC, which stipulates the need to improve working conditions, with Article 1 of the Social Agreement, which stipulates the objectives of the Community and the Member States as to the social matters of the EC.

The amended form of Article 117 of the TEC consists of three paragraphs. Its first paragraph is formed by the first sentence of Article 1 of the Social Agreement. This paragraph states: "The Community and the Member States, having in mind fundamental social rights such as those set out in the European Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonization while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion."

The phrase "so as to make possible their harmonization while the improvement is being maintained" in the first paragraph of the former Article 117 is inserted in the first sentence of Article 1. Except for this additional statement, the rest of the first paragraph of the former Article 117 expresses the same thing as the first sentence of Article 1 of the Social Agreement, but the wording is different. Therefore, by combining the first paragraph of the former Article 117 and the first sentence of Article 1 of the Social Agreement a new paragraph, as the first paragraph of the amended form of Article 117, is obtained. But, in this paragraph there is an additional phrase which exists neither in the former Article 117 nor in Article 1 of the Social Agreement. Through this phrase, the importance of fundamental social rights set out in the European Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers is emphasized with respect to the objectives of the Community and of the Member States on the social matters of the EC.

The second paragraph of the amended form of Article 117 of the TEC is constituted by the second sentence of Article 1 of the Social Agreement without any amendment. This paragraph states that, in order to be able to reach the objectives mentioned in the first paragraph, the Community and the Member States have the obligation of implementing measures by taking into account the diverse forms of national practices and the need to maintain the competitiveness of the Community economy.

The third paragraph of the amended form of Article 117 is constituted by the second paragraph of the former Article 117 without any amendment. This paragraph states: "They believe that such a development will ensue not only from the functioning of the common market, which will favour the harmonization of social systems, but also from the procedures provided for in this Treaty and from the approximation of provisions laid down by law, regulation or administrative action."

The content of Article 118 of the TEC, which deals with promotion of inter-State cooperation in specified areas, is replaced by the content of Article 2 of the Social

Agreement in the Amsterdam Treaty with some amendments. The content of Article 2 of the Social Agreement, which stipulates Community powers in the social matters, basically forms the content of Article 118 of the Amsterdam Treaty. In other words, its number has not changed but Article 118 has lost its content and has taken the content of Article 2.

The first amendment is made in the first paragraph which list five fields in which the Community shall support and complement the activities of the Member States: The Amsterdam Treaty changes the order of the last two of these five fields only. In the first paragraph of Article 2 of the Social Agreement, the order of these two fields is :

- the equality between men and women with regard to labour market opportunities and treatment at work;
- the integration of persons excluded from the labour market, without prejudice to Article 127.

However, in Article 118(1) of the Amsterdam Treaty, which is constituted by Article 2(1) of the Social Agreement, the order of these two fields is as :

- the integration of persons excluded from the labour market, without prejudice to Article 127;
- the equality between men and women with regard to labour market opportunities and treatment at work.

It can be seen that this is not a major amendment and the substance of the paragraph remains unchanged.

Moreover, the phrase "with a view to achieving the objectives of Article 1" in the first paragraph of Article 2 of the Social Agreement is replaced by the phrase "with a view to achieving the objectives of Article 117" in the Amsterdam Treaty, because the content of Article 1 of the Social Agreement replaces the content of Article 117 of the TEC and forms Article 117 of the Amsterdam Treaty. This amendment reflects the adaptation of the first paragraph of Article 118 of the Amsterdam Treaty to the amendments made by the Amsterdam Treaty in the articles on social policy.

Another difference between Article 2 of the Social Agreement and Article 118 of the Amsterdam Treaty is that, in the fifth paragraph of Article 2, the phrase "preventive measures" is used. But in the fifth paragraph of Article 118 of the Amsterdam Treaty, the phrase "protective measures" is used instead of phrase "preventive measures". Here, "preventive" and "protective" have the same meaning and the same effect as to the measures which may be introduced or maintained by any Member State. Therefore, this is not a major amendment with regard to its substance.

Furthermore, a new subparagraph is introduced by the Amsterdam Treaty at the end of Article 118(2) as a third subparagraph. This new subparagraph deals with combatting social exclusion through measures adopted by the Council to encourage cooperation between Member States.

This new subparagraph states: "The Council, acting in accordance with the same procedure, may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences in order to combat social exclusion."

Additionally, a declaration is also made to the Final Act on Article 118 of the Amsterdam Treaty. This declaration states: "It is understood that any expenditure under this Article will fall within Heading 3 of the financial perspectives."

Another amendment made by the Amsterdam Treaty occurs in the second subparagraph of Article 118 of the Amsterdam Treaty. This subparagraph states: "the Council shall act in accordance with the procedure referred to in Article 189b after consulting the Economic and Social Committee." The phrase "Article 189b" in this subparagraph replaces the phrase "Article 189c" in the third subparagraph of Article 2(2) of the Social Agreement. While Article 189b deals with *Conciliation and Veto Procedure*, Article 189c deals with *Cooperation Procedure*. This means that the Council shall no longer act in accordance with the Cooperation Procedure which was introduced by the Single European Act but shall act in accordance with Co-decision Procedure which was introduced by the Maastricht Treaty. This is a major amendment regarding the substance of the subparagraph, since the decision making procedure is changed.

The Member States have also made a declaration to the Final Act on the second paragraph of Article 118 of the Amsterdam Treaty in the IGC. According to this declaration, it was agreed that the Community does not intend to discriminate in a manner unjustified by circumstances against employees in small and medium-sized undertakings when it lays down minimum requirements for the protection of the safety and health of employees.

Article 118 a of the TEC, which is the third article of Chapter 1 of Title VIII, deals with power to legislate on labour matters. This article is replaced by Article 3 of the Social Agreement, which deals with Commission's power, with a slight amendment.

The only difference between Article 3 of the Social Agreement and Article 118a of the Amsterdam Treaty, which is formed by Article 3 of the Social Agreement, is in the fourth paragraph. The phrase "in Article 118b" in the fourth paragraph of Article 118a of the Amsterdam Treaty replaces the phrase "in Article 4" in the fourth paragraph of Article 3 of the Social Agreement, because, the content of Article 4 of the

Social Agreement replaces the content of Article 118b of the TEC and forms Article 118b of the Amsterdam Treaty. This amendment reflects the adaptation of the fourth paragraph of Article 118a of the Amsterdam Treaty to the amendments made by the Amsterdam Treaty in the articles on social policy. Except for this amendment, the article remains the same.

Article 118b of the TEC, which deals with the dialogue between the social partners, is replaced by Article 4 of the Social Agreement through the Amsterdam Treaty, as stated above where the amendment in the fourth paragraph of Article 118a of the Amsterdam Treaty is explained. Article 4 of the Social Agreement deals with collective agreements between management and labour, and with homologation by Council decisions. Only two amendments are made in order to adapt Article 118b to the amendments made by the Amsterdam Treaty in other articles on social policy.

One of these two amendments made by the Amsterdam Treaty takes place in the first subparagraph of Article 118b(2) of the Amsterdam Treaty: the phrase "..... in matters covered by Article 2" in the first subparagraph of Article 4(2) of the Social Agreement is replaced by the phrase "..... in matters covered by Article 118" in the first subparagraph of Article 118(2) of the Amsterdam Treaty, because, the content of Article 2 of the Social Agreement replaces the content of Article 118 of the TEC and forms Article 118 of the Amsterdam Treaty.

The second amendment in Article 118b(2) of the Amsterdam Treaty is that the phrase "..... the areas referred to in Article 118(3)" in the second subparagraph of Article 118b(2) of the Amsterdam Treaty replaces the phrase "..... the areas referred to in Article 2(3)" in the second subparagraph of Article 4(2) of the Social Agreement.

In addition to these amendments, a declaration to the Final Act on Article 118b(2) was also made in the IGC. This declaration is about the arrangements for application of the agreements between management and labour at Community level referred to in Article 118b(2). The contracting parties declare that the first arrangements will consist in developing the content of the agreements by way of collective bargaining according to the rules of each Member State. Additionally, to apply the agreements directly or to work out rules for their transposition and to amend national legislation in force to facilitate their implementation, this arrangement does not imply any obligation on the Member States.

In the Amsterdam Treaty, a new article called as 118c, which did not exist in Chapter 1 of Title VIII of the TEC, is formed through the combination of Article 5 of the Social Agreement and Article 118 of the TEC.

Article 5 of the Social Agreement sets out the obligation of the Commission to encourage cooperation between the Member States in all social policy fields. Article

118 of the TEC, whose content is replaced fully by the content of Article 2 of Social Agreement to form Article 118 of the Amsterdam Treaty, deals with the Commission's task of promoting close cooperation between Member States in the specified social areas. In other words, these two articles have the same aim and the same function. In both of the articles, the Commission is given the obligation of promoting close cooperation between the Member States in the social field. But, Article 118 of the TEC, as different from Article 5 of Social Agreement, lists additionally some specified areas in the social field within which the Commission shall have the task of promoting close cooperation between the Member States.

Again, differently from Article 5 of the Social Agreement, Article 118 of the TEC also stipulates the Commission's obligation of acting in close contact with the Member States to promote close cooperation between the Member States and of consulting the Economic and Social Committee. However, Article 5 of the Social Agreement neither lists specified areas of the social field nor stipulates the Commission's responsibility in acting in close contact with the Member States and of consulting the Economic and Social Committee. It only states the obligation of the Commission to encourage the cooperation between the Member States.

Finally, new Article 118c is formed by combining Article 5 of the Social Agreement with Article 118 of the TEC. Article 5 of the Social Agreement and the first paragraph of Article 118 of the TEC state the same thing but the wording is different. The wording of Article 5 of the Social Agreement has been chosen as the first paragraph of new Article 118c. Therefore, Article 5 of the Social Agreement has become the first paragraph of new Article 118c with only two slight amendments: The first one is the replacement of the phrase "the objectives of Article 1" in Article 5 of the Social Agreement with "the objectives of Article 117", because, the content of Article 1 of the Social Agreement replaces the content of Article 117 of the TEC and forms Article 117 of the Amsterdam Treaty.

The second amendment is the replacement of the phrase "other provisions of the Treaty" in Article 5 with "other provisions of this Treaty". Through the phrase "this Treaty", the Amsterdam Treaty is implied while "the Treaty" in Article 5 means the Maastricht Treaty.

The rest of new Article 118c is formed by the rest of Article 118 of the TEC which lists some specified areas of the social policy field and stipulates the Commission's responsibility to act in close contact with the Member States to promote cooperation between the Member States and to consult the Economic and Social Committee.

Briefly, it can be said that the new Article 118c consists mostly of the provisions included in Article 118 of the TEC except for its first paragraph the wording of which is taken from Article 5 of the Social Agreement.

Article 119 of the TEC, which deals with equal pay for equal work, is amended by the Amsterdam Treaty in the light of Article 6 of the Social Agreement which also deals with equal pay for equal work.

The first two paragraphs and fourth paragraph of the amended form of Article 119 of the TEC are the same as Article 6 of the Social Agreement which has three paragraphs. There is only one additional phrase "or work of equal value" in the first paragraph of the amended form of Article 119 as a difference from the first paragraph of Article 6 of the Social Agreement. Moreover, the fourth paragraph of the amended form of Article 119 has exactly the same meaning and the same function, but does not have exactly the same wording as the third paragraph of Article 6 of the Social Agreement. It stipulates that any Member State shall not be prevented by the principle of equal treatment provided by this article, from maintaining or adopting measures providing for specific advantages to encourage women to pursue a vocational activity or to prevent or compensate for disadvantages in professional carriers.

If the amendments are examined in the light of the former Article 119 which consists of two paragraphs, it can be seen that this article, the paragraphs of which are the same as the first two paragraphs of Article 6 of the Social Agreement, remains unchanged with only some amendments in the wording in its first paragraph. However, two new paragraphs are added to Article 119 of the TEC by the Amsterdam Treaty as the third and the fourth paragraphs of its amended form. The fourth paragraph, as explained previously, is basically formed by the third paragraph of Article 6 of the Social Agreement. However, the third paragraph of the amended form of Article 119 does not exist either in Article 119 of the TEC or in Article 6 of the Social Agreement. This is a new paragraph which stipulates that the Council is obliged to adopt measures, acting in accordance with the procedure referred to in Article 189b and after consulting the Economic and Social Committee, to provide the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

To conclude, it can be said that Article 119 of the TEC is the same as Article 6 of the Social Agreement with regard to the first two paragraphs of Article 6. However, there are some insignificant differences in the wording of their first paragraphs. The amended form of Article 119 of the TEC consists of these two paragraphs as its first and second paragraph, the third paragraph of Article 6 as its fourth paragraph and an additional paragraph, which exists neither in Article 119 of the TEC nor in Article 6 of the Social Agreement, as its third paragraph.

In the IGC, the reregulation of Article 119 of the TEC is completed by a Declaration to the Final Act on Article 119(4). This declaration states that Member States should have the aim of improving the situation of women in working life, when adopting measures referred to in Article 119(4).

A new article, Article 119a, is also introduced by the Amsterdam Treaty. In fact, the content of this new article exists in the TEC under another article: Article 120. The content of Article 120 of the TEC has changed its name, and, from now on, the new Article 119a will consist of the content of the former Article 120. Thus, new Article 119a is exactly formed by former Article 120 of the TEC which deals with paid holiday schemes.

Since the content of Article 120 of the TEC forms new Article 119a, a new content for Article 120 is provided by the Amsterdam Treaty in the light of Article 7 of the Social Agreement which deals with annual progress reports.

Article 120 of the TEC is replaced by Article 7 of the Social Agreement without any amendment, to form Article 120 of the Amsterdam Treaty. In other words; the content of the former Article 120 has changed and the content of Article 7 of Social Agreement forms Article 120 of the Amsterdam Treaty.

There is only an adaptation in this article to the amendment made by the Amsterdam Treaty: The phrase "the objectives of Article 1" in Article 7 is replaced by the phrase "the objectives of Article 117" since the content of Article 1 of the Social Agreement replaces the content of Article 117 of the TEC and forms Article 117 of the Amsterdam Treaty.

