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## The Single European Act: Attempt At An Appraisal

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# The Single European Act: Attempt At An Appraisal

Hans-Joachim Glaesner

## **Abstract**

This Article analyzes whether the Act [the Single European Act] will aid European unification. Part I argues that a realistic and balanced assessment of its results is possible through a comparison of the final outcome of its negotiations with the Act's original objectives, in light of the political realities of the Community. Part II briefly chronicles the recent history of European political operation. Part III discusses the effect of the Act on the power of the Community over the Member States. Part IV analyzes the decision making processes provided for by the Act.

# THE SINGLE EUROPEAN ACT: ATTEMPT AT AN APPRAISAL

*Hans-Joachim Glaesner* \*

## INTRODUCTION

The Single European Act (Single Act or Act) was signed in February, 1986, albeit in stages, by all of the current twelve Member States of the Community.<sup>1</sup> The signing has generated a debate<sup>2</sup> centered upon whether the Act really constitutes a step toward European unification, or whether the objectives set forth in the Act could have been attained without it, i.e. *de lege lata*. Several commentators have maintained that the Act is a retrograde step.<sup>3</sup>

This Article analyzes whether the Act will aid European unification. Part I argues that a realistic and balanced assessment of its results is possible through a comparison of the final outcome of the negotiations with the Act's original objectives, in light of the political realities of the Community. Part II briefly chronicles the recent history of European political cooperation. Part III discusses the effect of the Act on the power of the Community over the Member States. Part IV analyzes the decisionmaking processes provided for by the Act.

### I. POLITICAL OBJECTIVES AND POLITICAL REALITY

The negotiations that produced the Single European Act

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1. Single European Act, 2 E.C. Bull. No. 11 (Supp. Feb. 1986), reprinted in the Appendix to this Article, *infra*, at 471-500.

2. See, e.g., L'ACTE UNIQUE EUROPEEN (Inst. d'Etudes Europeens ed. 1986); Lodge & Juliet, *The Single European Act: Towards a New Euro-Dynamism?*, 24 J. COMMON MKT. STUD. (1986); Wessels, *Die Einheitliche Europäische Akte—Zementierung des Status quo oder Einstieg in die Europäische Union?*, 2 INTEGRATION 65 (1986); HOUSE OF LORDS, SELECT COMMITTEE OF THE EUROPEAN COMMUNITIES, SESSION 1985-1986, 12th Rep.; HOUSE OF COMMONS, THIRD REPORT FROM THE FOREIGN AFFAIRS COMMITTEE, SESSION 1985-1986; Glaesner, *Die Einheitliche Europäische Akte*, 2 EUROPARECHT 119 (1986); Pescatore, *Die "Einheitliche Europäische Akte," Eine ernste Gefahr für den Gemeinsamen Markt*, 2 EUROPARECHT 153 (1986); *Zur Einheitlichen Europäischen Akte*, 3 INTEGRATION (1986) (with contributions from Grabitz, Ehlermann, Scharrer, Biehl, Salzer, Wessels).

3. For a particularly critical commentary, see Pescatore, *supra* note 2.

were prompted by the demand made by Altiero Spinelli, and the "Crocodile Club," a group of Spinelli's colleagues from the European Parliament that met at the Crocodile restaurant in Strasbourg, to overcome the stagnant attempt at European unification by setting up a European Union, as set forth in the Parliamentary Draft Treaty.<sup>4</sup> The so-called Solemn Declaration of Stuttgart, adopted on June 19, 1983 by the European Council on the basis of the Genscher-Colombo Plan, was also an attempt to transform the existing Community structures into a European union.<sup>5</sup>

Those two texts do not share an identical concept of a European union. In fact, the concept has changed considerably in the course of Community history. For example, the Draft Treaty for a European Political Community,<sup>6</sup> the Vedel Report,<sup>7</sup> and the Tindemans Report<sup>8</sup> show that over the years the concept has been used for substantively quite different political objectives.<sup>9</sup>

However, apart from the Fouchet Plan,<sup>10</sup> which understood a European union purely as an intergovernmental form of organization, all the plans for a European union share some basic characteristics. First, the union should extend to all important policy areas. Unlike the Treaties of Rome, whose objectives are primarily economic, this Treaty should extend the powers of the union to include, at least, external relations, security, and defense. Second, a European union needs decisionmaking structures that maintain equilibrium between the Member States and the autonomous decisionmakers of the union. Special significance is attached to the democratic legitimacy of the union's decisionmakers, that is to say, a freely

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4. Parliamentary Draft Treaty, *reprinted in* EINE VERFASSUNG FÜR EUROPA 587-624 (J. Schwartz & R. Bieber eds. 1984); *see also* Capotorti, Hilf, Jacobs, Jacque, *Commentary*, in *ETUDES EUROPEENNES* (1985).

5. *See* Genscher-Colombo Plan, *reprinted in* 15 *EUROPA ARCHIV* D 420-427 (1983).

6. *See* B. Beutler, R. Bieber, J. Pipkorn & J. Streil, *DIE EUROPÄISCHE GEMEINSCHAFT* 452 (1979).

7. Vedel Report, E.C. Bull. No. 4 (Supp. 1972).

8. Tindemans Report, E.C. Bull. No. 1 (Supp. 1976).

9. *See* F. Jansen, *EUROPA: VON DER GEMEINSCHAFT ZUR UNION*, (1986); Bieber, *Verfassungsentwicklung in der EG*, in *EINE VERFASSUNG FÜR EUROPA* 81-89 (J. Schwartz & R. Bieber eds. 1984).

10. The Fouchet Report is *reprinted in* 15 *HANDBUCH DES EUROPÄISCHEN RECHTS* (previously *Handbuch für Europäische Wirtschaft*) IA, 13/4 (1976).

elected parliament with valid powers must participate in the decisionmaking process of the union.

The Parliamentary Draft of February 14, 1984, certainly satisfied these basic requirements for a European union. The Stuttgart Declaration, with all its reservations, did not. The report of the "Dooge Committee," created by a Decision of the European Council of June 1984, only partially met the above criteria.<sup>11</sup> In particular, the actual influence of the Parliament on the legislative process when opinions of the Parliament and the Council differ remained unclear in the Dooge Committee proposal. The text of that plan, which undoubtedly represents a compromise formula, must be construed in the context that, at least for some members of the Dooge Committee, the Council could reject the decision of the Parliament.

As signed, the Single European Act certainly does not contain those basic characteristics indispensable to the historical concept of a European union. It provides neither for a substantial amplification of Community powers,<sup>12</sup> nor for the remodeling of the Community decisionmaking structures to increase the autonomy of Community institutions in relation to participation by the Member States.<sup>13</sup> With two exceptions, no shared decision-making powers are granted to the Parliament. Article 1(1) of the Common Provisions merely defines the common objective of the European Communities and the European Political Cooperation as working together to making concrete progress towards European unity.

The Communities have become a political reality through their original Treaties. This is true particularly in the area of external trade where the Community possesses exclusive powers by virtue of Articles 113 and 114 of the EEC Treaty. For example, the regulation of international trade within the framework of GATT is no longer possible without Community action. The extension of Community activities within the area delineated by Article 235 of the EEC Treaty has in no small way contributed to the creation of the political reality of the Community.

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11. See Dooge Committee Report, reprinted in *EUROPA ARCHIV* D 233, D 240 (1985).

