

**PRESIDENCY NOTE**

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*Subject : Extension of qualified majority voting*

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In preparation for the meeting of Representatives on 13 November 2000, delegations will find:

- (i) in **Annex I a new draft of Article 42**. The amendments to the previous draft (4790/00) are intended mainly to:
- limit the material and persons covered by paragraph 1 (i.e. qualified majority) to those within the scope of existing legislation implementing Article 42 TEC (Regulation 1408/71) by means of a Protocol which can only be amended by unanimity;
  - confirm that social security for workers from third countries is governed by the provisions of Article 63(4) TEC.
- Annex I also contains the draft of **Articles 137 and 130 TEC** unchanged since the summary document.
- (ii) in **Annex II a new draft of Article 67** with a declaration to be entered in the Final Act of the Conference;
- (iii) in **Annex III a new draft of Article 93** with the following changes:
- paragraph 2 is now explicitly confined to indirect taxation;
  - the idea of "common notions" has been reinserted in the Protocol in appropriate terms;
  - provisions primarily of a fiscal nature in the sphere of the environment now appear in Article 175 (see below);

- (iv) in **Annex IV a new draft of Article 175(1) and (2)** comprising two options for the provisions primarily of a fiscal nature in the sphere of the environment (qualified majority or unanimity);
- (v) in **Annex V a new draft of Article 133**. The Protocol on European Union participation in WTO proceedings has been amended to ensure a consistent parallel between voting rules for internal measures and those for external measures and to meet delegations' concerns regarding Article 8(3).

**MEASURES REQUIRED IN THE FIELD OF SOCIAL SECURITY  
TO PROVIDE FREEDOM OF MOVEMENT**

*The title of Chapter I of Title III shall be amended as follows:*

**Workers and persons treated as such**

**ARTICLE 42 TEC**

1. The Council, acting in accordance with the procedure referred to in Article 251 **after consulting the Economic and Social Committee and the Committee of the Regions**, shall adopt such **coordination** measures in the social security **fields referred to in the Protocol annexed to this Treaty** as are necessary to provide freedom of movement for the persons referred to in that Protocol; to this end, it shall make arrangements to secure for **them** and for their dependants:

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

2. **The Council, acting unanimously on a proposal from the Commission after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt such measures as are necessary for applying this system in the social security fields and to nationals of Member States other than those mentioned in paragraph 1.**

3. **The measures referred to in paragraphs 1 and 2 may not significantly affect the financial equilibrium of Member States' social security schemes.**

4. **The Protocol referred to in paragraph 1 may be amended by the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament.**

**ARTICLE 63(4) TEC**

4. Measures defining the rights of nationals of third countries who are legally resident in a Member State to reside in other Member States **and the conditions under which they may do so, including the social security conditions.**

**PROTOCOL TO BE ANNEXED TO THE TEC WITH REGARD TO ARTICLE 42(1) OF  
THE TEC**

**The High Contracting Parties**

have agreed on the following provisions, which shall be annexed to the Treaty establishing the European Community.

**1. Article 42(1) of the TEC shall apply:**

**(i) in the following areas:**

- (a) sickness and maternity benefits;**
- (b) invalidity benefits, including those intended for the maintenance or improvement of earning capacity;**
- (c) old-age benefits;**
- (d) survivors' benefits;**
- (e) benefits in respect of accidents at work and occupational diseases;**
- (f) death grants;**
- (g) unemployment benefits;**
- (h) family benefits.**
- (i) other special non-contributory benefits, where they are intended either to provide supplementary, substitute or ancillary cover against the risks covered in the fields referred to in points (a) to (h) or solely as specific protection for the disabled;**

**(ii) to the following persons:**

- (a) workers and self-employed persons who are nationals of a Member State;**
- (b) students who are nationals of a Member State;**
- (c) stateless persons and refugees residing within the territory of one of the Member States;**
- (d) civil servants of the Member States and persons who are treated as such, in accordance with the legislation of the Member States.**

## SOCIAL PROVISIONS

### ARTICLE 137 TEC

1. With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
- (g) conditions of employment for third-country nationals legally residing in Community territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article 150;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;**
- (k) the development and improvement of social protection, without prejudice to point (c).**

2. To this end, the Council:

- 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, **excluding any harmonisation of the laws and regulations of the Member States, without prejudice to the second indent;**
- may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The Council shall act in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee and the Committee of the Regions, except in the fields referred to in paragraph 1(c), (d) and (g), where the Council shall act unanimously on a proposal from the Commission, after consulting the European Parliament and the abovementioned Committees.