Chapter 5. Environment

Until the Single European Act (SEA), the European Community had no explicit competence on environmental issues. Articles 130r-130t on environment were inserted into the Rome Treaty by the SEA and were contained under Title VII. A series of Environmental Action Programmes was also launched as a response to the increased awareness of the environment and to meet the economic pressures since the 1970s. Moreover, with the provisions of the TEU, aforementioned articles have retained the same numbers, but under a different Title; Title XVI, the competences of the Community have been extended. Explicit mentioning of the environment in Article 3(k), further, emphasizes the extended tasks of the Community. The Fifth Environmental Action Programme (Towards Sustainability) also aims to raise the public awareness on environment so as to develop a friendly and closer relationship between the environment and industries and business activities through changing existing consumption patterns into patterns which would pave a way for sustainable development.

In the light of these developments, this part of the Amsterdam Treaty starts with the amendment of the seventh indent of the Preamble to the European Union in which the importance of the principle of *sustainable development* is inserted. In its

original form, the seventh indent of the Preamble deals only with promoting economic and social progress within the context of the accomplishment of the internal market.

Another change involves Article B of the Treaty on European Union which states the objectives that the Union shall set. Article B has been amended by adding another objective to be realized by the Union. The new objective is "to achieve balanced and sustainable development..".

Article 2 of the Treaty establishing the European Community which envisages a "harmonious and balanced development of economic activities, a high level of employment, and of social protection, sustainable and non-inflationary growth, a high degree of convergence of economic performance, the raising of the standard of living and quality of life and economic and social cohesion and solidarity among Member States" is amended with a view to underlining the importance of *sustainable development* among the other objectives of the Community.

There is also another change within the environmental policy under the heading of integration of environmental protection into all sectoral policies. The new Article 3d in the TEC provides "Environmental protection requirements must be integrated into the definition and implementation of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development". As a consequence of this statement, the last sentence of Article 130r (2), first subparagraph, will be deleted. Article 130r, in general, deals with the aims and objectives of the Environmental Policy, the principles on which the Environmental Policy is based, the guidelines of the Environmental policy, the obligations of the Member States and the Community. There is also a Declaration to the Final act concerning impact assessment studies in which it is stated that Conference notes that Commission undertakes impact assessment studies when making proposals which may have the significant environmental application.

Paragraphs 3 to 5 of Article 100a of the TEC are replaced by the Amsterdam Treaty with new and amended paragraphs 3 to 9. The Amsterdam Treaty adds new concepts, and procedures to the existing ones and further extends the roles of the European Parliament, the Council and the Commission within this framework. Article 100a and Article 100b were introduced by the SEA, and 100b was amended by the TEU. Article 100a occurs under the Title V concerning Common Rules on Competition, Taxation and Approximation of Laws. The above mentioned paragraphs are all about the procedure on Adoption of an Act mentioned in the first paragraph of the Article 100a of the TEC.

The amended third paragraph underlines the roles of the European Parliament and the Council by inserting a phrase "within their respective powers, the European Parliament and the Council will also seek to achieve this objective". The fourth paragraph is almost the same as the first subparagraph of the former paragraph 4 of the

TEC. The only difference is that in the former paragraph 4, Member States were obliged to inform the Commission of the national measures that they have to take, now, it shall notify the Commission of the grounds for maintaining the national measures along with those necessary national measures themselves. The other two subparagraphs of the former paragraph 4 of the TEC are no longer contained in the amended paragraph 4. However, they are not totally repealed. They occur in the following paragraphs. Paragraph 5 deals with the conditions under which a Member State can introduce national provisions, and the procedural requirements, which a Member State has to meet. Accordingly this paragraph provides "without prejudice to the previous subparagraph, if after the adoption by the Council or by the Commission of a harmonization measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonization measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them".

The sixth paragraph is very similar to the second subparagraph of the former 4th paragraph of the TEC. The sixth paragraph contains a time limit (six months) for the Commission to approve or reject the national provisions. The seventh paragraphs deals with the Commission's obligation in case a Member State is authorized to introduce a national provision. This obligation is to examine immediately whether to propose an adaptation to that measure.

Paragraph 7a which is about a specific question on public health and prior harmonization measures, provides "When a Member State raises a specific problem on public health which has been the subject of a prior harmonization measure, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council".

The eighth paragraph which is the same as the third subparagraph of the former fourth paragraph of the TEC, provides a right for the Commission and any Member State to bring the matter directly before the Court of Justice if it considers that a Member State is making improper use of the powers provided in this Article. Furthermore, the ninth paragraph is the same as the fifth paragraph of Article 100a of the TEC. The ninth paragraph deals with cases in which harmonization measures shall include a safeguard clause authorizing the Member States to take provisional measures for one of the reasons referred to in Article 36 of the TEC.

Chapter 6. Public Health

In the Maastricht Treaty, the Chapter on public health included four paragraphs while Chapter 6 on public health under Amsterdam Treaty contains five paragraphs.

Article 129 of the TEC is amended by reorganizing the paragraphs; stressing the importance of scientific research on the causes and prevention of diseases and giving special emphasis to drugs-related health damage. Community action, which complements the liaison between the Commission and Member States on the coordination of policies concerning public health, is also underlined. The third paragraph of the amended form of article 129 is the same as the third paragraph of the former Article 129 of the TEC. The first and second paragraphs of the amended form of Article 129 have many similarities with the first and second paragraphs of the former Article 129 of the TEC. The fourth paragraph of the amended article defines the form of the action and the measures through which the Council can contribute to the achievement of the aims concerning public health.

They are listed under three points :

- measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives: these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures,
- by way of derogation from Article 43, measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health,
- incentive measures designed to protect and improve human health, excluding any harmonization of the laws and regulations of the Member States.

In the fifth paragraph, the obligations of the Member States and the lines of the Community Action are given within this context.

Chapter 7. Consumer Protection

Article 129a of the TEC on consumer protection is amended. The amended article contains five paragraphs while the former article 129a of the TEC had three paragraphs. The list of the activities that the "Community shall contribute for the protection of the interests of the consumers and for ensuring a high level of protection" are given in the first paragraph. These activities are; protecting the health, safety and economic interests of consumers, promoting the right to information and education of consumers and the right to organize themselves in order to safeguard their interests.

The second paragraph of the amended article provides "consumer protection requirements shall be taken into account in defining and implementing other Community Policies and activities". The last three paragraphs deal with the contribution of the Commission in the attainment of the objectives of consumer protection (third

paragraph of the amended Article 129a), the procedure within which Council is expected to act (fourth paragraph of the amended Article 129a) and the more stringent protective measures that the Member States can take by their action (fifth paragraph of the amended Article 129a). Moreover, these paragraphs; the third, fourth and fifth paragraphs of the amended Article 129a of the TEC, are almost the same as the first and second and third paragraphs of the former Article 129a of the TEC.

Chapter 8. Other Community Policies

a) Citizenship of the Union

Citizenship of the Union is regulated in the TEC by Part Two which has six articles as 8, 8a, 8b, 8c, 8d, 8e. The Amsterdam Treaty reviews *Citizenship of the Union* under Chapter 8 which is on "Other Community Policies".

First of all, Article 8 of the TEC, which is on the establishment of Union citizenship and has two paragraphs, is amended by the Amsterdam Treaty by adding a new statement: "Citizenship of the Union shall complement and not replace national citizenship" to the end of its first paragraph.

Through this new statement, the Amsterdam Treaty emphasizes that national citizenship will be retained even after obtaining Union citizenship. Thus, citizenship of the Union will not be introduced at the expense of national citizenship. Instead, the former will complement the latter. Therefore, they will coexist. By adding this new statement, the Amsterdam Treaty has determined the position of *Citizenship of the Union vis-à-vis national citizenship* and therefore, resolved the dilemma between them.

Except for this additional statement, Article 8 of the TEC remains the same.

Secondly, the Amsterdam Treaty adds a new third subparagraph to Article 8d of the TEC which initially had two subparagraphs and concerns the right of every Union citizen to petition the European Parliament and the Ombudsman.

The new third subparagraph which is added to Article 8d of the TEC stipulates that every citizen of the Union may write to any of the institutions or bodies referred to in this Article (the European Parliament and the Ombudsman) or in Article 4 (the Council, the Commission, the ECJ, the Court of Auditors) in one of the languages mentioned in Article 248, which refers to the twelve languages of the Treaties, and have an answer in the same language.

Through this new subparagraph, the number of institutions to which the citizens of the Union may write is increased (from only the European Parliament to all

institutions of the European Union) and the language in which the citizens of the Union may write to the relevant institutions and bodies, and may have an answer is determined.

As to the third point in the "Citizenship of the Union" subject of Chapter 8, a new paragraph is added in the preamble to the TEC. This new paragraph reads. "Determined to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and its continuous updating."

In the preamble to the TEC, the aims and principles of the EC are stated. Through this new paragraph which is added to the preamble, the importance of "promoting the development of the highest possible level of the knowledge for the EU citizens" and "a wide access to education and its continuous updating" to reach this objective are emphasized as one of the main aims of the EU.

b) Culture

The policy on *Culture* is regulated in the TEC by Article 128 under Title IX. This article arranges for cultural action by the Community to promote the cultures of the Member States while respecting their national and regional diversity and at the same time to bring the common cultural heritage to the fore. The Amsterdam Treaty under Chapter 8 reviews Article 128 of the TEC by way of amending its fourth paragraph. Article 128(4) of the TEC emphasizes the importance of taking cultural aspects into account when the provisions of the TEC are applied.

In this paragraph, a general approach is provided through the phrase "cultural aspects" since a specific cultural aspect is not stated. However, in the amended form of the fourth paragraph of Article 128, cultural diversity as a cultural aspect is particularly emphasized. This amendment is made by the Amsterdam Treaty by adding a new phrase: "in particular in order to respect and to promote the diversity of its cultures" to the end of Article 128(4) of the TEC. Except for this additional statement, the rest of the amended form of Article 128(4) of the TEC is fully constituted by the former Article 128(4).

The incorporation of culture into the Community sphere is subject to an array of provisions restricting the scope of Community action in this field. In the area of culture, where national diversity is apparent, the Community is to play only a small role, because the provisions on culture are by far the most restrictive of Community action.

c) Sport

Sport as a Community policy has not been taken up by the TEC or TEU under any provision or under any protocol or any declaration. The IGC has met this need

through a declaration on sport which is annexed to the Amsterdam Treaty under Chapter 8.

Through this declaration, the social significance of sport, in particular its role in forging identity and bringing people together, is emphasized. Therefore, the bodies of the EU are called on to take into consideration the views of sports associations when important questions affecting sport are at issue. In parallel, special consideration should be given to the particular characteristics of amateur sport.

With this declaration, sport as a Community policy takes its place in the Community agenda.

d) Countering fraud affecting the financial interests of the Community

The Amsterdam Treaty, through some amendments, reregulates Article 209a of the TEC which has been designed to help to the fight against fraudulent use of Community finances.

Through the amendments made by the Amsterdam Treaty, the scope of Article 209a of the TEC and therefore of action to counter fraud affecting the financial interests of the Community are widened. Originally, Article 209a of the TEC consisted of two paragraphs. However, this number of paragraphs is increased by the Amsterdam Treaty to five.

The first paragraph of the amended form of Article 209a is a new paragraph added to Article 209a of the TEC. According to this paragraph; the Community and the Member States shall take measures in accordance with this Article to prevent fraud and any other illegal activities affecting the financial interests of the Community. These measures shall be used as a deterrent and shall provide effective protection in the Member States.

The second paragraph of the Article 209a in the Amsterdam Treaty formed by the first paragraph of the former Article 209a, remains the same. The obligation in this paragraph is one of parallelism; the Member States are to be just as vigilant in countering fraud against Community finances as they are in dealing with fraud affecting their own interests.

The third paragraph of the amended form of Article 209a is formed by the second paragraph of the former Article 209a with two amendments. This paragraph imposes on Member States a requirement to coordinate their anti-fraud activities by organizing, together with the Commission, close and regular cooperation between the competent authorities. There are two differences between the former Article 209a and its amended form. Except for these differences, the former Article 209a remains in general the same.

The first difference is the replacement of the phrase "with the help of the Commission" with "together with the Commission." Therefore, in the Amsterdam Treaty, the Commission is more strictly involved in this process.

Secondly; a generalization is made in the Amsterdam Treaty by using the term "the competent authorities"; but in the former Article 209a of the TEC there had been a more specific phrase: "the competent departments of their administration."

The fourth paragraph is a new provision which is added to Article 209a of the TEC by the Amsterdam Treaty. In addition to the Member States and the Commission, the Council is also involved in the process through this paragraph. Like the Member States, the Council also has the responsibility to adopt the necessary measures to prevent fraud from affecting the financial interest of the Community.

This new paragraph states: "The Council, acting in accordance with the procedure referred to in Article 189b, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law and the national administration of justice."

The fifth paragraph of the amended form of Article 209a is also a new provision. This new provision which is added to Article 209a of the TEC by the Amsterdam Treaty imposes on the Commission another responsibility to submit each year, in cooperation with Member States, a report on the measures taken for the implementation of this Article to the Council and to the European Parliament.

e) Strengthening customs cooperation

The TEC did not have any provisions on "strengthening customs cooperation". In fact, this issue is very important for promoting integration between the Member States. Therefore, to fill in the void, a new article on this issue is inserted in the Amsterdam Treaty. This new article in the TEC provides that measures shall be taken by the Council, acting in accordance with the procedure referred to in Article 189b, in order to strengthen customs cooperation between Member States and between the latter and the Commission within the scope of application of this Treaty. Additionally, these measures shall not concern the application of national criminal law and the national administration of justice.

f) Outermost regions

The situation of the French overseas Departments with regard to the application of the provisions of the TEC in those regions has been regulated by the TEC due

to the second paragraph of its Article 227 which deals with territorial application of the Treaty. The Amsterdam Treaty reforms this paragraph through some substantial amendments depending on the need to update the treaty provisions on the situation of the French overseas Departments, and widens its area of application and its scope, since the original Article 227(2) of the TEC regulated the situation of the French overseas Departments with regard to the application of the provisions of the TEC within the situation which existed when the TEC was signed.