12. See *infra* notes 20-29 and accompanying text.

13. See *infra* notes 30-47 and accompanying text.

On the other hand, the Member States remain the supporting columns of the Community. It is the Member States that, in the final analysis, bear the responsibility for internal and external security in the widest sense, both for individuals living within their national boundaries and for their respective territorial integrity. They can therefore invoke powers for the self-attribution of competence under their respective constitutional rules. These powers are circumscribed only in areas where the Community possesses its own competence independent of the Member States. To that extent at least the Member States are not, as they are often informally called, masters of the Treaties, but are subject to the Community legal order.

However, the Community can only exercise powers conferred upon it by the Treaties, as is expressly stated in Article 4 of the EEC Treaty and in the corresponding provisions of the other two treaties. The tension, between the powers for the self-attribution of competence of the Member States and the competence of the Community created by the Treaties is translated into a structural weakness in the Council's decisionmaking process, which consists, as provided for in the Treaty, of representatives of the Member States' governments.

The initial stage of the legitimating process, independent of the Member States, is found in the European Parliament. This was true when the members of the European Parliament were delegates from the national parliaments. Even at that time, the members of the European Parliament considered themselves as a counterweight to the Community Executive in the Commission and the Executive of the Member States represented in the Council. The direct election of representatives to the European Parliament<sup>14</sup> strengthens not only its independence but above all its democratic legitimacy.<sup>15</sup>

In the general interest of the Communities, the Commission is completely independent in the performance of its duties. It lacks democratic legitimacy because its members are appointed by common accord of the Member States' govern-

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14. Council Decision No. 76/787, O.J. No. L 278/1 (1976).

15. See Constantinesco, *Das direkt gewählte Parlament—Bilanz und Perspektiven*, EUROPA DER ZWEITEN GENERATION 247 (R. Bieber, A. Bleckmann & F. Capotorti eds. 1981); R. Hrbek, L. Jamar, W. Wessels (publ.), *PARLEMENT EUROPEEN 1979-1984* (Bruges 1984).

ments. The European Parliament's sole check on the Commission is its ability to force the Commission to resign on a motion of censure. However, this power has not allowed the Commission to establish a political basis in Parliament, because the political composition of the Commission does not correspond to the political power structure in Parliament. Thus, the independence of the Commission remains endangered for want of a political basis.

Although members of the Court of Justice are also appointed by common accord of the Member States' governments, this has not prevented the Court from developing into an impartial guarantor of the independent legal order of the Community. Indeed, the Member States are subject to control by the Court insofar as the Treaties place an obligation on the Member States or have granted powers to the Community. However, Community law does not allow for the enforcement of judgments against Member States. The latter merely are required to take the necessary measures to comply with the judgment of the Court of Justice. This creates a problem of acceptance of the Court of Justice by the Member States as well as other parties which appear before the Court. The particular difficulties facing the Court of Justice, when compared to the national courts and especially the constitutional courts, stems from the fact that the Court acts only within the framework of a legal order rather than in a recognized social and political order.

## II. *AN ASSESSMENT OF THE POLITICAL CONTEXT AND PROCEDURE OF THE SINGLE ACT*

Unlike the Dooge Report, the European Parliament's Draft Treaty setting up a European Union did not envision amending the existing Treaties; rather it contemplated creating a European Union by means of a special Treaty instrument. The "acquis communautaire" was to be ratified by the Union after its creation. Accordingly, the European Council decided, on the basis of Article 236, to recommend convening a Conference to amend that Treaty at its meeting in Milan in June of 1985. This Decision was adopted by a majority, with three Member States dissenting.

The choice of the Article 236 procedure ensured that the

Single Act was signed and ratified by all Community Member States. The Parliamentary Draft Treaty provided, however, that the Treaty could also become effective only for certain Community Members. Therefore, the possible limitation of progress toward European unification was prevented by use of Article 236. It is noteworthy that those Member States that had voted not to convene the Conference participated in the Conference. Although doubts may persist, no Member State was prepared either to block the procedure for amending the Treaty or to forego its right to influence the negotiations. To interpret this as a sign of the inner coherence of the Community would conceal the fact that the participation was prompted by different, and partially opposing, motives.

The adoption of Title III dealing with European political cooperation entails no amendment to the Community Treaties. Title III is not subject to that part of the procedure governed by Community law under Article 236. Above all, Articles 3, 31, and 32 of the Single Act specify that Title III should not be integrated into the Community legal order. The juxtaposition of the texts amending the Community Treaties and the texts on European political cooperation was a purely political act that led to the instrument acquiring the name "Single Act."

The codification of European political cooperation essentially consists of the repetition of existing documents in the context of that cooperation, which after ratification of the Single Act, become legally binding texts. The character of European political cooperation otherwise remains scarcely altered. The resulting obligations generally are formulated in such vague terms that no practical consequences arise. Thus, the legal effect of this codification is limited to the fact that no Member State may withdraw from European political cooperation without violating the law. Another practical effect might be that further development of European political cooperation is only possible within narrow limits unless Title III of the Single Act is amended, i.e., unless a new international treaty requiring ratification is negotiated.

The revision clause in Article 30(12) takes this into account. As Title III does not form part of the Community legal order, there is no legal safeguard against the risk of divergent political decisions. It is true that Article 30(5) of the Single Act

requires that the external policies of the European Community and the policies agreed upon within the European Political Cooperation must be consistent. Special responsibility for ensuring such consistency is entrusted to the Presidency and the Commission. Because neither may decide policy alone, either in the context of the Community or European Political Cooperation, the necessary consistency may only be attained through political means. This may become problematic if majority decisions are made in the Community procedure.

Grabitz has questioned<sup>16</sup> whether the juxtaposition of texts amending Community treaties and texts on European Political Cooperation has created a new international organization. As argued by Grabitz, the answer must be no. The necessary minimum for a common structure or basic system of such an organization is absent. Article 3 of the Single Act clearly states that the Community may exercise its powers only in accordance with Community law, and the powers of European Political Cooperation may be exercised only on the basis of Title III of the Single Act. The legal basis for the European Council in Article 2 of the Single Act is not an organic superstructure, because its powers are undefined and no reference is made to the European Communities or to European Political Cooperation. Point three of the communique of the Summit conference of December 9-10, 1974, which establishes the basis of the European Council, states that the European Council shall meet "in the council of the community and in the context of political cooperation."<sup>17</sup> The joint objective defined in Article 1(1) for the European Communities and European Political Cooperation, namely to contribute to making concrete progress towards European unity, is insufficient to support consideration of a single international organization. Moreover, this new objective, which is also valid for the Community, could be important for the interpretation and application of Article 235 of the EEC Treaty. Following the previous practice and interpretation of Article 235,<sup>18</sup> it must be legally feasible (provided other conditions of this provision are met), to take measures

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16. Grabitz, *Die Einheitliche Europäische Akte: Rechtliche Bewertung*, 3 *INTEGRATION* 95 (1986).

17. E.C. Bull. No. 12, at 7 (1974).

18. For a valid description, see U. Everling, I. Schwartz & C. Tomuschat, in *EUROPARECHT* (Special Ed. 1976).

necessary to make concrete progress towards European unity and thus go beyond the former substantive scope of Article 235.