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2.

In this case, it shall ensure that, no later than the date on which a directive must be transposed in accordance with Article 249, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive.

4. The provisions adopted pursuant to this Article:

- **shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;**
- shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

**Declaration to be entered in the Final Act of the Conference**

**It is to be understood that any expenditure incurred by virtue of Article 137 of the Treaty establishing the European Community will be charged to heading 3 of the financial perspective.**

## LEGAL BASIS FOR ESTABLISHING A COMMITTEE ON EMPLOYMENT AND SOCIAL PROTECTION

### ARTICLE 130 TEC

The Council, after consulting the European Parliament, shall establish a Committee on Employment **and Social Protection** with advisory status to promote coordination between Member States on employment, labour market **and social protection** policies.

The tasks of the Committee shall be, without prejudice to Article 207, **to prepare reports or** formulate opinions at the request of either the Council or the Commission or on its own initiative.

**In addition,**

- (a) **on matters relating to employment**, the Committee shall monitor the employment situation and employment policies in the Member States and the Community and shall contribute to the preparation of the Council proceedings referred to in Article 128;
- (b) **on matters of social protection**, the Committee shall monitor the social situation and the development of social protection policies in the Member States and the Community and shall promote exchanges of information, experience and good practice between Member States and with the Commission.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

**VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATING  
TO THE FREE MOVEMENT OF PERSONS****ARTICLE 67 TEC**

1. **The Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures referred to in Articles 62(2)(a)** *[procedures for checks on persons at external borders]*, 62(2)(b)(ii) and (iv) *[certain rules on visas]*, **62(3)** *[conditions of freedom to travel for nationals of third countries]*, **63(1)(a), (b), (c) and (d)** *[measures on asylum]*, **63(2)(a)** *[minimum standards for giving temporary protection]*, **63(3)(b)** *[measures on illegal immigration]* and **65(a), (b) and (c)** *[judicial cooperation in civil matters]*.
2. The Council, acting by a qualified majority after consulting the European Parliament, shall adopt the measures referred to in Article 62(2)(b)(i) and (iii) *[other rules on visas]* **and Article 66** *[cooperation between the relevant departments of the administrations]*.
3. The Council shall adopt the measures referred to in Article 62(1) *[absence of any controls on persons when crossing internal borders]*, Article 63(2)(b) *[measures promoting a balance of effort between Member States in receiving refugees]*, Article 63(3)(a) *[measures on conditions of entry and residence]* and Article 63(4) *[residence of nationals of third countries in other Member States]* acting unanimously after consulting the European Parliament. **By 1 May 2004**, the Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this paragraph to be governed by the procedure referred to in Article 251.
4. In the areas covered by Articles 61 to 66, the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council.
5. The Council, acting unanimously after consulting the European Parliament, **the Commission and the Court of Justice**, shall take a decision with a view to adapting the provisions relating to the powers of the Court of Justice.

## Declaration to be entered in the Final Act of the Conference

**The High Contracting Parties agree that, in the decision it will be required to take by 1 May 2004 pursuant to Article 67(3) of the Treaty establishing the European Community, the Council will:**

- **make the procedure referred to in Article 251 applicable to the areas covered by Articles x, y, etc.;**
- **endeavour to make it applicable to the other areas referred to in Article 67(3).**

*REMARK: Another option would be not to amend the current Article 67 of the Amsterdam Treaty and to use the above declaration to indicate the areas for which a political undertaking may be entered into at Nice to move to the Article 251 procedure as of 1 May 2004 and the areas for which the undertaking will simply be to make "best endeavours".*

**TAX PROVISIONS**

**ARTICLE 93 TEC**

1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:

- provisions for the harmonisation of the laws and regulations of the Member States concerning turnover taxes, excise duties and other forms of indirect taxation;
- **provisions concerning the approximation of the laws and regulations of the Member States on direct taxation;**

to the extent that such provisions are necessary to ensure the establishment and the functioning of the internal market.