First of all, the second paragraph of the former Article 227 of the TEC related only to the French overseas Departments. However, Article 227(2) in the Amsterdam Treaty further includes the Azores, Madeira and Canary Islands.

Additionally, the content of the second paragraph of Article 227 of the TEC is widened. While the former second paragraph of Article 227 consisted of three subparagraphs, the amended form of this paragraph consists of four subparagraphs: The first two subparagraphs of the former Article 227(2) are amended; the third subparagraph of the former Article 227(2) is repealed; and two new subparagraphs are added to Article 227(2) of the TEC by the Amsterdam Treaty as the new third and the fourth subparagraphs.

The first subparagraph of the former Article 227(2) of the TEC reads as follows:

“2. With regard to the French overseas Departments, the general and particular provisions of this Treaty relating to :

- the free movement of goods;
- agriculture, save for Article 40(4);
- the liberalization of services;
- the rules on competition;
- the protective measures provided for in Articles 109h, 109l, and 226;
- the institutions,

shall apply as soon as this Treaty enters into force.”

The first subparagraph of the former Article 227(2) provided the application, as soon as the TEC enters into force, of the general and particular provisions of the TEC relating to some specific subjects listed in this paragraph: the free movement of the goods; agriculture; the liberalization of the services; the rules on competition; the protective measures; the institutions. As to the other provisions of the TEC relating to the subjects other than those mentioned above, the second subparagraph of the former Article 227(2) stated that the Council, within two years of the entry into force of the TEC, had the obligation to determine the conditions of their applications.

However, the first subparagraph of the amended form of Article 227(2) provides the application of the provisions of the TEC to the French overseas Departments and the Azores, Madeira, and the Canary Islands without stating immediate application of some provisions on specific subjects and without leaving the determination of the application conditions of the other provisions to the decisions of the Council.

The amended form of Article 227(2), first subparagraph, reads as follows :

“The provisions of the Treaty establishing the European Community shall apply to the French overseas Departments, the Azores, Madeira and the Canary Islands.”

In its second subparagraph, the amended form of Article 227(2), differently from its original form, imposes on the Council a requirement of adopting specific measures aimed at laying down the conditions of the application of the present Treaty and common policies to the French overseas Departments, the Azores, Madeira and Canary Islands by taking into account the structural social and economic situation of those regions instead of a requirement –as stated in the former Article 227(2)– of determining, within a period of time, the application conditions of the provisions relating to the subjects other than those mentioned in the first subparagraph of the former Article 227(2). In such a case, special consideration shall be given to the structural, social and economic situation of those overseas Departments since their structural, social and economic situation which is compounded by some negative factors (such as their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development) may cause some difficulties in the application of the present Treaty to those regions.

The third subparagraph of the amended form of Article 227(2), which is introduced by the Amsterdam Treaty, envisages some areas which shall be taken into account by the Council when adopting the relevant measures mentioned above. These areas are: customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Community programmes.

As to the fourth subparagraph of the amended form of Article 227(2), which is also a new paragraph, the Council shall take into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Community legal order and of the internal market and common policies when it adopts the measures mentioned above.

g) Island Regions

In the TEC, there had not been any provisions about island regions or about problems and solutions on their economic and social level of developmental differ-

ences from the other regions in the Community. However, there was an article in the TEC about reducing disparities between the levels of development of the various regions and the backwardness of the least-favoured regions (Article 130a); but "islandsassuch", as regions of the Community are ignored.

This void was filled in the Amsterdam Treaty by inserting the word "islands" in the second paragraph of Article 130a of the TEC. This amendment provides that the Community shall aim at reducing the backwardness of islands in addition to reducing the backwardness of the least-favoured regions including rural areas. Except for this additional word, "islands", the amended form of Article 130a(2) of the TEC remains the same as its former form. Through this amendment, islands as regions of the Community are included in the regions for whose development the Community is responsible.

The amended form of the second paragraph of article 130a reads as "In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas."

In addition to the amendments on the second paragraph of Article 130a, a declaration on the island regions is also included in the Amsterdam Treaty. This declaration, first of all, provides for the recognition, by the IGC, of structural handicaps of island regions arising from their island status. In case of the permanence of these structural handicaps, the economic and social development of island regions are impaired.

After stating the problems of island regions, the declaration proposes solutions for these problems: In order to strengthen the Community's economic and social cohesion by integrating these regions better into the internal market on fair conditions, the above-mentioned handicaps must be taken into account when Community legislation is made, and, some specific measures may be taken in favour of these island regions.

h) Overseas countries and territories

The Amsterdam Treaty either raises a new issue which has not existed in the European Community framework, or reviews an existing issue. Association of the Overseas Countries and Territories (OCTs) as an established policy in the TEC under Part Four is reviewed by the Amsterdam Treaty.

Part Four of the TEC, which consists of seven articles: 131-136 and 136a, arranged association of the non-European countries and territories which have special relations with some members of the Community (Belgium, Denmark, France, Italy,

the Netherlands, and the UK) with the Community under the situation which existed when the TEC was signed.

The Amsterdam Treaty, which includes a declaration to the Final Act on the OCTs, reviews Part Four through this declaration with the aim of opening the way for updating the arrangements for the association of the OCTs.

This declaration consists of four paragraphs. In the first paragraph, the situation of the OCTs at the time when the TEC was signed is stated: "The special arrangements for the association of the OCTs with the Community under Part Four of the TEC were designed for countries and territories that were numerous, covered vast areas and had large populations. These arrangements have changed little since 1957."

However, in the second paragraph, the present situation of these countries and territories is stated: Today there are only 20 OCTs which are scattered island territories with a total population of approximately 900,000. Additionally, because of their severe geographical and economic handicaps most OCT, in structural terms, lag far behind. Therefore, the special arrangements for association as they were conceived in 1957 can no longer effectively be sufficient to deal with the challenges of OCT development.

The purpose of association which is stipulated in the second paragraph of Article 131 of the TEC, forms the content of the third paragraph of the declaration without being amended. Accordingly, the purpose of association is to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.

As to the fourth paragraph of the declaration, the Council, acting in accordance with the provisions of Article 136 of the TEC, is invited to review the association arrangements by February 2000 with the objectives of :

- promoting the economic and social development of the OCTS more effectively;
- developing economic relations between the OCTs and the EU;
- taking greater account of the diversity and specific characteristics of the individual OCTs, including aspects relating to freedom of establishment;
- ensuring that the effectiveness of the financial instrument is improved.

The Council shall act in accordance with the provisions of Article 136 of the TEC, which is one of the Part Four articles, to review the association arrangements.

i) Services of general economic interest

A new article which is called Article 7d is added to the TEC by the Amsterdam Treaty. This article regulates services of general economic interest. According to this new article, the Community and the Member States shall take care that services of general economic interest operate on the basis of principles and conditions which enable them to fulfill their missions without prejudice to Articles 77 (which is on permissible aids), 90 (which regulates competition rules as to public undertakings) and 92 (which regulates prohibited and permissible State aids). This new article is inserted in the Amsterdam Treaty with a thorough consideration of the place occupied by such services in the shared values of the Union as well as their role in promoting social and territorial cohesion.

In addition to the new article, Article 7d, declaration to the Final Act on services of general economic interest was also made in the IGC. This declaration states: "The provisions of Article 7d on public services shall be implemented with full respect for the jurisprudence of the Court of Justice, inter alia as regards the principles of equality of treatment, quality and continuity of such services."

j) Public Service Broadcasting

In the IGC, the Member States agreed on a Protocol on *Public Service Broadcasting* to be annexed to the TEC.

The system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism.

In the light of this fact, the Protocol provides: "The provisions of the Amsterdam Treaty shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting in so far as such funding is granted to broadcasting organizations for the fulfillment of the public service remit as conferred, defined and organized by each Member State, and that such funding does not affect trade conditions and competition in the Community to an extent which would be contrary to the common interest, while the realization of the remit of that public service shall be taken into account."

k) Public credit institutions in Germany

On *public credit institutions in Germany*, a declaration to the Final Act was made in the IGC.

The declaration deals with the compatibility of services of general economic interest provided by public credit institutions existing in Germany and the facilities

granted to them to compensate for the costs associated with such services with the Community's existing competition rules. According to the Community's existing competition rules, they are allowable but such facilities must not adversely affect the conditions of competition and must not be contrary to the interests of the Community.

l) Voluntary Service Activities

On *voluntary service activities*, a declaration to the Final Act was made in the IGC. Through this declaration the significant contribution of voluntary service activities to developing social solidarity is recognized by the IGC. Additionally, the declaration states that the European dimension of voluntary organizations will be encouraged by the Community with particular emphasis on the exchange of information and experiences as well as on the participation of the young and the elderly in voluntary work.

m) Animal Welfare

The Member States of the Community, with the aim of ensuring improved protection and respect for the welfare of animals as sentient beings, have agreed on a protocol which shall be annexed to the TEC.

This protocol provides that the Community and the Member States, while respecting the legislative or administrative provisions and customs of the Member States, shall pay full regard to the welfare requirements of animals when they formulate and implement the Community's agriculture, transport, internal market and research policies.

n) Trans-European Networks

The Amsterdam Treaty amends the third indent of Article 129c(1) of the TEC which determines the actions to be taken by the Community in order to achieve the objectives referred to in Article 129b.

Trans-European networks are regulated in the TEC by Article 129b, 129c and 129d under the Title of Trans-European Networks. These articles aim at permitting the citizens of the Union to "derive full benefit from the setting up of an area without any internal frontiers". This is to be achieved through Community contribution to the establishment and development of trans-European networks in the areas of transport, telecommunications, and energy infrastructures as stated in Article 129b. Therefore, this contribution helps achieve the objectives referred to in Articles 7a (completion of the internal market) and 130a (completion of the economic and social cohesion).

The third indent of Article 129c of the TEC permits the Community to support the financial efforts made by the Member States in common projects, identified under the guidelines referred to in the first indent.

As to the amended form of the third indent, the phrase "may support the financial efforts made by the Member States for projects of common interest financed by the Member States," in the third indent of Article 129c(1) of the TEC is replaced by the phrase "may support projects of common interest supported by the Member States".

The rest of the third indent of Article 129c(1) remains unchanged. The amended form of this indent provides the Community to support directly projects of common interests supported by the Member States, instead of supporting the financial efforts made by the Member States in common projects. No special phrase "financial efforts made by the Member States shall not be supported" is used in the amended form of Article 129b. In fact, the support is limited only to financial efforts. In the amended form of the third indent of Article 129b, Community support on projects of common interest is provided through general terms.

o) Statistics

A new article, Article 213a is introduced by the Amsterdam Treaty. This new article is on Community statistics.

This new article consists of two paragraphs. The first paragraph imposes on the Council a requirement of adopting measures for the production of statistics: "Without prejudice to the provisions of Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the Council, acting in accordance with Article 189b, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Community."

In the second paragraph, some principles which shall be respected while Community statistics are produced are stated: "The production of Community statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators."

Chapter 9. Subsidiarity

Protocol on the Application of the Principles of Subsidiarity and Proportionality

"Subsidiarity is the principle that decisions should be taken at the lowest level consistent with effective action within a political system"⁶. This principle had first appeared within the context of the European Community with the introduction of article

6 Bainbridge, *op. cit.* p.43.

130r on environment by the SEA. The Maastricht Treaty, then, introduced a subsidiarity clause into the Rome Treaty with Article 3b :

“In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action can not be sufficiently achieved by Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community”.

The protocol consists of 13 Points and a Declaration. In the Protocol which has been proposed by the Amsterdam Treaty, there are some important references to the Birmingham European Council and on the overall approach to the application by the Council of the principle of subsidiarity decided at the Edinburgh Summit and found in Article 3b of the Treaty on European Union (11-12 December 1992) along with Article 3b of the TEC and Article F(3) of the TEU. Article F(3) provides “The Union shall provide itself with the means necessary to attain its objectives and carry through its policies”.

It is appropriate to say that the statements of the Birmingham Declaration such as: *“Greater unity can be achieved without excessive centralization and bringing into life the principle of subsidiarity is essential if the Community is to develop with the support of its citizens”*, constituted the basis of this protocol.

Point 1 provides that compliance with principles of subsidiarity and proportionality shall be ensured within the Community.

With regard to implementation of Article 3b, points 2 and 3 of the Protocol have similar features with the fourth paragraph of the Edinburgh Declaration; *“Subsidiarity is a dynamic concept and should be applied in the light of the objectives set out in the Treaty”*. Point 4 sets out two requirements which shall be met in any proposal for Community legislation :

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

Point 6 emphasizes that for Community action to be justified, the Community shall legislate only to the extent necessary. Point 5 lists three guidelines which should be used in examining whether the conditions of the subsidiarity criterion are met. These guidelines are :

- the issue under consideration has transnational aspects which can not be satisfactorily regulated by action by Member States,

- actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or to avoid disguised restrictions on trade or to strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests,
- action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of Member States.

The subsidiarity criteria also have two conditions. The first condition is that: "The objectives of the proposed action can not be sufficiently achieved by the Member States' action in the framework of their national constitutional system". The second condition is that the "objectives of the aforementioned proposed action, therefore, be better be achieved by action on the part of the Community".

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

Point 8 set out the obligations of the Member States "where the application of the principle of subsidiarity leads to no action being taken by the Community" as follows :

"... to comply with the general rules laid down in Article 5 of the Treaty by taking all appropriate measures to ensure fulfillment of their obligations under the Treaty and by abstaining from any measure which could jeopardize the attainment of the objectives of the Treaty".

Point 9 defines the obligations of the Commission and point 10 defines the role of the European Council with a reference to point 9 within the context of the right of initiative of the Commission. The obligations of the Commission are listed as :

- consulting before the proposing legislation (except in cases of urgency and confidentiality),
- publishing a consultation document (where appropriate),
- justifying the relevance of its proposals with regard to the principle of subsidiarity,
- taking duly into account for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, ec-

onomic operators and citizens, to be minimized, and proportionate to the objective to be achieved,

- submitting an annual report to the European Council, the Council, and the European Parliament on the application of Article 3b of the Treaty. It shall be sent to the Committee of the Regions and to the EcoSoc.