### III. *AMPLIFICATION OF THE SUBSTANTIVE POWERS OF THE COMMUNITY*

#### A. *Internal Market*

Article 13 of the Act requires the insertion of Article 8A in the EEC Treaty and defines the internal market as an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the Treaty. These provisions do not extend beyond the four "basic freedoms" of the EEC Treaty, and therefore do not signify any increase in substantive powers for the Community. This is guaranteed by the qualifying phrase "in accordance with the provisions of this Treaty." Nor do the other new provisions governing the internal market, Articles 14 through 19, contain any enhancement of substantive powers. They contain new instruments for the realization of the internal market, but are not applicable to such important areas as direct taxes, free movement of persons, and the rights and interests of employed persons (Article 100A(2)). The new provision regarding indirect taxes also impedes the goal of facilitating and accelerating the realization of the internal market as epitomized by the principle of qualified majority. The newly drafted Article 99 continues to provide for unanimity. It does represent a certain progress, however, because there can no longer be any doubt that there exists an obligation to harmonize indirect taxes and that it is not within the Commission's discretion to decide whether such harmonization is necessary.

#### B. *Economic and Monetary Union*

Monetary capacity is governed under Article 20 of the Single Act, which introduces Article 102A of the EEC Treaty. The Article only provides for cooperation among Member States to achieve the existing objectives in Article 104. It is debatable, therefore, whether the provision creates any new substantive powers for the Community. However, the Treaty now establishes that this cooperation is to ensure the convergence of the economic and monetary policies of the Member States. This

principle was previously only established by the so-called Convergence Decision.<sup>19</sup> Thus, theoretically, the principle could have been the subject of a new Decision with a new and different content.

Regarding monetary policy, Article 102A promises no progress. Apart from a reference to the experience acquired from the European Monetary System, the existing powers, particularly the autonomy of the central banks, are expressly confirmed. Reference to Article 102A(2) refutes the interpretation that this provision prohibits any future amendment of the separation of powers between the Member States and the Community. That section expressly provides for the possibility of future institutional changes. However, such changes may be made only through the Article 236 procedure to amend the EEC Treaty.

Indeed, it is arguable that this provision is a retrograde step to the extent that the autonomous Community procedure under Article 235 was applicable. Thus, the European Monetary Cooperation Fund was set up by a Regulation based on Article 235.<sup>20</sup> To this extent, the Single Act does not implicate an increase of the Community's powers in the area of monetary policy, but rather a limitation of its sphere of activity.

### C. *Social Policy*

The Act's provisions on social policy also fail to increase the Community's substantive powers. Article 21 of the Act introduces Article 118A into the EEC Treaty, obliging Member States to encourage improvements in the working environment for the health and safety of workers. Article 118, however, already delegates entirely comparable duties to the Commission without granting decisionmaking powers to the Community. No interpretation of the new provision will affect the powers the Commission already enjoys under Article 118. In any event, the Commission is obliged under the first paragraph of Article 155, to ensure that the Treaty is applied, and is also entitled under the second paragraph of Article 155 to formulate recommendations or deliver opinions.

Article 118A(2) does authorize the Council to adopt mini-

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19. Council Decision No. 74/120/EEC, O.J. No. L 63/16 (1974).

20. Council Regulation (EEC) No. 907/73, O.J. No. L 89/2 (1973)

minimum requirements by way of Directives. This constitutes an increase in the decisionmaking powers for the Community. However, the Member States retain the power to maintain or introduce measures whose level of protection exceeds that of the minimum standards adopted by the Community.

#### D. *Economic and Social Cohesion*

A new Title V has been inserted into the EEC Treaty by Article 23 of the Act. The object of this Title is economic and social cohesiveness within the Community, particularly with regard to the differing levels of development in various regions. Comparing the substance of new Article 130A with the principles enshrined in Article 2 of the EEC Treaty, it is difficult to distinguish any substantial difference. In light of the broad concepts in Article 2, Article 130A does not enlarge the substantive powers of the Community.

Following the examples of Article 103 for conjunctural policy and Articles 104 and 105 for the balance of payments, Article 130A places primary responsibility on the Member States to coordinate their economic policies to attain the objectives of that Article. The creation of the internal market must account for Article 130A. In the same way, the influx of Community structural funds can be directed towards Community solidarity. One of the existing structural funds, the Regional Fund, was set up on the basis of Article 235 of the EEC Treaty.<sup>21</sup> This Fund now has a legal basis in the Treaty under Article 130C. Therefore, the theoretical possibility of abolishing the Fund by means of a new Regulation under Article 235 is excluded. Its objectives are also fixed by the Treaty through the same provision. The decisions necessary for the further development and day-to-day administration of the Fund have also acquired an independent legal basis through Article 130E. These provisions do not increase the substantive and formal powers of the Community, but do give a new quality to the legal basis of the Regional Fund.

#### E. *Research and Technological Development*

Apart from the research programs in the Coal and Steel

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21. Council Regulation (EEC) No. 724/75, O.J. No. L 73 (1975), Comm. Mkt. Rep. (CCH) ¶ 7691.

Treaty (Article 55) and the Euratom Treaty (Article 7), the first research programs in other technical areas were developed by the Community in its Resolution of January 14, 1974.<sup>22</sup> After adopting a series of ad hoc research programs, the first multi-annual framework program was adopted through the Resolution of July 25, 1983.<sup>23</sup> This framework program was implemented by many individual operational programs. These operational programs and the framework program, despite their status as Resolutions, were based on Article 235 of the EEC Treaty, because there was no specific legal basis in the EEC Treaty.<sup>24</sup> Given the consensus among Member States on the importance of research and technological progress, a new Title VI was inserted in the EEC Treaty by means of the Act (Article 24).

The policy aims in the new Article 130F and the implementing instruments in Article 130G are substantially identical to the Resolution of January 14, 1974, and the framework program of July 15, 1983. This conclusion is not altered by the greater emphasis in the new Title VI placed on the scientific and technical basis of European industry or by the encouragement of competitiveness at the international level. Community activity in basic research and procompetitive technological development is not excluded, as seen in Article 130F, sections (2)(a) and 130G(a). In those provisions, express reference is made to research and technological development activities in universities. Thus, no substantive increase in competence is granted through the new Title VI of the EEC Treaty. The instruments provided for in this Title, such as the coordination of the Member States' research measures by the Commission (Article 130H), the adoption of multi-annual framework programs (Article 130I), the implementation of the framework program through specific sectoral programs (Article 130K), the participation by the Community in national programs of the Member States (Article 130M), and the conclusion of agreements with third countries or international organizations

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22. O.J. No. C 7/2 (1974)

23. O.J. No C 208/1 (1983)

24. For individual examples of these programs, see Glaesner, *Gemeinschaftspolitik im Bereich von Wissenschaft und Technik*, in *DAS EUROPÄISCHE WIRTSCHAFTSRECHT VOR DEN HERAUSFORDERUNGEN DER ZUKUNFT* 55-83 (J. Schwarze & R. Bieber eds. 1985).

(Article 130N), do not represent anything new relative to the possibilities available in Article 235 of the EEC Treaty.

Because the necessary instruments for a research and development policy have been inserted in the Treaty, and the prerequisite for applying Article 235 is that the necessary instruments not be provided for in the Treaty, Article 235 is no longer applicable. In view of the broad formulations of Article 130, sections F and G, and the broad discretion in Article 235, to pursue Treaty obligations, the Community's flexibility in this area is not limited.