2. **By way of derogation from paragraph 1, the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt, in the area of indirect taxation:**

- **technical updating measures for the sole purpose of simplifying existing Community rules or ensuring uniform, simple and transparent application of existing Community rules relating to turnover tax, excise duties and other forms of indirect taxation in the areas referred to in the Protocol annexed to this Treaty;**
- **measures for the sole purpose of preventing fraud, tax evasion and the circumvention of existing rules.**

**3. The measures referred to in paragraph 2 may not affect, either directly or indirectly:**

- in the case of turnover tax, rules concerning the location of transactions, the reallocation of tax revenue between Member States or the fixing of rates;**
- in the case of excise duties and other forms of indirect taxation, rules concerning the place of taxation, the basis of assessment or the fixing of rates.**

**4. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions necessary for mutual assistance, exchanges of information, and cooperation between tax authorities within the Community with a view in particular to combating fraud and tax evasion and to recovering tax claims. These measures shall not concern the application of national criminal law or the national administration of justice in the Member States.**

**The Protocol referred to in paragraph 2 may be amended by the Council, acting unanimously on a proposal from the Commission after consulting the European Parliament.**

#### **ARTICLE 94 TEC**

*Article deleted.*

**PROTOCOL TO BE ANNEXED TO THE TREATY ESTABLISHING THE  
EUROPEAN COMMUNITY**

**The High Contracting Parties**

**have agreed on the following provisions, which shall be annexed to the Treaty establishing the European Community.**

**The first indent of Article 93(2) shall apply in the following areas:**

**(a) with regard to turnover tax:**

- **refund arrangements/right to deduct**
- **determination of the person liable for payment of tax;**
- **determination and definition of concepts in common;**
- **fiscal procedures;**
- **derogations intended to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance;**

**(b) with regard to excise duties:**

- **structure of excise duties;**
- **determination and definition of concepts in common;**
- **uniform application of traffic and taxation rules;**
- **derogations.**

**PROVISIONS PRIMARILY OF A FISCAL NATURE  
IN THE SPHERE OF THE ENVIRONMENT**

***OPTION 1***

*Add a new second subparagraph to Article 175(1) TEC*

**The Council, acting in accordance with the same procedure, shall adopt provisions primarily of a fiscal nature concerning the territory of more than one Member State, the main objective of which is to protect the environment.**

***OPTION 2***

*Maintain the following point (a) in paragraph 2:*

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

- (a) provisions primarily of a fiscal nature;**
- (b) ...

**CONCLUSION OF INTERNATIONAL AGREEMENTS ON INTELLECTUAL  
PROPERTY AND SERVICES**

***OPTION 1***

**ARTICLE 133 TEC**

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements **relating to trade in goods and services, investment and intellectual property**, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

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

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.
5. *[Paragraph deleted]*

## *OPTION 2*

### ARTICLE 133 TEC

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

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

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority. **The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules.**
5. **Paragraphs 1 to 4 shall also apply, as provided for in the Protocol annexed to this Treaty, to the negotiation and conclusion of agreements relating to services and the commercial aspects of intellectual property insofar as they are not covered by those paragraphs. That Protocol may be amended by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament.**

**DRAFT PROTOCOL TO BE ANNEXED TO THE TEC  
WITH REGARD TO ARTICLE 133(5) TEC**

**The High Contracting Parties**

**have agreed on the following provisions, which shall be annexed to the Treaty establishing the European Community.**

- 1. Article 133(5) of the Treaty establishing the European Community shall apply to:**
  - (a) the sectors of services appearing on the schedule of specific commitments of the Community and the Member States as annexed to the General Agreement on Trade in Services (GATS) set out in Annex 1B to the Agreement of 15 April 1994 establishing the World Trade Organisation, as that schedule stands on the date of entry into force of this Protocol;**
  - (b) the matters covered by the Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) set out in Annex 1C to the Agreement of 15 April 1994 establishing the World Trade Organisation.**
- 2. The provisions of this Protocol shall not apply to the negotiation and conclusion of international agreements in the field of sea transport which shall continue to be governed by the provisions of Title V and Article 300 of the Treaty establishing the EC.**
- 3. No agreement resulting in the harmonisation of the laws and regulations of the Member States may be concluded by the Council in an area for which the Treaty establishing the European Community rules out such harmonisation.**