There is also a Declaration relating to the Protocol on the application of the principles of subsidiarity and proportionality. With this Declaration, the responsibility of the Member States in the administrative implementation of Community action has been underlined by stating that this responsibility "... shall not affect the supervisory, monitoring and implementing powers of the Community Institutions as provided under Article 145 and 155 of the TEC".

Chapter 10. Transparency

Transparency is defined as a vague term which implies greater public openness and access in the working of the Union⁷.

The second paragraph of Article A of the TEU in which there is a reference to the Treaty of Rome with the phrase "ever closer union", is amended. The phrase inserted in the original article is about openness, stressing the importance of transparency: "... as openly as possible".

There is a new Article 191a in the TEC which contains three paragraphs. It deals with the right of access to documents. The first paragraph lists the persons who have the right of access to documents and the institutions whose documentation can be obtained by the persons specified in the paragraph. The list covers "... any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, and as institutions: The Council, European Parliament and Commission".

The second and the third paragraphs deal with the conditions that provide such a right. In the third paragraph there is an implied reference to Article 151(3), second subparagraph.

There is also a Declaration to the Final Act on Article 191a (1) of the TEC which is about the access to documentation originating from a Member State by third parties. This Declaration provides "The Conference agrees that the principles and conditions referred to in Article 191a(1) will allow a Member State to request the Commission or the Council not to communicate to third parties a document originating from that State without its prior agreement".

7 Church & Phinnemore, *op. cit.*

Chapter 11. Quality of Community Legislation

Declaration to the Final Act on the quality of the drafting of Community Legislation

Through this Declaration, the relationship between proper implementation and better understanding of Community legislation and quality of the drafting of Community legislation is underlined. There are, also, references to the European Council in Edinburg (11 and 12 December 1992) and to Council Resolution on the quality of drafting of Community legislation (for further information see, OJ C, 166, 17.6.1993 p.1 with regard to the subject matter of this Declaration). The obligations of the three institutions (European Parliament, Council, Commission) which are involved in procedures for adopting Community legislation are further emphasized, taking into account the Interinstitutional Agreement of 20 December 1994 (for further information on Interinstitutional Agreement see, OJ C 293, 8.11.1995, p.2). This obligation is: laying down guidelines on the quality of drafting of the said legislation.

In the Declaration, two tasks are also set out for the European Parliament, the Council and Commission to meet the requirement of the aforementioned obligation. These are :

- to establish by common accord guidelines for improving the quality of the drafting of Community legislation and follow those guidelines when considering proposals for Community legislation or draft legislation, taking the internal organizational measures they deem necessary to ensure that these guidelines are properly applied;
- to make their best efforts to accelerate the codification of legislative texts.

Section III. An Effective and Coherent External Policy

Chapter 12. The Common Foreign and Security Policy

The Amsterdam Treaty has weighty provisions on the external policy of the EU, including both political and economic aspects of this policy. Section III, "An Effective and Coherent Policy" covers these provisions.

The first article on the CFSP of the EU to be amended by the Amsterdam Treaty is Article C of the Maastricht Treaty. The second subparagraph of this article is amended in such a way as to reflect the basic objective behind the amendments. It provides that the Union should in particular ensure the consistency of its activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission are given the responsibility for the

achievement of this consistency. All these statements were also included in the Maastricht Treaty. The amendment brought about by the Amsterdam Treaty is the additional statement that the Council and the Commission shall cooperate for the achievement of the consistency mentioned in the subparagraph. Both Treaties provide that these bodies shall ensure the implementation of these policies, each in accordance with its respective powers.

In this article, the term "consistency" has a significance in the sense that it refers here to common belief and action by the Member States on foreign policy issues. Especially after the Yugoslav experience (i.e., the unexpected German move to recognize the new European states etc.), the EU Member States were seriously confronted with the need to decide and act quickly, decisively and effectively, particularly in emergency situations.

The amended Article C confers the responsibility both on the Council and the Commission for ensuring the consistency required. This is significant in the sense that the Commission, with regard to its role in the Maastricht Treaty has acquired new responsibilities in the implementation of the Common Foreign and Security Policy (CFSP).

Title V. Provisions on Common Foreign and Security Policy

Under Title V on CFSP, in Chapter 12, Article J.1(1) lays down the objectives of the CFSP. (In the Maastricht Treaty, these objectives were given in Article J.1(2). Article J.1(1) in the Amsterdam Treaty is an amended form of this article.) These objectives are :

1. safeguarding the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the UN Charter; (The terms "integrity" and "in conformity with the UN Charter" are affixed by the Amsterdam Treaty and they, in a way, signify the Member States' will for further integration and their commitment to their responsibilities within the UN framework.)
2. strengthening the security of the Union in all ways; (while the Maastricht Treaty takes the Union and its Member States as different entities, the Amsterdam Treaty only uses the term "Union" for meaning both.)
3. preserving peace and strengthening international security, in accordance with the principles of the UN Charter, as well as the principles of the Final Act and the objectives of the Paris Charter, including those on external borders; (The phrase "including those on external borders" is affixed by the Amsterdam Treaty. Again, this objective certifies the Member States' commitment to their other obligations under the basic international organizations

like the UN and the OSCE. Furthermore, the additional statement on external borders reflects the Member States' intention for integration not only in economic but also in political terms.)

4. promoting international cooperation;
5. developing and consolidating democracy and the rule of law, and respect for human rights and fundamental freedoms.

The Amsterdam Treaty further stipulates that the Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and solidarity (Article J.1(2), subparagraph 1). Here, the term "unreservedly" is significant in the sense that it ensures consistency on the one hand and that it is an important feature of a *common* policy on the other. The phrase "spirit of loyalty and mutual solidarity" is also used to express the manner in which the Member States are expected to act in order to ensure the achievement of common action. These phrases were also included in the Maastricht Treaty. The Amsterdam Treaty adds that the Member States shall work together to enhance and develop their mutual political solidarity. This signifies a further step in the achievement of the loyalty and solidarity set out by the Maastricht Treaty.

In both the Maastricht Treaty and the Amsterdam Treaty, the Member States are required to refrain from any action that can be contrary to the interests of the Union or can impair its effectiveness as a cohesive force in international relations. This requirement further reflects the intention of the achievement of cohesion in the external policies of the Member States.

Again, in both of the Treaties, the Council is entrusted with the task of ensuring that the provisions of Article J.1 are complied with. Here, it should be noted that the Council is the major body to deal with the CFSP of the EU.

The means through which the Council should pursue the objectives laid down in Article J.1 are stated in Article J.2, which amends Article J.1 (3) in the Maastricht Treaty. In the Maastricht Treaty, these means were stated as :

1. establishing systemic cooperation between the Member States in the conduct of policy,
2. gradually implementing joint action in the areas in which the Member States have important interests in common.

The means set out by the Amsterdam Treaty are :

1. defining the principles of and general guidelines for the CFSP;
2. deciding on common strategies;
3. adopting joint actions;

4. adopting common positions; and
5. strengthening systematic cooperation between Member States in the conduct of policy.

As can be seen in the differences in the wording, the Amsterdam Treaty, takes “systemic cooperation” between the Member States as established and it provides for further steps to be taken, this time for the achievement of common action in the conduct of foreign policy. Therefore, instead of gradual joint action for issues of vital common interests, the Amsterdam Treaty renders a broad and intensive process of decision-making in the field of CFSP from the definition of the principles to the adoption of common positions.

The Organizational Structure and Procedures :

The European Council

Article J.3 (which amends J.8 (1) and (2), first subparagraph of the TEU) confers some tasks upon the **European Council**. Accordingly, the European Council is supposed to define the principles of, and general guidelines for, the CFSP, including the matters with defense implications. Here, the term “defense implications” is included by the Amsterdam Treaty and its inclusion has a significance in the sense that it is a sign of the move towards a common defense policy.

The European Council is held responsible for deciding on common strategies to be implemented by the EU in areas where the Member States have important common interests.

Common strategies shall also set out their objectives, duration and the means to be made available by the EU and the Member States.

As can be observed, the major decisions are deemed to be taken by the Heads of State or Governments on the issues regarding the vital common interests of the Member States. This, in fact, refers to the sovereign rights of the Member States.

The Council of Ministers

In the Amsterdam Treaty, the tasks and responsibilities assigned to the Council and its competence are arranged under articles J.3 (3) (which amends Article J.8 (2) of the TEU), J.4 (an amended form of Article J.3 of the TEU), J.5 (an amended form of Article J.2 (2) of the TEU) and J.6 (an amended form of Article J.2 (1) of the TEU).

Under Article J.3 (3), first subparagraph; the Council is required to take the decisions necessary for defining and implementing the CFSP on the basis of the gener-

al guidelines defined by the European Council; as was stated in the TEU under Article J.8 (2), first subparagraph. However, the Amsterdam Treaty includes a new subparagraph which further provides that the Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions (Article J.3 (3), subparagraph 2).

The major task assigned to the Council is ensuring the unity, consistency and effectiveness of action by the Union; similar to what was stated in the Maastricht Treaty.

Joint Actions

Under Article J.4 (an amended form of Article J.3 of the TEU), the conditions under which the Council is supposed to take joint actions are determined. Accordingly, the Council shall adopt "joint actions" which shall address specific situations where operational action by the Union is deemed to be required. The Treaty emphasizes that joint actions shall lay down their objectives, scope and the means to be made available to the Union; if necessary, their duration and the conditions for their implementation.

The joint actions can be changed if and only if there is a change in circumstances and upon the act of the Council. The Council is required to review the principles and objectives of the action in question and take the necessary decisions. If the Council does not act, then, the joint action will maintain its validity.

The Member States undertake the commitment to take into account the joint actions in the positions they adopt and in the conduct of their activity.

The Council is further entitled to request the Commission to submit to it any appropriate proposals on the CFSP for the implementation of a joint action.

A Member State which plans to adopt a national position or take national action pursuant to a joint action has to provide the necessary information in a certain period of time. The time limit referred to here shall allow for prior consultations with the Council. This obligation does not apply to measures adopted for a national transposition of Council decisions.

If a imperative need arises from changes in the situation and if there is no Council decision, Member States may take the necessary measures as a matter of urgency. While doing so, they have to take into account the general objectives of the joint action. Furthermore, the Member States are also required to inform the Council immediately.

Member States are also required to refer any difficulties in implementing a joint action to the Council. The Council, in such a case, is supposed to discuss these dif-

difficulties and seek appropriate solutions. The solutions shall not run counter to the objectives of the joint action, or impair its effectiveness.

Common Positions

Under Article J.5 (an amended form of Article J.2 (2) of the TEU), the adoption of the “common positions” is determined. Although the Maastricht Treaty stipulates the condition that the Council shall adopt a common position whenever it deems necessary, the Amsterdam Treaty takes the adoption of a common position as an ordinary task of the Council. The Amsterdam Treaty regards the “common positions” as a tool in defining the approach of the Union towards a particular matter of a geographical or thematic nature. The adoption of common positions is also a task assigned to the Council. The Member States are expected to ensure that their national policies conform with the common positions.

Concerted and Convergent Action

Under Article J.6 (an amended form of Article j.2 (1) of the TEU), the Member States are expected to inform and consult each other within the Council on matters of foreign and security policy of general interest. This is a significant requirement for ensuring that the EU's influence is exerted as effectively as possible by means of concerted and convergent action. Here, the term “concerted and convergent action” is of special importance since this terminology reiterates the will towards the achievement of a common foreign and security policy.

The Decision-Making Process in the CFSP

By a new article introduced by the Amsterdam Treaty, Article J.13, it is provided that the decisions under the CFSP shall be taken by the Council acting “unanimously”. This requirement, in a way, refers to the sovereign rights of the Member States, guaranteeing that proposals which can impair a Member State's vital national interests shall not be adopted. This means that any rejection by a Member State will prevent the adoption and application of proposed acts. Nevertheless, the same Article also provides that abstentions by members do not prevent the adoption of such decisions. This is significant in the sense that it further ensures that abstentions shall not block the decision making process in CFSP. Article J.13 (1), subparagraph 2 of the Amsterdam Treaty also defines the procedure through which the Member States can abstain in a vote.

The Council is entitled to act by “qualified majority” when adopting joint actions, common positions or taking any other decision on the basis of a common strategy and when adopting any decision implementing a joint action and common position

(Article J.13 (2) of the Amsterdam Treaty). Here, it should be taken into account that common positions and joint actions to be adopted under this article usually refer to secondary issues which do not have serious implications for a Member State's foreign policy affecting its national interests to a great extent.

Under Article J.13 (2), subparagraph 2 of the Amsterdam Treaty, Member States are given the right to oppose the adoption of a decision to be taken by a qualified majority, on the grounds of important and stated reasons of national policy. In case of such a declaration of opposition, a vote shall not be taken. The same subparagraph further provides that the Council may, acting by a qualified majority, request the matter be referred to the European Council for decision by unanimity.

It should be noted that, Article J.13 (2), subparagraph 4 of the Amsterdam Treaty emphasizes that Article J.13 (2) shall not apply to decisions having military or defense implications. This statement further signifies the sovereign rights of Member States, recalling that decisions with vital implications for a country's national interests, i.e., decisions with military or defense implications, can not be taken by qualified majority voting. This also marks the difference between a "Common Foreign and Security Policy" and a "Common Defense Policy".

For procedural questions, the Council is supposed to act by a majority of its members. (Article J.13 (3) of the Amsterdam Treaty).

Under a new article, Article J.14, introduced by the Amsterdam Treaty, the Council is given the competence to act unanimously in cases where it is necessary to conclude an agreement with one or more states or international organizations in implementation of the CFSP. In such a case, the Council may authorize the Presidency, assisted by the Commission as appropriate, to open negotiations to that effect. Therefore, such agreements shall be concluded by the Council acting unanimously and on a recommendation from the Presidency. In the same Article, it is also provided that no agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure. However, the other members are given the chance to agree that the agreement shall apply provisionally to them. The provisions of Article J.14 shall also apply to matters falling under Title VI which is on the simplification and consolidation of the Treaties.

Through a declaration to the Final Act relating to Articles J.14 and K. 10, the Member States also asserted that any agreements resulting from them shall not imply any transfer of competence from the Member States to the Union. This statement also refers to the sovereign rights of the Member States and it clearly shows that the establishment of a CFSP does not and shall not mean the transfer of their sovereign rights.