#### F. *Environment*

When the Rome Treaties were being drawn up, the general environmental problems, apart perhaps from the problems of the developing nuclear industry, had not yet come to public notice. Basic standards for the protection of the health of workers and the general public were set forth in Article 30 of the Euratom Treaty. These basic standards had already been adopted in 1960 as the so-called minimum standards for radiation protection.<sup>25</sup> The increasing recognition of the importance of environmental problems and of the necessary corrective measures, along with the consideration of influence of such measures on the competitive position of undertakings, led, after several years of discussion, to the adoption of the first Community environment program on November 22, 1973.<sup>26</sup> This program, which took the unusual form of a Declaration by the Council and the representatives of the Governments of the Member States meeting within the Council, resulted in part from the lack of a specific legal basis caused by the adoption of Directives based on Article 100 of the EEC Treaty and legal instruments based on Article 235 of that Treaty.<sup>27</sup> Just as the Act's provisions for research and technological developments were largely preempted by similar Community Resolutions, the new Title VII of the Act has predominantly the same content as previous Council Decisions. There-

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25. For the most recent version, see Council Directive No. 80/836/Euratom, O.J. No. L 246 (1980), amended by Council Directive No. 84/467/Euratom, O.J. No. L 265/4 (1984)

26. O.J. No C 112/1 (1973)

27. Cf. EC COMMISSION, 10 JAHRE UMWELTPOLITIK (1984).

fore, there is no significant alteration in the scope of the substantive powers of the Community.

The identification of a prudent and rational utilization of natural resources as a special objective of environmental policy by the new Article 130R(1)(iii) is distinct from previous Community measures. However, because policy in this area has become more and more indispensable for harmonious development of economic life within the Community, it is within Community objectives, and thus could have been based on Article 235 of the EEC Treaty. The broad formulation of Article 130S enables the Community to use any of the legal instruments available to it under the Treaty (Article 189). Furthermore, the conclusion of agreements with non-member countries or international organizations is expressly provided for in Article 130R(5). Again, this is indistinguishable from the possibilities provided for under Article 235 of the EEC Treaty. The misleading drafting of Article 130R(5) could lead to an interpretation, that excludes the *AETR* effect as it has been developed by the Court of Justice.<sup>28</sup> However, this does not correspond to the intentions of the Member States as shown in a statement of interpretation contained in the Final Act.

In any event, Article 130R(4) limits the exercise of Community powers through the subsidiary nature principle that the Community may only act at a time and in a situation where the objectives of the Community environmental policy may be better attained at a Community level than at an individual Member State level. Moreover, the exercise of Community competence is already determined by the establishment of the principle that the polluter should pay established in Article 130R(2). However, fixing the general objectives of a Community policy in such a way is not an innovation introduced by the Act. For example, one may refer to Article 110 of the EEC Treaty which establishes as a general aim of the common commercial policy the progressive abolition of restrictions on international trade.

In spite of a certain limitation on the Community's action caused by the subsidiary nature principle, the introduction of Title VII into the EEC Treaty must, on balance, be considered as positive. The Title clearly specifies that protection of the

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28. *Commission v. Council*, Case 22/70, 1971 E.C.R. 263, *Comm. Mkt. Rep.* (CCH) ¶ 8134.

environment, without substantive limitations, is one of the Treaty objectives. This clarifies an ambiguity that had arisen in the previous application of Article 235 to environmental measures. Apart from the fact that Article 235 will be no longer applicable after the new provisions become effective, the application of the new provisions will not depend on whether the environmental protection measures have economic objectives, or are economically relevant.

#### IV. EFFICIENCY AND THE DECISIONMAKING PROCESS

##### A. Majority Voting

Article 16 of the Single Act provides for the introduction of a qualified majority in a series of Articles of the EEC Treaty.<sup>29</sup> Therefore, this provision should facilitate the decisionmaking process, especially with regard to the realization of the internal market.<sup>30</sup> The importance of the introduction of a qualified majority in Article 100A is increased by the fact that not only Directives, as under Article 100, but also Regulations may be thereby adopted.

However, it was not possible to achieve qualified majority voting in all cases where it was desirable in the interests of the speedy realization of the internal market. Apart from the fact that Article 57(2) of the EEC Treaty introduces a legislative reservation that may only be overcome by unanimity, the introduction of a qualified majority in Article 84 (sea and air transport), is softened by a reference to Article 75, sections (1) and (3). In fact, Article 75(3) provides for unanimity in such cases. As a starting point, the introduction of a Community sea and air transport policy would affect the basic principles of transport arrangements and injure the operations of air and transport companies.

A particular impediment to the realization of the internal market may be that all measures for taxation harmonization remain subject to unanimity. Article 100A(2) excludes the application of Article 100 to direct taxes. Harmonization measures

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29. Treaty establishing the European Economic Community, March 25, 1957, arts. 28, 57(2), second sentence, 59(2), 70(1), 84(2), 1973 Gr. Brit. T.S. No. 1 (Cmd. 5179-II) (official English trans.), 298 U.N.T.S. 3 (unofficial trans.) [hereinafter EEC Treaty].

30. *Id.* arts. 8B, 100A, 100B, 118A, 130C, 130Q(2).

must therefore continue to be based on Article 100, which requires unanimity. Article 99, concerning the harmonization of indirect taxes, was redrafted, but the unanimity requirement was retained.

Additionally, it was not possible to introduce a qualified majority in all the newly inserted provisions. Thus, the framework program for research and technological development was adopted unanimously (Article 130Q), and only the specific programs, which in all essential details are already fixed by the framework program, were adopted by a qualified majority. Similarly, environmental measures have to be passed unanimously (Article 130S). Only after a unanimous decision is made may implementation measures be passed by a qualified majority.

The above review shows that the improvement of the decisionmaking process of the Council by the introduction of the qualified majority was never possible when the actually or supposedly sensitive interests of Member States could be affected. This is particularly clear with tax harmonization. The budgetary policy of the Member States can be affected by harmonization measures because of possible alterations to the tax yield. At the same time far-reaching alterations may affect the cost structure of firms, which represents an essential basis for corporate decisions, particularly in the investment area.

If the improvement of the Council's decisionmaking process is realized only incompletely, the functional value of the qualified majority should not be overestimated for several reasons. Decisions by a qualified majority can be made only in situations specified by the Treaty, and when the Decision is in accordance with the corresponding Commission proposal. Deviations from this proposal may only be made unanimously (Article 149 EEC Treaty). In any event, the Commission may amend its proposal at any time up to the Council decision, that is to say, that the Commission can make it possible for the Council to vote by a qualified majority if it is prepared to include the outcome of the Council's deliberations in its proposal.

Additionally, it is inconceivable to have a system of majority voting without protection of minorities. This has particular significance for the Community, because it cannot be in the

Community interest to allow individual Member States or groups of Member States to be outvoted in a manner that is unacceptable to them. The existing Article 148 of the EEC Treaty already takes into account this need for protection of minorities. The weighing of Member States' votes in that provision permits the formation of blocking minorities. For example, after the accession of Spain and Portugal the Member States with economically weaker regions can block a decision with twenty-one votes.