**EUROPEAN UNION PARTICIPATION IN THE PROCEEDINGS  
OF THE WORLD TRADE ORGANISATION (WTO)  
DRAFT PROTOCOL TO BE ANNEXED TO THE TEU AND THE TEC**

**The High Contracting Parties**

have agreed on the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty establishing the European Community,

**Article 1**

Participation by the European Union (European Community and Member States) in the proceedings of the World Trade Organisation (WTO) shall be governed by the rules in this Protocol.

**Article 2**

A single procedure shall apply in all cases, whether involving the exercise of Community powers, the exercise of Member States' powers or the exercise of powers shared between the Community and the Member States.

**Article 3**

1. The Commission shall act as the European Union's spokesman and sole negotiator and shall present the Union's common position as established in accordance with this Protocol.
2. In negotiations, the Commission shall act on the basis of prior authorisation from the Council following recommendations presented to it by the Commission. The Council may at any time address negotiating directives to the Commission.
3. For the purposes of paragraph 2, the Council shall act by a qualified majority ***It shall act unanimously when the draft agreement covers a field for which unanimity is required for the adoption of internal rules. The common accord of the members of the Council shall be required when the field is one which comes within the competence of the Member States.***

#### Article 4

1. Member States may participate in all WTO meetings either directly or through the Council Presidency, which shall be assisted by the General Secretariat of the Council.
2. The Commission shall ensure that the Member States and the Council Presidency are informed in sufficient time of all WTO meetings to be held.
3. The Commission shall forward all documents available to it to the Member States and the Council Presidency without delay.
4. The Commission shall at all times agree to a request by any Member State for consultation on a position stated or to be stated on behalf of the Community and the Member States. If need be, the Commission shall ask to have a meeting adjourned in order to meet such a request.

#### Article 5

1. The common position to be stated by the Commission at the WTO on behalf of the European Union shall be established by the Council. The Commission may submit drafts for that purpose.
2. However, the Council may lay down particular procedures for establishing that common position where its purpose is to comment on WTO texts which have no legal effect for the Community or for the Member States.
3. Where the Union's position relates to matters of day-to-day administration, it shall be established by the Commission.

#### Article 6

The European Union common positions referred to in Article 5 shall be established ~~by a qualified majority~~ in accordance with the provisions of Article 3(3).

## Article 7

1. If a dispute settlement procedure is initiated at the WTO against one or more Member States, the unity of the Union's representation must be upheld.
2. The Member State or Member States concerned shall be represented by the Commission in the procedure, including the procedure before the Appellate Body. The defence shall be prepared by the Commission, in close cooperation with the States in question, and the Council and the Committee referred to in Article 133 of the Treaty shall be kept fully informed.
3. The Member States concerned and the Commission shall make every effort to ensure that WTO procedures do not result in calling advantages enjoyed by the Community or by other Member States into question.

## Article 8

1. Where a dispute settlement procedure is to be initiated against a third country belonging to the WTO, the Commission, after consulting the Committee referred to in Article 133 of the Treaty, shall hold the consultations provided for in the WTO Understanding on Rules and Procedures governing the Settlement of Disputes.
2. Decisions to request that the WTO establish a panel or to appeal against the report of such a panel shall be taken by the ~~Committee referred to in Article 133 of the Treaty~~ the Council. The Council, acting unanimously, may delegate that power to the Committee referred to in Article 133 of the Treaty. The decisions referred to in this paragraph shall be taken in accordance with the provisions of Article 3(3).
3. Where, in a field coming within the competence of the Member States, it is not possible to establish a common position ~~in accordance with Article 6~~ in order to request the establishment of a panel at the WTO, a Member State may make the request on its own behalf. In that case, it shall be required to cooperate closely with the Commission, to keep the Council and the Committee referred to in Article 133 of the Treaty fully informed and to make every effort to ensure that WTO procedures do not result in calling advantages enjoyed by the Community or by other Member States into question.