Under Article J.16, the Secretary General of the Council, the High Representative of the CFSP, is required to assist the Council in matters coming within the scope of the CFSP. The Secretary General is supposed to contribute to the formulation, preparation and implementation of policy decisions. The Secretary General can also, when appropriate and acting on behalf of the Council at the request of the Presidency, conduct political dialogue with third parties.

The European Parliament

The European Parliament has a consultative role with regard to the main aspects and basic choices of the CFSP. Accordingly, under Article J.11 (Article J.7 of the TEU) of the Amsterdam Treaty, the Presidency is expected to consult the EP in CFSP areas and ensure that the views of the EP are duly taken into consideration. The EP, in this respect, is to be informed regularly by the Presidency and the Commission of the development of the Union's CFSP.

The EP can further ask questions and make recommendations. It is also supposed to hold an annual debate on the progress in implementing the CFSP.

The Commission

Under Article J.12 (which takes Article J.8 (3) and (4) of the TEU as a whole), any Member State or the Commission is entitled to refer to the Council any question relating to the CFSP and to submit proposals to it. It is an important provision in the sense that the Commission is granted the right to submit proposals to the Council in the CFSP area, which in fact reminds one of its right to initiate action in the decision-making process of the ECs. The Member States and the Commission also have the competence to request the Presidency to convene an extraordinary Council meeting within forty-eight hours or, in an emergency, within a shorter period, in cases requiring rapid decision. The Presidency is also entitled to act on its own motion in such cases requiring a rapid decision.

Under Article 17, which is a new article introduced by the Amsterdam Treaty (the same article as Article J.9 of the TEU), the Commission is to be fully associated with the work carried out in the CFSP field. This statement also reflects the will for the inclusion of the Commission in the CFSP decision-making in the coming years. However, it should be noted that the Amsterdam Treaty does not change one word in the Maastricht Treaty regarding the role of the Commission. Therefore, it can be concluded that the Member States do not urge the inclusion of the CFSP in a Community-like framework within which the Commission plays a major role.

The Political Committee

Under Article J.15 (an amended form of Article J.8 (5) of the TEU) it is provided that a Political Committee shall monitor the international situation in the areas covered by the CFSP and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It is also supposed to monitor the implementation of agreed policies without prejudice to the responsibility of the Presidency and the Commission. In the Maastricht Treaty it was further provided that the Political Committee should consist of Political Directors; however, the Amsterdam Treaty does not include this provision.

The Intergovernmental Conference also agreed on a Declaration to the Final Act on Article J.15 of the Amsterdam Treaty, stating that the Member States should ensure that the Political Committee would be able to meet at any time, in the event of international crises or other urgent matters, at very short notice at the Political Director or deputy level. This declaration is also made with the aim of providing the Union with the required flexibility and ability for action in emergency situations.

The Policy Planning and Early Warning Unit

Through a Declaration to the Final Act, the IGC also made known the Member States' intention to establish a Policy Planning and Early Warning Unit. This unit is supposed to operate under the auspices of the General Secretariat of the Council, under the responsibility of its Secretary General. It shall cooperate with the Commission where appropriate, in order to ensure full coherence with the EU's external economic and development policies.

The tasks assigned to the unit are as follows :

- a) monitoring and analyzing developments in areas relevant to the CFSP;
- b) providing assessments of the EU's foreign and security policy interests and identifying areas where the CFSP could focus in future;
- c) providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises;
- d) producing, at the request of either the Council or the Presidency or on its own initiative, argued policy options papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP.

To be able to fulfill its tasks, the unit shall consist of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU.

The Member States and the Commission are entitled to make suggestions to the Unit for work to be undertaken. Furthermore, they are required to assist the policy planning process by providing, to the fullest extent possible, relevant information, including confidential information.

Budgetary Procedures

The Budgetary Procedures of the CFSP are laid down in Article J.18 (an amended form of Article J.11 of the TEU) of the Amsterdam Treaty. Accordingly, all the provisions referred to in Articles 137, 138, 139 to 142, 146, 147, 150 to 153, 157 to 163, 191a and 217 of the Rome Treaty shall apply to the provisions relating to the areas referred to in the Title on the CFSP.

Administrative expenditures for the institutions in the CFSP field are to be charged to the budget of the ECs.

Operational expenditures which arise out of the implementation of the CFSP are also to be charged to the budget of the ECs, except for such expenditure arising from operations with defense and military implications, and cases where the Council, acting unanimously, decides otherwise.

If expenditure is not charged to the budget of the ECs, it shall be charged to the Member States, according to their GNP scale, unless the Council decides otherwise. As for the expenditures arising from the operations with military and defense implications, the Member States which have made a formal declaration under Article J.13 (1), second subparagraph, shall not be obliged to contribute to the financing thereof.

Finally, Article J.8 (4) of the Amsterdam Treaty states that the budgetary procedure laid down in the Rome Treaty shall apply to the expenditure charged to the budget of the ECs.

An inter-Institutional agreement between the EP, the Council and the Commission on provisions regarding the financing of the CFSP also sets out the general provisions for the implementation of the budgetary procedure.

The Role of Western European Union

The relations of WEU with the EU was determined by Article J.4 of the Maastricht Treaty and a Declaration to the Final Act, attached to the Maastricht Treaty on WEU (Declaration No. 30) in the previous years. In the Amsterdam Treaty, EU-WEU relations have acquired a new framework. The provisions on the role of WEU are included in the main text of the Amsterdam Treaty.

Under Article J.7 of the Amsterdam Treaty (an amended form of Article J.4 of the TEU) it is provided that the CFSP shall include all questions related to the security of the EU. This shall also include the progressive framing of a common defense

policy which might lead to a common defense, if the European Council decides in that direction. In such a case, the European Council is expected to recommend to the Member States the adoption of such a decision in accordance with their respective constitutional arrangements.

In the Amsterdam Treaty, WEU is regarded as an integral part of the development of the EU; in the sense that it provides the EU with access to an operational capability and that it supports the EU in framing the defense aspects of the CFSP. Therefore, the EU is expected to foster closer institutional relations with WEU with a view to the possibility of integration of WEU into the Union, if the European Council so decides. This statement clearly shows the will for the inclusion of WEU in the EU framework in the coming years. In case of such an inclusion, the European Council is required to recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The commitment of both EU and NATO member states under the North Atlantic Treaty are also respected by the Amsterdam Treaty. It strictly emphasizes that those states' rights and obligations under the North Atlantic Treaty shall not be prejudiced by the EU policies to be adopted within the framework of Article J.7. Accordingly, it is stated that these provisions shall not prejudice the specific character of the security and defense policy of certain Member States and shall respect the obligations of certain Member States which see their common defense realized in NATO, under the North Atlantic Treaty; and be compatible with the common security and defense policy established in that framework.

Article J.7 (1) subparagraph 3 of the Amsterdam Treaty, reveals the Member States' concern over relations with NATO. It shows that they acknowledge NATO's importance and credibility in European security issues and that they are trying to create a complementary body rather than a competitive one. Therefore, it is important for the Member States not to ignore their obligations under the North Atlantic Treaty while fulfilling their obligations under the CFSP framework.

The Member States also undertake to support the common defense policy through cooperation between them in the field of armaments. (Article J.7 (1), subparagraph 4 of the Amsterdam Treaty).

The Petersberg Tasks are also included in the Amsterdam Treaty in Article J.7 (2). The tasks mentioned in Article J.7 (2) of the Amsterdam Treaty are: humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

The Union avails itself of WEU in the elaboration and implementation of the Petersberg tasks referred to in the Article J.7 (2) of the Amsterdam Treaty. All Member States are entitled to participate fully in the tasks in question. This time, the Council is given the responsibility for the adoption of the necessary practical arrangements to

allow all Member States contributing to the tasks in question to participate fully and on an equal footing in planning and decision-taking in WEU. The Council has to achieve this task in agreement with WEU.

Under the same Article, in the third paragraph, it is provided that the Union will also avail itself of WEU to elaborate and implement decisions and actions of the Union with defense implications. The European Council retains its task of establishing guidelines (assigned to it under Article J.3 of the Amsterdam Treaty) in areas related to WEU for the matters for which the Union avails itself of WEU. Here, the term "the Union will avail itself of WEU", is used to explain that the EU intends to use WEU as its defense arm and make use of its established organizational structure in the implementation of its decisions with defense implications.

The decisions with defense implications, referred to in Article J.7 (3) of the Amsterdam Treaty are to be taken without prejudice to the policies and obligations of the Member States under the NATO frameworks. (The intention of the Member States in making such a statement about NATO was explained above.)

Article J.7 (4) of the Amsterdam Treaty refers to the bilateral relations of the Member States in the CFSP framework. It provides that the provisions of Article J.7 shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, within the framework of WEU and NATO, provided such cooperation does not run counter to or impede the requirements of the CFSP.

All the provisions set out in this article are to be reviewed in accordance with Article N of the TEU which stipulates the procedure for the amendment of the Treaties on which the Union is founded. This task is also assigned to the Council.

The Member States also made a Protocol on Article J.7, agreeing that the EU should draw up, together with WEU, arrangements for enhanced cooperation between them, within a year from the entry into force of the Protocol. In this case the Member States were expected to take into account the need to implement fully the provisions of Article J.7 of the Amsterdam Treaty and their NATO obligations.

A declaration on enhanced cooperation between the EU and WEU is also made by the parties. In this declaration, the IGC invites the Council to seek the early adoption of appropriate arrangements for the security clearance of the personnel of the General Secretariat of the Council.

The Representation of the Union

The Amsterdam Treaty (Article J.8 - an amended form of Article J.5 of the TEU) provides that the Presidency shall represent the Union in matters related with the CFSP. The Presidency is also given the responsibility to implement the common measures. Therefore, in the fulfillment of its responsibility, it is entitled to express the

position of the EU in international organizations and conferences. In this respect, the Presidency will be assisted by the Secretary General of the Council. The Secretary General of the Council is charged with exercising the function of High Representative for the CFSP. The Presidency shall be seconded by the Deputy Secretary General of the Council. Here, the Commission shall also be associated fully in the tasks regarding the Presidency. The next Member State to hold the Presidency shall also assist the Presidency in its tasks.

The Council is entitled to appoint a special representative, if it deems necessary, with a mandate in relation to particular policy issues.

Under Article J.9 of the Amsterdam Treaty (a combination of the Articles J.2 (3) and J.5 (4) of the TEU) the Member States are expected to coordinate their action in international organizations and at international conferences. They are also expected to uphold the common positions in these organizations and conferences. The Member States are further asked to inform the other Member States which do not participate in related international organizations and international conferences in areas of common interest. This is especially relevant for the UN and UN-related activities of the Member States. Within this framework, Member States which are also members of the UN Security Council are expected to concert and keep the other Member States fully informed. This is important in the sense that it is another significant requirement at the achievement of common and concerted action by the Member States.

Under Article J. 10 (which takes Article J.6 of the TEU as a whole), cooperation between the diplomatic and consular missions of the Member States and the Commission delegations in third countries and international conferences, and their representations to international organizations, is provided. This provision is introduced especially for ensuring that the common positions and common measures adopted by the Council are complied with and implemented. Exchange of information, carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 8c of the TEC, are the ways to be used in such cooperation.

It should be noted that the Amsterdam Treaty does not change one word in the Maastricht Treaty on the representation of the Union.

Chapter 13. External Economic Relations

External economic relations are reregulated by the Amsterdam Treaty under Chapter 13. This reregulation is made by adding a new paragraph, as the fifth paragraph, to the Article 113 of the TEC which consists of four paragraphs, and by amending the second paragraph of Article 228 of the TEC.

Article 113 of the TEC deals with the implementation of the common commercial policy; and negotiation and conclusion of the trade agreements. The Amsterdam Treaty inserts a new paragraph to Article 113 as its fifth paragraph. The aim of adding this paragraph to Article 113 is to meet the necessity of application of Article 113 to international negotiations and agreements on services and intellectual property insofar as they are not covered by the four paragraphs of Article 113.

According to this new paragraph, this necessity may be met by the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament. Therefore, the application of Article 113 may be extended by the Council to international negotiations and the agreements on the above-mentioned areas insofar as these agreements are not covered by Article 113.

The reregulation of external economic relations by the Amsterdam Treaty also consists of the amendment of the second paragraph of Article 228 which deals with treaty-making power and procedure.

The Amsterdam Treaty amends the second paragraph of Article 228 of the TEC by adding two subparagraphs to it and making it a paragraph which consists of three subparagraphs. The former Article 228(2) forms the first subparagraph of this amended form, with some changes in its first sentence while the second sentence of the former Article 228 (2) of the TEC remains the same.

These amendments do not change the content of the first sentence. It can be seen that the new sentence explains the position of the Council in treaty-making procedure in a detailed way when it is compared with the former sentence. The amended form of the first sentence of Article 228 (2) of the TEC states: "Subject to the powers vested in the Commission in this field, *the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission*" while the former first sentence of Article 228 (2) of the TEC stated: "Subject to the powers vested in the Commission in this field, the agreement shall be concluded by the Council, acting by a qualified majority on a proposal from the Commission".

The subparagraph which is added to Article 228 (2) of the TEC as its second subparagraph explains when the same procedure mentioned in the first subparagraph, shall apply. Accordingly, the second subparagraph of the amended form of Article 228 (2) states: "By way of derogation from the rules laid down in paragraph 3, the same procedure shall apply for a decision to suspend the application of an international agreement, and for the purpose of establishing the position to be adopted on behalf of the Community in a body set up by an agreement based on Article 238, when that body is called upon to adopt decisions having legal effects, with the excep-

tion of decisions supplementing or amending the institutional framework of the agreement.”

The third subparagraph of the amended form of Article 228(2), which is introduced by the Amsterdam Treaty, deals with the position of the European Parliament. Accordingly, it states: “The European Parliament shall be immediately and fully informed on any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.”

Section IV. The Union’s Institutions

Protocol on the Institutions with the prospect of enlargement of the European Union

Under Section IV the Member States agreed on a Protocol on the institutions, with the prospect of enlargement of the EU, to be annexed to the TEU and to the Treaties establishing the ECs.