Moreover, the Single Act provides a series of instruments to avoid unreasonable hardship on individual Member States through the realization of the internal market. Article 8C of the EEC Treaty, introduced by Article 15 of the Act, opened up the possibility of providing for derogations if necessary to avoid a disproportionate burdening of individual economies arising from the differences in development during the establishment of the internal market. These derogations must be limited in time and executed as to cause the least possible disturbance to the functioning of the Common Market. This provision follows the existing practice of granting temporary derogations from Community duties when objectively necessary.<sup>31</sup> It is essential that the necessary protection is ensured here by a Community act. So far as a harmonization measure taken under Article 100A adversely affects predominantly non-economic interests of a Member State, a Community legal act may also provide for a safeguard clause that enables the affected Member State itself to take provisional measures. Such measures are only permissible, however, under conditions specified in Article 36 of the Treaty. The safeguard clause must also provide for a Community control procedure, as done in current practice.<sup>32</sup> In this way, an equilibrium should be established between the protection of the legitimate interests of the Member States and the maintenance of the unity of Community law.

Although it is possible for the Community to decide on derogations (Article 8C) and safeguard clauses (Article

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31. *See, e.g.*, Directive 362/85, art. 31, O.J. No. L 192/20 (1985); Directive 443/83, art. 3, O.J. No. L 206/35 (1983).

32. *Cf.* Comm'n Regulation No. 1439/74, art.14, O.J. No. L 159/1 (1974); Comm'n Regulation No. 636/82, art. 2, O.J. No. L 76/1 (1982).

100A(5)) in specific individual legal acts, Article 100A(4) contains a general provision granting a Member State the power to take unilateral action, without a prior decision concerning such action having been taken by the Community. A Member State's action may be made for purely non-economic reasons, as in the case of a safeguard clause under paragraph 5. These reasons are referred to in Article 36 of the EEC Treaty, and also include the protection of the environment or the working environment.

The nearly identical nature of the grounds for justification of unilateral measures and those for invoking a safeguard clause indicates that measures under paragraph 4 are impermissible if the Community act from which the Member State wishes to derogate provides for a safeguard clause under Article 100A(5). In these cases the object of the protection guaranteed by paragraph 4 is already covered by the safeguard clause under paragraph 5. Further recourse to paragraph 4 may only be considered if the Council has decided the harmonization measure in question by a qualified majority. If, for example, the Council has unanimously adopted an act based on Article 100A in order to take exception from the Commission proposal (Article 149), paragraph 4 could not apply because a derogation provision must be narrowly interpreted.

The Court of Justice would seem to support this contention. In Case 166/78 (1979), the Court held jurisdiction existed over an action by a Member State against a Council act although the Member State concerned had voted for the act.<sup>33</sup> This decision has important practical implications for the future application of paragraph 4 if the conditions justifying a unilateral measure by a Member State arise after the adoption of the legal act by the Council.

The new Article 100A(4) has been severely criticized as inferior to the existing situation<sup>34</sup> because it questions the existing case law on the free movement of goods. The existing case law excludes use of Article 36 if the Community has taken harmonization measures that account for the safeguard provi-

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33. Case 166/78, 1979 E.C.R. 2575.

34. For a particularly critical commentary, see *L'ACTE UNIQUE EUROPEEN*, *supra* note 2, at 29; Pescatore, *supra* note 2, at 156; Wessels, *supra* note 2, at 65.

sions of Article 36.<sup>35</sup> Recourse to Article 36 was excluded only if complete harmonization was implemented.

The inclusion of paragraph 4 in Article 100A should not have altered this procedure. If a complete harmonization occurs, in the sense that the Community Act incorporates the protection objective of paragraph 4, for example by a safeguard clause under paragraph 5, then there can be no grounds for unilateral measures within the meaning of paragraph 4. The provision thus becomes nugatory, unless the objects said to be subject to paragraph 4 protection are not listed in Article 36.

Moreover, to the extent that a Member State can invoke paragraph 4, it must respect the proportionality principle. This principle, as developed by the case law of the Court of Justice<sup>36</sup> states that the measures of a Member State taken under Article 36 must be limited to the extent appropriate and absolutely necessary for the attainment of a lawfully pursued objective. The case law definition of "necessary" has been incorporated in Article 100A(4). Therefore the Court can be expected to apply Article 36 case law to this new provision, thereby ensuring the unity of the Community legal order as it has done in the past.

The procedures in the second and third subsections of paragraph 4 also serve to protect the Community legal order against unilateral measures by Member States. These subsections require a measure by a Member State based on paragraph 4 to be confirmed by the Commission. The requirements for this confirmation are not specified. If the Commission gives its confirmation, the national provision presumably complies with the Treaty. This does not exclude another Member State, on the basis of Article 170 of the EEC Treaty, from bringing the matter directly before the Court of Justice, without complying with the preliminary procedure set forth in Article 170.

If the Commission refuses to grant confirmation, then the

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35. See Millarg, *Mintelligsche*, 4 *EUROPARECHT* 417 (1979), compare *Rewe-Zentrale AG v. Branntwein*, Case 120/78, 1979 E.C.R. 649, *Comm. Mkt. Rep. (CCH)* ¶ 8543 with *In re Motte*, Case 247/84, 1985 E.C.R. —, *Comm. Mkt. Rep. (CCH)* ¶ —.

36. Cf. *Bauhius v. Netherlands*, Case 46/76, 1976 E.C.R. 5; *Penkavit Futtermittel v. Minister für Ernährung*, Case 251/78, 1979 E.C.R. 3371, *Comm. Mkt. Rep. (CCH)* ¶ 8616.

Member State concerned must withdraw its measure, since it does not comply with the Treaty. A more far-reaching legal effect should not be read into the Commission's refusal. For example, it would be incorrect to infer that the national legal position has been altered by the Commission's refusal because no power has been given to the Commission to intervene in the internal legal orders of the Member States. Indeed, it is the Member State that must conform its legal order with Community law. However, a Member State is also free to challenge a negative Commission decision in the Court of Justice under Article 173 of the EEC Treaty. Conversely, if the Member State refuses to alter its provisions in accordance with the Commission decision, the Commission may bring an action against the Member State under Article 169, without following the preliminary procedure laid down in that provision.

Deliberations over whether the Act strengthens the majority principle led to a discussion of the so-called Luxembourg Accord.<sup>37</sup> Both the Parliamentary draft and the Dooge Committee Report tried to resolve the question of the veto power of a Member of the Council<sup>38</sup> by developing criteria for the exercise of such a right that could be judicially reviewed. The Act did not attempt to resolve this problem. Thus, the dispute over the right of veto continues.

### B. *New Parliamentary Powers*

The increased role of the European Parliament in the decisionmaking process of the Community was a major objective of the Parliamentary initiative. Under Article 203 of the EEC Treaty, the European Parliament possessed only limited powers of co-decision on budget matters. It was the goal of the European Parliament that democratic decisionmaking be enhanced by a bicameral legislative process.<sup>39</sup> It fell far short.

Parliamentary co-decision was provided for only in case of the enlargement of the Community (Article 237) or the conclusion of association agreements (Article 238). In both cases, the Council can act only after receiving the assent of the Parlia-

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37. See 1 *EUROPARECHT* 73 (1966).

38. Draft Treaty on a European Union, art. 23, Report of the Ad Hoc Committee for Institutional Questions, ch. III(A)(b) (the "Dooge Report").

39. *Id.* arts. 36-38.

ment. A similar provision would seem appropriate for the direct election of Parliament members (Article 138), voting on Community resources forming part of the budget (Article 201), and amendments to the Treaty (Article 236). Although the powers granted to the Parliament are somewhat modest, they can be of great political importance. It suffices to consider the recurring discussion of Turkish accession to the Community. Parliament will certainly be called upon to participate in the conclusion of association agreements. The Lomé Convention, for example, is based on Article 238 and is limited in time.

No provision could be found in the normal Community legislative procedure for the power of co-decision by Parliament. Thus, the Act is limited to providing for a procedure of cooperation in the specific cases listed in Article 6 of the Act.<sup>40</sup>

Details of the cooperation procedure are regulated in the newly drafted Article 149 of the EEC Treaty. The innovation consists essentially in the requirement of two readings of a Commission proposal, both in the Council and in the Parliament. The first reading corresponds to the previous procedure, which is initiated by a Commission proposal. The Council consults the Parliament on the proposal and decides after receiving Parliament's Opinion. The Council decision no longer contains the definitive adoption of the legal act, but only the adoption of the "common position." This terminology is unfortunate because in reality it involves the adoption of a provisional outcome of Council deliberations, which is communicated to the Parliament. The Commission also gives its opinion to Parliament.

Within a period of three months, which may be extended by one month by common accord with the Council, the Parliament may approve the Council's position, propose amendments, or reject the deliberations. If Parliament agrees with the Council, or fails to decide within the allotted time, the Council decides definitively by a qualified majority. This decision remains bound by the provisional deliberations communicated to the Parliament.

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40. Article 6 of the Single European Act refers to the following articles of the EEC Treaty, *supra* note 29: arts. 7, 49, 54(2), 56(2), second sentence, 57 (with the exception of para. 2, second sentence), 100A, 100B, 118A, 130E, 130Q(2).

If Parliament rejects the provisional position of the Council, the Council must decide unanimously on the second reading. In this case the Council is still bound by its provisional deliberations, as the Parliament's rejection was based upon those deliberations. If this were not the case, the Council could avoid discussions with Parliament on alternative solutions by a unanimous vote.

Proposed amendments by Parliament communicated within the time limit are only admissible to the extent that the provisional outcome of Council deliberations differs from the opinion given by Parliament in the first reading. This is the only way for the cooperation procedure to lead to a dialogue between Parliament and the Council that justifies lengthening of the decisionmaking process by introducing a second reading.

As discussed above, the Council is bound by a corresponding obligation in cases of Parliamentary silence or rejection to abide by its provisional deliberations. This interpretation of the new Article 149 corresponds to the practice developed in the application of Article 203 to the budgetmaking procedure. In the second reading of the draft budget drawn up by the Council, amendments by both the Council and by Parliament can be made only if they were decided during Parliament's first reading or the second reading of the Council.<sup>41</sup>

Proposed amendments by Parliament in the cooperation procedure are initially examined by the Commission within one month. When amendments are proposed, no direct referral is made to the Council, unlike cases where Parliament accepts or rejects the Council's position. Next the Commission analyzes whether it is prepared to alter its proposal. At this stage of the procedure, the Commission's power of amendment is more limited than its general powers set forth in Article 149. This is not gainsaid by the reaffirmation of the general rule of Article 149 in the new paragraph 3 of Article 149. The wording of Article 149(2)(d) refers expressly to the amendments proposed by the European Parliament. After the Commission has concluded its examination, it forwards Parliament's amendments and, where appropriate, the amended Commission proposal to the Council. Further Council proce-

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41. 11 SACCHETTINI, *LE DROIT DE LA CEE* 52 (University of Brussels ed. 1982).

ture follows the general rules, that is to say, the Council can adopt the Commission proposal with amendments proposed by Parliament and accepted by the Commission. Any alteration by the Council requires unanimity.

However, the Council is also limited in its ability to amend those proposals of Parliament and the Commission that derogate from the provisional outcome of its deliberations. Otherwise the cooperation procedure between Council and Parliament would be robbed of its substance and would amount to a waste of time. The same also holds true for the Commission's powers of amendment in this phase of the procedure. Because those Parliamentary amendments that the Commission did not accept were also forwarded by the Commission to the Council, and because the Council can only accept those amendments unanimously, it is conceivable, for example, that the Commission may subsequently take up these amendments in its proposal in order to facilitate the overall acceptance of a legal act or to make a vote by a qualified majority possible. It is equally conceivable that the Commission might withdraw amendments to its proposal during the second council. This withdrawal will probably be used sparingly by the Commission to avoid conflict with the Parliament.

Similar to the restrictions on the Parliament, the Council is also limited to a period of three months for the second reading. This period may also be extended by a maximum of one month by common accord between the Council and Parliament. The Commission proposal is deemed not to have been adopted unless an affirmative decision is made within the appropriate period. Thus, the procedure can end without any decision being reached. If the proposed regulation is thought to be necessary, then the whole procedure must be recommenced, that is to say, the Commission must submit another proposal, which undergoes two readings both in Parliament and in the Council.

Naturally, these rules can cause delays, particularly in respect to the realization of the internal market. On the other hand, they are also apt to increase the pressure on the Council to make a decision. Parliament must also be concerned that proposals for amendment adopted in the second reading are not so contradictory to the provisional position of the Council that, insofar as the Commission takes them into account, they

stand no chance of being adopted by the Council by a qualified majority.

In conclusion, the introduction of the cooperative procedure has not given significant powers of co-decision to Parliament. On the other hand, it has strengthened Parliament's influence on the formation of intent in the Commission and the Council. Although the opinion of Parliament in the consultation procedure is an essential procedural requirement for a Council decision, it is neither binding on the Council nor influential on the Council's decisionmaking process. However, through the proposed amendments made possible by the cooperation procedure, Parliament can influence the decision-making process in the second Council reading. Still, this ability is emasculated by the Commission's position between Parliament and the Council. Measured against the demand, particularly by the Parliament, to increase democratic decision-making in the Community the result is unsatisfactory. The new official title of the Parliament (under Article 3(1) of the Act it will henceforth be designated in all three Treaties as the "European Parliament"), is insufficient compensation in light of its decisionmaking powers.

### *C. Strengthening the Role of the Commission?*

The position of the Commission has been strengthened, particularly with respect to Parliament, by the cooperation procedure between the Council and Parliament. Although Parliament's opinion in the consultation procedure was previously forwarded directly to the Council, Parliament's proposals for amendment must first go to the Commission for examination under the cooperation procedure. Parliament's influence on the decisionmaking process of the Council depends on the assessment of Parliament's proposals by the Commission. To be sure, the Commission may alter its proposals in the light of Parliament's opinion. Under the new procedure, however, the Council can only discuss Parliament's proposals when and to the extent that the Commission refers them to the Council. On the other hand, Parliament possesses its general right of control over the Commission through the possibility of a motion of censure.