The parties decided that at the date of entry into force of the first enlargement of the EU, notwithstanding Article 157(1) of the TEC, the Commission should comprise one national of each of the Member States provided that, by that date, the weighting of the votes in the Council had been modified, whether by reweighting of the votes or by dual majority, in a manner acceptable to all Member States. In doing this, it should take into account all relevant elements, notably compensating those Member States which gave up the possibility of nominating a second member of the Commission.

The second Article of the Protocol provides that at least one year before the membership of the EU exceeds twenty, a conference of representatives of the governments of Member States shall be convened. This conference is expected to carry out a comprehensive review of the provisions of the treaties on the composition and functioning of the institutions.

Through a Declaration to the Final Act, the Member States stated that until the entry into force of the first enlargement, it was agreed that the decision of the Council (of March 29, 1994 - the Ioannina Compromise) would be carried out. It further included that, by that date, a solution for the special case of Spain would be found.

Chapter 14. The European Parliament

The provisions related to the European Parliament are set under Chapter 14 in the Amsterdam Treaty. Chapter 14 consists of three parts: Legislative procedures,

Simplification of the co-decision procedure, Organization and composition of the European Parliament.

Legislative Procedures

Assent procedure

New Treaty provisions

According to the Amsterdam Treaty, the assent procedure will apply to a new Treaty provision: *Article Fa*. Article Fa is on *sanctions in the event of a serious and persistent breach of fundamental rights by a Member State*.

Existing Treaty provisions

The assent procedure will also apply to some existing Treaty provisions. These provisions are on :

- Accession procedure
- Structural and cohesion funds
- Proposals by the European Parliament for a uniform electoral procedure
- Conclusion of certain international agreement

Co-decision procedure

New Treaty provisions

The co-decision procedure will apply to some new provisions. These provisions are on :

- Employment-Incentive measures (**Article 5**)
- Social policy-Equal opportunities and treatment (**Article 119**)
- Public health (former basis Article 43-consultation) (**Article 129**)
 - Minimum requirements regarding quality and safety of organs
 - Veterinary and phytosanitary measures with the direct objective of the protection of public health
- General principles for transparency (**Article 191a**)
- Countering fraud effecting the financial interests of the Community (**Article 209a**)
- Customs cooperation (**New Article**)
- Statistics (**Article 213a**)
- Establishment of independent advisory authority on data protection (**Article 213b**)

Existing Treaty provisions

The co-decision procedure will also apply to existing Treaty provisions. These provisions are on :

- Rules to prohibit discrimination on grounds of nationality (cooperation)
- Provisions for facilitating the exercise of citizens' rights to move and reside freely within the territory of the Member States (assent)
- Internal market (consultation)
 - Rules on social security for Community immigrant workers
- Coordination of provisions laid down by law, regulation or administrative action for special treatment for foreign nationals (right of establishment)
- Coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons (consultation)

Amendment of existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons (consultation)

- Transport policy (cooperation)
 - Common rules applicable to the international transport to or from the territory of a Member State or passing across the territory of one or more Member States;
 - The conditions under which non-resident carriers may operate transport services within a Member State;
 - Measures to improve transport safety.
- Transport policy (cooperation)
 - Sea and air transport
- Articles resulting from the transposition into the Treaty of the Agreement on social policy (Article 2(2)), except for aspects of that Agreement which are currently subject to unanimity (Article 2(3)) (see Chapter 4 - Social provisions) (cooperation)
- Implementing decision relating to the European Social Fund (cooperation)
- Vocational training (cooperation)
 - Measures to contribute to the achievement of the objectives of Article 127
- Other measures (TENs) (cooperation)
- ERDF implementing decisions (cooperation)

- Adoption of measures referred in Articles 130k and I-research (cooperation)
- Environment (cooperation)
 - Action by the Community in order to achieve the objectives of Article 130r
- Development cooperation (cooperation)

Simplification of the co-decision procedure

The Amsterdam Treaty amends Article 189b of the TEC which deals with Conciliation and Veto procedure (Co-decision procedure). The amendments made by the Amsterdam Treaty to Article 189b simplify the co-decision procedure.

1. If the first paragraph of Article 189b (which sets a requirement of the application of this article for the adoption of an act where reference is made to it in the TEC) is examined then it can be seen that this paragraph remains word for word the same.

2. The second paragraph of Article 189b of the TEC deals with the common position which shall be adopted by the Council with the aim of the adoption of an act.

The Council, acting by a qualified majority on a proposal from the Commission after obtaining the opinion of the European Parliament, shall adopt a common position. Following this, the common position in question shall be communicated to the European Parliament.

According to this paragraph, the European Parliament within three months of such communication :

- either approves the common position,
- or does not take a decision,
- or indicates, by an absolute majority of its component members, that it intends to reject the common position,
- or proposes amendments to the common position by an absolute majority of its component members.

In the first two cases, the Council shall adopt the act in question in accordance with that common position. *In the third case*, the Council may convene a meeting of the Conciliation Committee. The European Parliament shall thereafter either confirm its rejection of the common position, in which event the proposed act shall be deemed not to have been adopted, or propose amendments. *As to the fourth case*, the amended text shall be forwarded to the Council and the Commission. These two institutions shall deliver an opinion on those amendments.

By the Amsterdam Treaty some amendments are made to the second paragraph of Article 189b of the TEC, which is analyzed above.

The Amsterdam Treaty stipulates that a proposal shall be submitted by the Commission to the Council and to the Parliaments as stipulated in Article 189b(2) of the TEC. Differently from the former Article 189b(2); the amended form of Article 189b(2) envisages that the Council, acting by a qualified majority, after obtaining the opinion of the Parliament:

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act in that amended form;
- if the European Parliament does not propose any amendment, may adopt the proposed act;
- shall otherwise adopt a common position and communicate it to the European Parliament.

A conclusion that can be derived is that, Article 189b(2) of the TEC envisages that the Council can adopt a common position after obtaining the opinion of the Parliament without taking into account the amendments proposed by the European Parliament in its opinion on the proposed act. However, the Amsterdam Treaty which amends Article 189b of the TEC brings about the possibility that the Council may take into account the amendments proposed by the European Parliament. Accordingly, the amended form of Article 189b(2) states that if the opinion of the Parliament contains some amendments and if the Council approves all these amendments then the Council may adopt the proposed act thus amended. In the case that the opinion of the Parliament does not contain any amendments, the Council may adopt the proposed act. Otherwise the Council shall adopt a common position and communicate it to the Parliament. As it is stated in Article 189b(2) of the TEC, the Amsterdam Treaty also envisages that the Council shall inform the European Parliament fully of the reasons which led it to adopt its common position and the Commission shall inform the Parliament fully of its position.

The part in the 189b(2) of the TEC, which stipulates four positions of the European Parliament regarding the common position communicated to it by the Council, is also amended by the Amsterdam Treaty.

The first discernible amendment is that while the part in question consists of four indents in the TEC, its amended form consists of three indents in the Amsterdam Treaty: The first two indents called *a* and *b* in Article 189b(2) of the TEC are integrated with each other by the Amsterdam Treaty and form the amended form of indent *a*. The amended form of indent *a* states that if the European Parliament approves the common position or has not taken a decision within three months of such communication, the act in question shall be deemed to have been adopted in accordance with that common position.

Another difference of the amended form of indent *a* from the former indents *a* and *b* appears in the wording: The statement "the act in question shall be deemed to have been adopted" is used in the amended form of Article 189b(2) instead of the statement "shall definitively adopt the act in question" in the former Article 189b(2). Therefore, certainty that can be seen in Article 189b(2) of the TEC does not exist in its amended form.

Indent *c* of Article 189b(2) of the TEC forms indent *b* of the amended form of Article 189b(2). Indent *b* of the amended form of Article 189b(2) states that if the European Parliament, within three months of such communication, rejects the common position by an absolute majority of its component members, then the proposed act shall be deemed not to have been adopted. In this indent not the substance but the wording is amended: *The Conciliation Committee* which may, according to Article 189b(2) of the TEC, be convened by the Council in the case of the rejection of the common position by the Parliament is not mentioned in the amended form of Article 189b(2).

Indent *c* of the amended form of Article 189b(2) is fully the same as indent *d* of Article 189b(2) of the TEC. Accordingly, indent *c* of the amended form of Article 189b(2) stipulates that if, within three months of the communication of the common position, the European Parliament proposes amendments to the common position by an absolute majority of its component members, then the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

With respect to the amendment made by the Amsterdam Treaty to the third paragraph of Article 189b of the TEC, no important amendment is made in its substance, but there are some differences in the wording. According to the amended paragraph, if the European Parliament proposes amendments to the common position and the Council acting by a qualified majority approves these amendments then the act in question shall be deemed to have been adopted in the form of the common position thus amended. In Article 189b(3) of the TEC, instead of the statement "the act in question shall be deemed to have been adopted in the form of the common position thus amended", the statement "it shall amend its common position accordingly and adopt the act in question" appears. As can be seen, no important amendment is made in the substance of the provision. In fact, it is a matter of semantics.

If the Commission has delivered a negative opinion on the amendments, the Council shall act unanimously on them. This statement is the same both in Article 189b(3) of the TEC and in the amended form of Article 189b(3).

With respect to the case that the Council does not approve all the amendments, the amended form of Article 189b(3) states that the President of the Council, in agreement with the President of the European Parliament shall convene a meeting of the Conciliation Committee **within six weeks**. However, in Article 189b(3) of the

TEC, it is envisaged that the President of the Council, in agreement with the President of the European Parliament shall **forthwith** convene a meeting of the Conciliation Committee in this case. The phrase "forthwith" in Article 189b(3) of the TEC is replaced by the phrase "within six weeks". Therefore, a period within which a meeting of the Conciliation Committee shall be convened, is determined by the Amsterdam Treaty.

In the fourth paragraph of the amended form of Article 189b, the composition and the tasks of the Conciliation Committee are stated. Additionally, the position and the task of the Commission are also clarified. According to this paragraph, the Conciliation Committee shall be composed of the Council's members or their representatives and an equal number of the representatives of the European Parliament. Its task is to reach agreement on a joint text by a qualified majority of the Council's members or their representatives and by a majority of the Parliament's representatives. As to the Commission, it shall also take part in the Conciliation Committee's proceedings and its task is to take all the necessary initiatives to provide reconciliation between the Parliament and the Council.

Up to this point, both Article 189b(4) and its amended form are word for word the same. The amendment which is a statement added to the end of the paragraph 4, emphasizes the place of "amendments proposed by the European Parliament for the common position" in fulfilling the task of reaching agreement on a joint text: "In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament".

The fifth paragraph of the amended form of Article 189b(5) does not consist of major amendments regarding the substance of the former Article 189b(5). These amendments consist of the addition of the word "each" to the sentence "shall each have a period of six weeks", replacing the phrase "one of the two institutions" by "either of the two institutions" and adding the phrase "within that period" to the end of the sentence "if either of the two institutions fails to approve the proposed act". Such amendments merely provide clarity with the aim of obtaining a more understandable paragraph. Except for these three points, which do not have significant effects regarding the substance of the paragraph, this paragraph remains the same. It deals with the adoption of the act in question by the Parliament and the Council in accordance with the joint text if the Conciliation Committee approves a joint text within six weeks of its being convened. To do that the Parliament and the Council have a period of six weeks from that approval. If within that period the proposed act can not be approved by one of these two institutions it shall be deemed not to have been adopted.

The sixth paragraph of Article 189b of the TEC is shortened by the amendment made in the IGC. The first part of the sixth paragraph of Article 189b of the TEC up to

the word "unless", which explains the case where the Conciliation Committee does not approve a joint text, is kept, but all the rest is repealed with the aim of simplifying the procedure. According to this paragraph in the case mentioned above the proposed act shall be deemed not to have been adopted. Therefore, through this amendment this paragraph consists of only the first part of the sixth paragraph of Article 189b of the TEC: "Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted".

The seventh paragraph of Article 189b of the TEC is also amended by the Amsterdam Treaty. The seventh paragraph deals with the periods referred to in this article. The amended paragraph brings certainty and obligation by using "shall" instead of "may" used in the seventh paragraph of Article 189b of the TEC. This is a significant amendment since it changes the substance of the paragraph.

In addition to this amendment, there are two more amendments made by the Amsterdam Treaty: In the seventh paragraph of Article 189b of the TEC, there is a phrase "**by common accord** of the European Parliament **and** the Council". In its amended form, the above-mentioned phrase is changed to "**at the initiative** of the European Parliament **or** the Council". These two amendments are also significant since they change the substance of the paragraph. As a result, the amended form of this paragraph states that the periods of three months and six weeks referred to in this article shall (not *may*) be extended by a maximum of one month and two weeks respectively at the initiative (not *by common accord*) of the European Parliament or (not *and*) the Council.

Additionally, the statement "The period of three months referred to in paragraph 2 shall be automatically extended by two months where paragraph 2(c) applies", made at the end of Article 189b(7) of the TEC, is repealed.

The eighth paragraph of Article 189b of the TEC, which deals with widening of the scope of the procedure under this article, is repealed.

Consequently, Article 189b of the TEC which regulates the co-decision procedure, is reorganized and simplified by the Amsterdam Treaty through the amendments explained above.

In the IGC, in addition to some amendments on co-decision procedure, a declaration on respect for time limits under the co-decision procedure was also made. According to this declaration, the Parliament, the Council and the Commission should make every effort to ensure that the co-decision procedure operates as expeditiously as possible. Additionally, it emphasizes the importance of strict respect for the deadlines in Article 189b and states that unless it is strictly necessary, the extension of the periods in question which is provided for in paragraph 7 of that article should not be considered.

This declaration also provides that the actual period between the second reading by the European Parliament and the outcome of the Conciliation Committee should not exceed nine months in any case.

Organization and composition of the European Parliament

In addition to the simplification and the reorganization of the co-decision procedure, the Amsterdam Treaty also makes some amendments with respect to the organization and the composition of the European Parliament.