Under Article 155 of the EEC Treaty, the Commission

must both ensure that the measures taken by the institutions are applied and exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter. When the Council has conferred powers of implementation on the Commission in the past, it has consistently restricted those powers by setting up committees composed of representatives from the Member States to control the exercise of the powers conferred on the Commission. Under certain conditions, the committees enabled the Council to withdraw the conferral of implementation powers in specific cases.<sup>42</sup> Parliament has questioned the need for these committees and described them as inconsistent with the Commission's position, especially with regard to the implementation of the budget. The Court of Justice<sup>43</sup> has ruled that the Management Committees in the agricultural sphere are consistent with the Treaty.

In view of the criticism from Parliament and the often unreasonable delay in adopting Council decisions caused by discussion on what committee to set up in a specific case, the Commission suggested amending Article 155 to the Governmental Conference. The amendment would automatically place the implementation powers in the Commission's hands, unless the Council decided otherwise. The Single Act did not adopt this proposal. However, under the amendment to Article 145, the Council is obliged to confer powers on the Commission to implement the rules formulated by the Council. In any event, the Council can establish the procedure for the exercise of these powers, including creating committees of representatives from the Member States within the Commission. General principles and rules that can be applied to each specific case must be adopted to halt the diversity of these committees. This would enhance legal certainty and accelerate the decisionmaking process. The Commission has already submitted a proposal along these lines<sup>44</sup> that has been accepted by

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42. See Council and Commission Committees, E.C. Bull. 1980, Annex 2; B. Beutler, R. Bieber, J. Pipkorn & J. Streil, *supra* note 6, at 126; Glaesner, *supra* note 2, at 178.

43. *Einfuhr- und Vorratsstelle v. Köster, Bendt & Co.*, Case 25/70, 1970 E.C.R. 1161, Comm. Mkt. Rep. (CCH) ¶ 8127.

44. O.J. No C 70/6 (1986)

the European Parliament. Now the Council must take definitive action.

D. *The Competence of the Court of Justice*

The importance of the Court of Justice in maintaining and developing Community law has grown over the years, not only with respect to the quality and the political relevance of its decisions, but also with respect to the number of cases brought before it. The burden upon the Court of Justice has also been increased by the number of cases involving technically difficult and complex facts.<sup>45</sup> Often the Court is faced not only with the task of deciding questions of law, but also with questions of fact, as with the antidumping cases. Recognition of the growing strain on the Court has given rise to the fear that the quality of the decisions could deteriorate. The Court of Justice has asked the Governmental Conference to create a legal basis in all three Treaties allowing the Council, by unanimous vote, to create a court with original jurisdiction with appeal to the Court of Justice only on questions of law. The Act adopted this proposal. With only minor changes, the Act adopted proposals of the Court by introducing Article 32D into the Coal and Steel Treaty, Article 168A into the EEC Treaty and Article 140A into the EURATOM Treaty.<sup>46</sup>

Amendments to the three Treaties have conferred an autonomous decisionmaking power that supplants the previously existing Treaty amendment procedure in Article 236 and the corresponding provisions of the other Treaties. A court of first instance can now be created without convening a Governmental Conference, concluding a Treaty of amendment, or obtaining the necessary ratification through the participation of the national parliaments.

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45. Cf. Eighteenth General Report on the Activities of the Communities 392 (1984); Jung, *The Court of Justice*, in *GRUNDRECHTSZEITSCHRIFT* 229 (1986).

46. See Single European Act, *supra* note 1, arts. 4, 11, 26.

## APPENDIX: THE SINGLE EUROPEAN ACT

*His Majesty the King of the Belgians,  
Her Majesty the Queen of Denmark,  
The President of the Federal Republic of Germany,  
The President of the Hellenic Republic,  
His Majesty the King of Spain,  
The President of the French Republic,  
The President of Ireland,  
The President of the Italian Republic,  
His Royal Highness the Grand Duke of Luxembourg,  
Her Majesty the Queen of the Netherlands,  
The President of the Portuguese Republic,  
Her Majesty the Queen of the United Kingdom of Great Britain and  
Northern Ireland.*

Moved by the will to continue the work undertaken on the basis of the Treaties establishing the European Communities and to transform relations as a whole among their States into a European Union, in accordance with the Solemn Declaration of Stuttgart of 19 June 1893.

Resolved to implement this European Union on the basis, firstly, of the Communities operating in accordance with their own rules and, secondly, of European Cooperation among the Signatory States in the sphere of foreign policy and to invest this union with the necessary means of action,

Determined to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice,

Convinced that the European idea, the results achieved in the fields of economic integration and political cooperation, and the need for new developments correspond to the wishes of the democratic peoples of Europe, for whom the European Parliament, elected by universal suffrage, is an indispensable means of expression,

Aware of the responsibility incumbent upon Europe to aim at speaking ever increasingly with one voice and to act with consistency and solidarity in order more effectively to protect its common interests and independence, in particular to display

the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter,

Determined to improve the economic and social situation by extending common policies and pursuing new objectives, and to ensure a smoother functioning of the Communities by enabling the institutions to exercise their powers under conditions most in keeping with Community interests,

Whereas at their Conference in Paris from 19 to 21 October 1972 the Heads of State or of Government approved the objective of the progressive realization of economic and monetary union;

Having regard to the Annex to the conclusions of the Presidency of the European Council in Bremen on 6 and 7 July 1978 and the Resolution of the European Council in Brussels on 5 December 1978 on the introduction of the European Monetary System (EMS) and related questions, and noting that in accordance with that Resolution, the Community and the Central Banks of the Member States have taken a number of measures intended to implement monetary cooperation,

*Have decided to adopt this Act and to this end have designated as their plenipotentiaries:*

*His Majesty the King of the Belgians,*

*Mr Leo Tindemans,*

*Minister for External Relations;*

*Her Majesty the Queen of Denmark,*

*Mr Uffe Ellemann-Jensen,*

*Minister for Foreign Affairs;*

*The President of the Federal Republic of Germany,*

*Mr Hans-Dietrich Genscher,*

*Federal Minister for Foreign Affairs;*

*The President of the Hellenic Republic,*

*Mr Karolos Papoulias,*

*Minister for Foreign Affairs;*

*His Majesty the King of Spain,*

*Mr Francisco Fernández Ordóñez,*

*Minister for Foreign Affairs;*

*The President of the French Republic,*

*Mr Roland Dumas,  
Minister for External Relations;*

*The President of Ireland,  
Mr Peter Barry, TD,  
Minister for Foreign Affairs;*

*The President of the Italian Republic,  
Mr Giulio Andreotti,  
Minister for Foreign Affairs;*

*His Royal Highness the Grand Duke of Luxembourg,  
Mr Robert Goebbels,  
State Secretary for Foreign Affairs;*

*Her Majesty the Queen of the Netherlands,  
Mr Hans van den Broek,  
Minister for Foreign Affairs;*

*The President of the Portuguese Republic,  
Mr Pedro Pires de Miranda,  
Minister for Foreign Affairs;*

*Her Majesty the Queen of the United Kingdom of Great  
Britain and Northern Ireland,  
Mrs Lynda Chalker,  
Minister of State, Foreign and Commonwealth Office,*

Who, having exchanged their full powers, found in good and due form, have agreed as follows:

## *TITLE I*

### **Common provisions**

#### *Article 1*

The European Communities and European Political Cooperation shall have as their objective to contribute together to making concrete progress towards European unity.

The European Communities shall be founded on the Treaties establishing the European Coal and Steel Community, the European Economic Community, the European Atomic Energy Community and on the subsequent Treaties and Acts modifying or supplementing them.