As a first step the Amsterdam Treaty amends Article 137 of the TEC which deals with the composition and powers of the European Parliament, by adding a new sentence to the end of this Article. Except for this additional last sentence, this Article remains the same with respect to the meaning and the wording. Article 137 of the TEC provides that the European Parliament, which shall consist of representatives of the peoples of the Member States, shall exercise the powers conferred on it by the TEC.

As to the last additional sentence which forms the amended part of Article 137 of the TEC, the number of the members of the European Parliament shall not exceed seven hundred.

Secondly; a provision is added by the Amsterdam Treaty to Article 138(2) of the TEC (Article 2 of the Act 20 September 1976). Article 138(2) of the TEC regulates the number of the representatives elected in each Member State. The addition provides that if any amendment to this paragraph is envisaged, the number of representatives elected in each Member State must guarantee appropriate representation of the peoples of the Community States. Therefore, no amendments are made as to the number of representatives elected in each Member State. However, the possibility of any amendment parallel to the changes in the institutional structure is left open by the Amsterdam Treaty, on the condition that the number of representatives elected in each Member State must ensure appropriate representation of the peoples of the Member States.

Here, it has to be stated that corresponding amendments will also be made in Article 21(2) of the ECSC Treaty and Article 108(2) of the Euratom Treaty.

Thirdly; the Amsterdam Treaty amends the first subparagraph of Article 138(3) of the TEC through an additional phrase at the end of the article. The phrase added to this subparagraph is "or in accordance with principles common to all Member States". According to the amended subparagraph in the Amsterdam Treaty, the European Parliament has the obligation of drawing up a proposal for elections by direct universal suffrage in accordance with a uniform procedure in all Member States *or in accordance with principles common to all Member States*. Therefore, the importance

of conformity of a proposal drawn up by the Parliament for elections by direct universal suffrage with "common principles" of the Member States is emphasized by the Amsterdam Treaty. According to this amendment, respecting either "a uniform procedure in all Member States" or "principles common to all Member States" in drawing up a proposal for elections is crucial for providing common action in the Community.

Fourthly and lastly; a new paragraph is added to Article 138 of the TEC as 138 (4). Originally, Article 138 of the TEC consisted of 3 paragraphs. But the Amsterdam Treaty adds a new paragraph to this article. This new paragraph, forming the fourth paragraph of Article 138 of the TEC, provides another obligation for the European Parliament: laying down the regulations and general conditions which govern the performance of the duties of its Members, after seeking an opinion from the Commission and obtaining the approval of the Council acting by unanimity. Here, it has to be kept in mind that a corresponding amendment will be made to the Act concerning the election of representatives of the European Parliament.

Chapter 15. The Council

The Amsterdam Treaty gave the Council new areas to decide on by qualified majority voting. These new areas are; employment guidelines (**Article 4, New Title on Employment**), incentive measures on employment (**Article 5, New Title on Employment**), social exclusion (**Article 1182(2)**), equality of opportunity and treatment of men and women (**Article 119(3)**), public health (**Article 129(4)**), transparency (**Article 191a**), countering fraud (**Article 209a**), statistics (**Article 213a**), establishment of independent advisory authority on data protection (**Article 213b**), outermost regions (**Article 227(2)**), and, customs cooperation (**New Article**). The existing treaty provisions covered are: compensatory aid for imports of raw materials, coordination of provisions laid down by law, regulation or administrative action on special treatment for foreign nationals (right of establishment), adoption of the research framework programme and setting up of joint undertakings in research and development.

The Amsterdam Treaty revises Article 151 of the TEC (which was repealed by the merger Treaty of April 8, 1965) formalizing the role of COREPER in the EC set-up. As a new arrangement, Art 151(1) of the Draft Treaty includes a sentence stating that the Committee may adopt procedural decisions in cases provided for in the Council's rules of procedure. Article 151(2) is also amended by an added provision requiring that the General Secretariat would be under the responsibility of the Secretary General and the Secretary General should be seconded by a Deputy Secretary General who should be responsible for the running of the General Secretariat and that both the Secretary General and the Deputy Secretary General should be appointed by the Council acting unanimously.

Article 151(3) subparagraph 2 of the Amsterdam Treaty includes a new provision that for the purpose of applying Article 191a(3), the Council shall elaborate in the stated rules the conditions under which the public shall have access to Council documents. The Council is also expected to define the cases in which it is to be regarded as acting in its legislative capacity, with a view to allowing greater access to the documents in those cases, while at the same time preserving the effectiveness of its decision-making process. Furthermore, when the Council acts in its legislative capacity, the results of votes and explanations of vote as well as statements in the minutes shall be made public in any case.

Chapter 16. The Commission

On the appointment of the members of the Commission, the Amsterdam Treaty includes an amendment to the first and second subparagraphs of Article 158(2) of the Rome Treaty. The amendment to the first subparagraph is made to give the EP the power of approval which it lacked under the TEC. In the TEC, the EP only had consultative power. Therefore, the Amsterdam Treaty provides that the governments of the Member States shall nominate by common accord the person they intend to appoint as President of the Commission; the nomination shall be approved by the EP.

The amendment to the second subparagraph is on the relations between the Member States and the nominee for President. In the TEC, the nominee for President could only be consulted for the nomination of other persons to be appointed as members of the Commission. However, in the Amsterdam Treaty, a common accord between the Member States and the nominee for President is required.

On the composition and organization of the Commission, the Amsterdam Treaty stipulates a new first subparagraph in Article 163 of the TEC which provides that the Commission shall work under the political guidance of its President.

A Declaration to the Final Act on the organization and functioning of the Commission is also included in the Amsterdam Treaty. With this Declaration, the Member States reported that the Conference noted the Commission's intention to prepare a reorganization of tasks within the College in good time for the Commission which would take up office in 2000, in order to ensure an optimum division between the conventional portfolios and specific tasks. Within this context, they considered that the Commission had to enjoy broader discretion in the allocation of tasks within the College. Furthermore, the reorganization of the Commission's departments is also mentioned in this declaration. In particular, the desirability of bringing external relations under the responsibility of a Vice-President is also emphasized in the Declaration.

Chapter 17. The Court of Justice

The Amsterdam Treaty includes amendments to Article L of the TEU on the powers of the Court of Justice. Accordingly, subparagraphs (b) and (c) are changed and a new subparagraph (d) is added to the article [The new subparagraph (d) took the content of former subparagraph (c)]. Due to these amendments, the ECJ's powers and the exercise of these powers shall only apply to the following provisions:

- (a) provisions amending the TEC with a view to establishing the EC, the Treaty Establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community.
- (b) provisions of Title VI under the conditions provided for by Articles K(7) and K(12) of the Amsterdam Treaty.
- (c) Article F(2) of the TEU with regard to action of the institutions in so far as the Court has jurisdiction under the Treaties establishing the ECs and under the Amsterdam Treaty.
- (d) Articles L to S of the TEU.

Within this context, it can be concluded that the powers of the ECJ are extended to the provisions on cooperation in the fields of justice and home affairs. Furthermore, its powers shall be exercised in the light of Article F(2) which stipulates that the EU shall respect fundamental rights, as guaranteed by the European Convention on the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 and as they result from the constitutional traditions common to the Member States as general principles of EC law.

Chapter 18. Other Institutional Issues

a) Court of Auditors

Article E of the TEU, which clearly sets out the status of the institutions other than European Council, is amended. Into the first part of the Article, the Court of Auditors is inserted along with the European Parliament, Council, Commission and the Court of Justice of the TEC.

The third subparagraph of the Article 173 of the TEC, which is on the right of the Court of Justice to review the decisions of the institutions, is amended by adding the Court of Auditors among those institutions.

The second subparagraph of the Article 188c(1) of the TEC is amended by stipulating a new requirement: the Court of Auditors shall provide the European Parlia-

ment and the Council with a statement of assurance as to the reliability of the accounts and the legality and the regularity of the underlying transactions which "shall be published in the Official Journal of the European Communities".

The first subparagraph of Article 188c(2) of the TEC, which sets out the criteria to be applied by the Court of Auditors in examining the accounts of all Community bodies is amended by adding a new condition; "In doing so, it shall report in particular on any cases of irregularity".

Article 188c(3) of the TEC, which provides the procedure to be followed by the Court of Auditors within this context, is amended. The amended first paragraph is about how the Audit shall be made and which institutions shall deal with the Audit in case of necessity. There are two amendments to this paragraph. The first amendment lists new types of premises relevant to the records on which the Audit shall be based :

"... records and, if necessary, performed on the spot in the other institutions of the Community, premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget".

The second amendment provides the principle through which cooperation between the national audit bodies of the Member States and the Court of Auditors is to be governed; "... in a spirit of trust".

In the amended second subparagraph, the list of the bodies which shall forward any necessary document or information within the framework this article, to the Court of Auditors at its request, is enlarged. The new list covers "any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from the budget, along with the other institutions of the Community and the national audit bodies".

The third subparagraph is also inserted in Article 188c(3) which deals with the Court of Auditors' right of access to information on the European Bank's activities. It lays down the conditions which govern the implementation of that right. It provides that in respect of the European Investment Bank's activity in managing Community expenditure and revenue, the Court's right of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Community expenditure and revenue by the Bank.

There is also a Declaration to the Final Act on Article 188c(3) of the TEC which provides for the maintenance of the present Tripartite Agreement between the Court of Auditors, the European Investment Bank and the Commission.

Article 206(1) of the TEC sets out the documents to be examined by the Council and European Parliament. Then, with these documents the European Parliament shall give a discharge to the Commission in respect of the implementation of the budget. The Amsterdam Treaty also amends Article 206(1) by inserting a new document among existing ones: "... The statement of assurance referred to in Article 188c (1) which is to be examined by the Council and European Parliament".

b) Economic and Social Committee

This committee (EcoSoc) was established by the Treaty of Rome (Articles 193-8). It advises the Council of Ministers on draft legislation in certain subject areas. This committee is not one of the five institutions of the Union. It only assists the Council and Commission.

Prior to the Amsterdam Treaty, consultation with EcoSoc was provided under Articles such as 49, 54, 63, 75(3), 79, 99, 118, 118a, 121, 125, 126b, 127, 129, 129a, 129d, 130, 130b, 130d, 130e, 130i, 130o and 130s. The Amsterdam Treaty provides for its consultation on new provisions to be included in the TEC with regard to Employment (**Article 4 on Guidelines, Article 5 on Incentive measures**) Social Matters (**Article 118(2) and (3) on Legislation on social matters and Article 119(3) on the application of the principle of the equal opportunities and equal treatment**) and Public Health (**Article 129(4) on Measures to contribute to the achievement of the objectives of this article**).

Article 198 of the TEC specifies the importance of its consultative opinions and the form in which they are submitted. A new paragraph is added to this article by the Amsterdam Treaty. This paragraph provides "The Economic and Social Committee may be consulted by the Parliament".

c) Committee of the Regions

The Committee of the Regions was established by the Maastricht Treaty (Article 198a EEC). It is composed of representatives of regional and local bodies and has advisory status.

Protocol 16 of TEU, which provides "The EcoSoc and Committee of the Regions shall have a common organizational structure", shall be repealed.

The third paragraph of the 198a TEC, which formally establishes the Committee and gives it a name and a status, then lays down the number of members coming from each Member State, is amended. The amendment in that article is: "No member of the Committee shall at the same time be a member of the European Parliament". With this amendment, Article 6 of the Act of 20 September 1976 will be amended accordingly.

The second paragraph of Article 198b of the TEC, which deals with the procedural issue is amended: "It shall adopt its rules of procedure".

The first paragraph of Article 198c, which provides that Council and Commission shall consult the Committee where the Treaty so provides as well as in all other cases when these institutions feel it appropriate, is amended. Cross-border cooperation is the only case which is specifically mentioned in the article as an example of the "all other cases". Now the amended first paragraph provides: "The Committee of the Regions shall be consulted by the Council or by the Commission where this Treaty so provides and in all other cases, in particular those which concern cross-border cooperation, in which one of these two institutions considers it appropriate".

The Treaty provides for the Committee to be consulted under Articles 126, 129, 129d, 130b, 130d, and 130e by adding in particular those which concern cross-border cooperation. A new fourth subparagraph to article 198c of the TEC is added, stating that the Committee of the Regions shall be consulted by the *European Parliament* as in the case of EcoSoc.

The scope for consultation of the Committee of the Regions is enlarged, covering the provisions in the TEC concerning Employment, (same as it is provided for the EcoSoc), Social Matters (same as it is provided for the EcoSoc), Public Health (**Article (129(4) on measures to contribute to the achievement of the objectives of this article)**), Environment (**Article 130s (1) (2) (3) on environment**), Social Fund (**Article 125 on implementing decisions**), Vocational Training (**Article 127(4) on measures to contribute to the achievement of the objectives of this article**) and Transport (**Article 75 on transport**).

d) Financial Provisions

Article 205 of the TEC, which is about financial provisions, is amended by adding the requirement that: "Member States shall cooperate with the Commission to ensure that the budget appropriations are used in accordance with the principles of sound financial management".

e) Conferring of Implementing Powers on the Commission

In the Declaration to the Final Act on Conferring of implementing powers on the Commission the Conference calls on the Commission to submit to the Council by the end of 1998 at the latest a proposal to amend the Council decision of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission.

f) Seats

Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Community

In this Protocol it is stated that the Representatives of the Governments of the Member States have agreed upon certain provisions concerning the subject matter of the Protocol. Provisions upon which the representatives have agreed shall be annexed to the Treaty of Amsterdam. They have so decided having regard to the TEU, Decision of 8 April 1965 and Article 216 of the TEC, Article 77 of the Treaty establishing the ECSC (which states that) and article 189 of the Treaty establishing the EURATOM. In the three aforementioned Articles, it is stated that the seat of the institutions of the Community will be determined by common accord of the Governments of Member States. The sole Article through which the question of the location will be governed consists of 10 points. Each point deals with the location of a different body, institution and department.

Point (a) deals with the European Parliament (12 periods of Plenary sessions in Strasbourg, additional plenary sessions in Brussels, its committees shall meet in Brussels, the General Secretariat and its departments shall remain in Luxembourg).

Point (b) deals with the Council (in Brussels, except during the months of April, June and October: in Luxembourg)

Point (c) deals with the Commission (in Brussels. However, the departments which are listed in Articles 7, 8, 9 of the Decision of 8 April 1965 shall be established in Luxembourg)

Point (d) deals with the Court of Justice and Court of First Instance (in Luxembourg)

Point (e) deals with the Court of Auditors (in Luxembourg)

Point (f) deals with the EcoSoc (in Brussels)

Point (g) deals with the Committee of the Regions (in Brussels)

Point (h) deals with the European Investment Bank (in Luxembourg)

Point (i) deals with the European Monetary Institute and the European Central Bank (in Frankfurt)

Point (j) deals with the EUROPOL (in The Hague).

CHAPTER 19. ROLE OF NATIONAL PARLIAMENTS

The contracting parties agreed on a Draft Protocol on the Role of National Parliaments in EU. This protocol was made with the purpose of encouraging greater

involvement of national parliaments in EU activities and of enhancing their ability to express their views on matters which may be of particular interest to them. Accordingly, they have decided that all Commission consultation documents should be promptly forwarded to national parliaments of the Member States. Furthermore, Commission proposals for legislation should also be made available in good time so that the Government of each Member State might ensure that its own national parliament received them as appropriate.

The Conference of European Affairs Committees (COSAC) is also given the power to make appropriate contributions on the basis of draft legal texts which representatives of Governments of Member States may decide by common accord to forward to it. However, its contributions shall in no way bind national parliaments or pre-judge their position.

Section V. Closer Cooperation and Flexibility

A. General Clauses To Be Inserted as A New Title in the Common Provisions of the TEU

The Amsterdam Treaty introduces a new section called Closer Cooperation and Flexibility, which, in fact, opens the way for a long discussed "multi-speed Europe". Title A covers the general clauses to be inserted as a new title in the common provisions of the TEU. Article 1 under this heading provides that the Member States are entitled to make use of the institutions, procedures and mechanisms laid down by the Treaties for the establishment of closer cooperation between them. However, this has to be done under certain conditions. Accordingly, the cooperation that they intend to establish, should :

1. be aimed at furthering the objectives of the Union and at protecting and serving its interests;
2. respect the principles of the treaties and the single institutional framework of the Union;
3. be used only as a last resort, where the objectives of the Treaties could not be attained by applying the relevant procedures laid down therein;
4. concern at least a majority of Member States;
5. not affect the *acquis communautaire* and the measures adopted under the other provisions of the Treaties;
6. not affect the competences, rights, obligations and interests of those Member States which do not participate therein;

7. be open to all Member States and allow them to become parties to the cooperation at any time, provided that they comply with the basic decision and with the decisions taken within that framework;
8. comply with the specific additional criteria laid down in Article 5a of the TEC and Article K12 of the Amsterdam Treaty, depending on the area concerned, and be authorized by the Council in accordance with the procedures therein.

The same article further maintains that the non-participant Member States shall not impede the implementation of the cooperation by the participating Member States. The participating Member States are also responsible for the application of the acts and decisions adopted for the implementation of the cooperation that they established.

Under Article 2, it is provided that the relevant institutional provisions of the treaties shall apply for the implementation of the cooperation mentioned in the first article. All members of the Council have the right to participate in the deliberations. However, only those representing the participating Member States are given the right to take part in the adoption of the decisions. Qualified majority voting will be applied according to the weighted votes of the participating Member States and unanimity will also be constituted only by the participating Member States.

As for the expenditures on the implementation of the cooperation, the costs shall be borne by the participating Member States. Nevertheless, administrative costs entailed for the institutions are not included. The Council is entitled to decide on this expenditure issue and it can change the reimbursement procedure, acting unanimously.

The Council and the Commission are responsible for regularly informing the EP of the development of closer cooperation. (Article 3)

B. Clauses Specific to the TEC

Under Part B, clauses specific to the TEC are included. Accordingly, Article 5a of the TEC covers the provisions on the establishment of closer cooperation mentioned in Articles 1 and 2 under Part A of the same section. Article 5a also reiterates that the participating States have the right to make use of the institutions, procedures and mechanisms laid down by the Treaty. Article 5a also sets out some conditions for the cooperation proposed to be subject to these provisions. Accordingly, the cooperation should :

1. not concern areas which fall within the exclusive competence of the Community;

2. not affect Community policies, actions or programmes;
3. not concern the citizenship of the Union or discriminate between the nationals of Member States
4. remain within the limits of the powers conferred upon the Community by the Amsterdam Treaty; and
5. not constitute a discrimination or a restriction on trade between Member States and not distort the conditions of competition between them.

The authorization referred to in the first paragraph, will be granted by the Council. The Council shall act by a qualified majority, on a proposal from the Commission and after consulting the EP. However, members of the Council are given the right to oppose the granting of an authorization for important and stated reasons of national policy. In such a case of opposition, a vote shall not be taken. The Council may also request that the matter be referred to the European Council for a unanimous decision. Here, the Council is supposed to act by a qualified majority.

Member States intending to establish closer cooperation, may address a request to the Commission. The Commission is expected to submit a proposal to the Council to that effect. However, the Commission has the right not to submit a proposal. In such a case it has to inform the Member States concerned of the reasons for not doing so.

Any Member State with the intention to join the cooperation is required to notify this intention to the Council and to the Commission. The Commission is required to give an opinion to the Council within three months of receipt of that notification. Within four months of the date of that notification, the Commission shall decide on it and on possible specific arrangements that it deems necessary.

Similar to what has been provided in Articles 1 and 2 in this section (Part A), all the acts and decisions to be taken for the implementation of cooperation activities shall be subject to the relevant provisions of the Amsterdam Treaty.

Article 5a (5) further provides that Article 5a should not prejudice the provisions of the Protocol integrating the Schengen Acquis into the framework of the EU.

Part C in this section determines the specific clauses in Title VI (Progressive Establishment of an Area of Freedom, Security and Justice) of the TEU (on Justice and Home Affairs) and refers to Article K. 12 in Chapter 2.

The provisions on closer cooperation, in fact, reflect the Member States' will to establish a multi-speed Europe. The Amsterdam Treaty is the first binding document which gives those countries which wish to do so the chance to engage in further integrative arrangements in a way which may lead to a multi-speed Europe in the future.

Section VI. Simplification and Consolidation of the Treaties

The simplification and consolidation of the Treaties are referred to in Section VI of the Treaty of Amsterdam. As for simplification, it is provided that the proposed amendments for simplifying the Treaties (cf. CONF/4156/1/97 REV.1) shall form the second part of the Treaty of Amsterdam.

As for Consolidation, a Declaration to the Final Act is made. According to this Declaration, the parties agreed that the technical work begun during the course of the IGC shall continue as speedily as possible with the aim of drafting a consolidation of all the relevant Treaties, including the Treaty on European Union. The declaration further announces that the parties agreed that the final results of the technical work mentioned shall be published for illustrative purposes under the responsibility of the Secretary General. However, this technical work shall have no binding legal effect.

The writers' Annex on Employment

The Amsterdam Summit was dominated by a row between the new French Government and that of Germany over the so-called stability pact designed to limit budget deficits after the launch of a single currency as agreed at the Dublin meeting. Although consensus was reached and the stability pact was signed in Dublin, since the new French government refused to endorse the stability pact, there was a feeling of *deja vu* in Amsterdam. The reason was that the socialist-led government in Paris thought that the stability pact tilted too far towards budgetary rigor at the expense of growth and jobs.

Mr. Jospin's government had threatened to reject the stability pact without measures to boost employment and to form an economic mechanism to counter the independent European Central Bank. There was talk of an employment protocol to be added to the stability pact and lots of new money to create jobs, with cash from the reserves the European Investment Bank and of the Coal and Steel Community.

At the end of the Amsterdam Summit, a compromise was reached. The French socialist Government signed up to the stability pact in return for obtaining the employment and growth pact. The employment and growth pact is filled with "new labour" soundbites and ideas. All EU members committed themselves to reviewing their tax and benefit systems to root out disincentives to job creation. They vowed to increase the adaptability of their labour markets in the face of rapid economic change. They promised to take steps to increase the employability of their workforces through investment in education and training.

Without such a deal, there was a real risk that the French Government would block final agreement on the stability pact. The Left's message is that austerity cannot continue without a stronger commitment to tackle unemployment.

In addition to obtaining the employment and growth pact, Mr. Jospin made some other headway in his campaign for putting employment and growth at the top of the EU agenda, rather than echoing the German-led mantra of monetary discipline and fiscal austerity :

Firstly, EU leaders issued a resolution which will be a strong political signal rather than a declaration with legal weight, and flesh out existing provisions in favour of greater coordination of macro-economic policies via EU finance ministers. The French pushed for a new language to give the Council of Ministers a role in the formulation of euro exchange rate policy vis-à-vis the dollar and yen, while respecting the Maastricht Treaty's stipulation that the primary role of the European Central Bank must be price stability.

- Secondly, Luxembourg, which took over the EU presidency on July 1997, will held a summit on employment in the autumn. French officials argue that it complements the employment chapter in the revised Maastricht Treaty under final negotiation in Amsterdam.
- Thirdly, Mr. Jospin pressed his partners to consider fresh commitments to extend the range of loans which the Luxembourg-based European Investment Bank offers to infrastructure projects, as well as small and medium-sized businesses.

Although Germany reluctantly endorsed a waffle employment chapter in the treaty, it would not allow new spending from the EU's budget. It also would not allow the stability pact's text to be tampered with. Eventually, it was decided to adopt a resolution that merely invited the investment bank to expand its lending and talked vaguely of strengthening economic policy coordination. Therefore, a Franco-German squabble over the stability pact was tetchily patched up.

*The Writers' Annex on the Definitions of Protocol, Declaration and Final Act**

Protocol : A protocol is an additional or supplementary document which is agreed on by the so-called High Contracting Parties. In Article 239 of the Treaty of Rome, it is clearly stated that protocols form an integral part of the Treaty. Therefore, a protocol has legal force and its provisions must be applied in conjunction with the Treaty provisions to which they relate. Protocols usually embody lengthy and detailed provisions on matters touched on in the Treaty to which it is attached. The Statute of the Court of Justice is, for instance, annexed as a protocol to the Treaty of Rome. An opt-out from a treaty undertaking is formalized in a protocol, thus providing scope for variable geometry or Europe *à la carte*. 17 Protocols appear within the actual Treaty on European Union immediately before the Final Act. They are an integral part of the TEU. The Treaty of Amsterdam has 13 Protocols.

Declaration : Declarations are not the result of the agreements reached by the so-called High Contracting Parties, but the result of the agreements reached by the intergovernmental conferences that drew up the TEU. Declarations are annexed to the Final Act of the IGCs that stand separate from the TEU. A declaration has no legal force, but is intended to have political force, and may touch on matters not otherwise dealt with it: for example a, Declaration on animal welfare was annexed to the Maastricht Treaty at the behest of the British Government. Declarations may also take the form of an undertaking to examine or re-examine an issue at some future date, or of an agreed interpretation of some provisions in the Treaty. Such Declarations are used as a way of resolving disagreements that proved insoluble in the course of negotiations. Generally, Declarations consist of between one and three paragraphs. The most significant exception to this general rule is the Declaration on WEU. Some Declarations are made in the name of only certain parties to the Treaty, and often result from the desire of particular governments to make formal statements for particular domestic reasons. Declarations provide guidance for an individual, institution or Member State in interpreting the provisions of the TEU and of the amended Community Treaties. The TEU has 34 Declarations attached to it. The SEA has 11 Declarations and the Treaty of Rome has 9 Declarations attached to them. The Treaty of Amsterdam has 51 Declarations adopted by the Conference and 8 Declarations of which the Conference took note.

Final Act : The Final Act appears immediately after the Protocols, it is not an

* These definitions are taken from Church & Phinnemore *European Union and European Community*, Harvester Wheatsheaf, New York, 1994, pp. 390, 427, 429; Bainbridge, *The Penguin Companion To European Union*, Penguin Books, London, 1995, pp. 375-376.

integral part of the TEU. Its primary function is to summarize exactly which text the IGCs agreed to adopt. It is the final act of the intergovernmental conferences which drew up the TEU. While not extending the content of the TEU, the Final Act includes formal list of all the Protocols and of all the Declarations. It states clearly which Protocols the IGCs in their deliberations agreed to annex to which Treaties, and establishes that the Declarations are to be annexed that the Declarations are to be annexed to the Final Act itself and not to the TEU.

Annex 1

TABLES OF EQUIVALENCES REFERRED TO IN FOOTNOTE “**”

Consolidated Version TREATY ON EU	DRAFT TREATY
<i>Title I Common Provisions</i>	
Article 2	Article B (Chapter 3- Employment Chapter 5- Environment)
Article 3	Article C (Chapter 12- Common Foreign and Security Policy)
Article 5	Article E (Chapter 18- Other Institutional Issues)
Article 6	Article F (Chapter 1- Fundamental Rights and Non-Discrimination)
Article 7	Article Fa (Chapter 1- Fundamental Rights and Non- Discrimination)
<i>Title V- Provisions on a Common Foreign and Security Policy</i>	
Article 11	Article J.1 (Chapter 12- Common Foreign and Security Policy)
Article 12	Article J.2 (Chapter 12-)
Article 13	Article J.3 (Chapter 12-)
Article 14	Article J.4 (Chapter 12-)
Article 15	Article J.5 (Chapter 12-)

Article 16	Article J.6 (Chapter 12-)
Article 17	Article J.7 (Chapter 12-)
Article 18	Article J.8 (Chapter 12-)
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CFSP	:	Common Foreign and Security Policy
COSAC	:	Conference of European Affairs Committees
COREPER	:	Committee of Permanent Representatives
EP	:	European Parliament
ECJ	:	European Court of Justice
EU	:	European Union
EC	:	European Community
ECSC	:	European Coal and Steel Community
EEA	:	European Economic Area
EAEC	:	European Atomic Energy Community
EURATOM	:	European Atomic Energy Community
IGC	:	Intergovernmental Conference
NATO	:	North Atlantic Treaty Organization
OCTs	:	Overseas Countries and Territories
SEA	:	Single European Act
TEC	:	Treaty Establishing the European Communities
TEU	:	Treaty on European Union
UK	:	United Kingdom
UN	:	United Nations
WEU	:	Western European Union