Political Cooperation shall be governed by Title III. The provisions of the Title shall confirm and supplement the procedures agreed in the reports of Luxembourg (1970), Copenha-

gen (1973), London (1981), the Solemn Declaration on European Union (1983) and the practices gradually established among the Member States.

*Article 2*

The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission of the European Communities. They shall be assisted by the Ministers for Foreign Affairs and by a Member of the Commission.

The European Council shall meet at least twice a year.

*Article 3*

1. The institutions of the European Communities, henceforth designated as referred to hereafter, shall exercise their powers and jurisdiction under the conditions and for the purposes provided for by the Treaties establishing the Communities and by the subsequent Treaties and Acts modifying or supplementing them and by the provisions of Title II.

2. The institutions and bodies responsible for European Political Cooperation shall exercise their powers and jurisdiction under the conditions and for the purposes laid down in Title III and in the documents referred to in the third paragraph of Article 1.

*TITLE II*

**Provisions amending the Treaties establishing the European Communities**

*Chapter I*

**Provisions amending the Treaty establishing the European Coal and Steel Community**

*Article 4*

The ECSC Treaty shall be supplemented by the following provisions:

*'Article 32d*

1. *At the request of the Court of Justice and after consulting the Com-*

mission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 41.

2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.

3. The members of that court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

4. That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.'

#### Article 5

Article 45 of the ECSC Treaty shall be supplemented by the following paragraph:

*'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'*

#### Chapter II

#### **Provisions amending the Treaty establishing the European Economic Community**

#### **SECTION I**

#### **Institutional provisions**

*Article 6*

1. *A cooperation procedure shall be introduced which shall apply to acts based on Articles 7, 49, 54(2), 56(2), second sentence, 57 with the exception of the second sentence of paragraph 2 thereof, 100 A, 100 B, 118 A, 130 E and 130 Q(2) of the EEC Treaty.*

2. In Article 7, second paragraph of the EEC Treaty the terms 'after consulting the Assembly' shall be replaced by '*in cooperation with the European Parliament*'.

3. In Article 49 of the EEC Treaty the terms 'the Council shall, acting on a proposal from the Commission and after consulting the Economic and Social Committee', shall be replaced by '*the Council shall, acting by a qualified majority on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee.*'

4. In Article 54(2) of the EEC Treaty the terms 'the Council shall, on a proposal from the Commission and after consulting the Economic and Social Committee and the Assembly,' shall be replaced by '*the Council shall, acting on a proposal from the Commission, in cooperation with the European Parliament and after consulting the Economic and Social Committee,*'

5. In Article 56(2) of the EEC Treaty the second sentence shall be replaced by the following:

*'After the end of the second stage, however, the Council shall, acting by a qualified majority on a proposal from the Commission and in cooperation with the European Parliament, issue directives for the coordination of such provisions as, in each Member State, are a matter for regulation or administrative action.'*

6. In Article 57(1) of the EEC Treaty the terms 'and after consulting the Assembly' shall be replaced by '*and in cooperation with the European Parliament.*'

7. In Article 57(2) of the EEC Treaty, the third sentence shall be replaced by the following:

*'In other cases the Council shall act by a qualified majority, in cooperation with the European Parliament.'*

*Article 7*

Article 149 of the EEC Treaty shall be replaced by the following provisions:

*'Article 149*

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

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

(a) *The Council, acting by a qualified majority under the conditions of paragraph 1, on a proposal from the Commission and after obtaining the Opinion of the European Parliament, shall adopt a common position.*

(b) *The Council's common position shall be communicated to the European Parliament. The Council and the Commission shall inform the European Parliament fully of the reasons which led the Council to adopt its common position and also of the Commission's position.*

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

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

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

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

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

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

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

*(f) In the cases referred to in points (c), (d) and (e), the Council shall be required to act within a period of three months. If no decision is taken within this period, the Commission proposal shall be deemed not to have been adopted.*

*(g) The periods referred to in points (b) and (f) may be extended by a maximum of one month by common accord between the Council and the European Parliament.*

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

#### *Article 8*

The first paragraph of Article 237 of the EEC Treaty shall be replaced by the following provision:

*'Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.'*

#### *Article 9*

The second paragraph of Article 238 of the EEC Treaty shall be replaced by the following provision:

*'These agreements shall be concluded by the Council, acting unanimously and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.'*

#### *Article 10*

Article 145 of the EEC Treaty shall be supplemented by the following provision:

*'— confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which the Council lays down. The Council may impose certain requirements in respect of the exercise of these powers. The Council may also reserve the right, in specific cases, to exercise directly implementing powers itself. The procedures referred to above must be consonant with principles and rules to be laid down in advance by the Council, acting unanimously on a proposal from the Commission and after obtaining the Opinion of the European Parliament.'*

*Article 11*

The EEC Treaty shall be supplemented by the following provisions:

*'Article 168 A*

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

*Article 12*

A second paragraph worded as follows shall be inserted in Article 118 of the EEC Treaty:

*'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'*

## SECTION II

### **Provisions relating to the foundations and the policy of the Community**

#### *Subsection I — Internal Market*

##### *Article 13*

The EEC Treaty shall be supplemented by the following provisions:

##### *'Article 8 A*

*The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8D, 8C, 28, 57(2), 59, 70(1), 83, 99, 100A and 100B and without prejudice to the other provisions of this Treaty.*

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

##### *Article 14*

The EEC Treaty shall be supplemented by the following provisions:

##### *'Article 8 B*

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

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

##### *Article 15*

The EEC Treaty shall be supplemented by the following provisions:

##### *'Article 8 C*

*When drawing up its proposals with a view to achieving the objectives set*

*out in Article 8 A, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain during the period of establishment of the internal market and it may propose appropriate provisions.*

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

#### Article 16

1. Article 28 of the EEC Treaty shall be replaced by the following provisions:

#### 'Article 28

*Any autonomous alteration or suspension of duties in the common customs tariff shall be decided by the Council acting by a qualified majority on a proposal from the Commission.'*

2. In Article 57(2) of the EEC Treaty, the second sentence shall be replaced by the following:

*'Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons.'*

3. In the second paragraph of Article 59 of the EEC Treaty, the term 'unanimously' shall be replaced by 'by a qualified majority.'

4. In Article 70(1) of the EEC Treaty, the last two sentences shall be replaced by the following:

*'For this purpose the Council shall issue directives, acting by a qualified majority. It shall endeavour to attain the highest possible degree of liberalization. Unanimity shall be required for measures which constitute a step back as regards the liberalization of capital movements.'*

5. In Article 84(2) of the EEC Treaty, the term 'unanimously' shall be replaced by 'by a qualified majority.'

6. Article 84 of the EEC Treaty shall be supplemented by the following paragraph:

*'The procedural provisions of Article 75(1) and (3) shall apply.'*

*Article 17*

Article 99 of the EEC Treaty shall be replaced by the following provisions:

*'Article 99*

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

*Article 18*

The EEC Treaty shall be supplemented by the following provisions:

*'Article 100 A*

*1. By way of derogation from Article 100 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 8 A. The Council shall, acting by a qualified majority on a proposal from the Commission in cooperation with the European Parliament and the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.*

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

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

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

The Commission shall confirm the provisions involved after

having verified that they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

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

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

#### *Article 19*

The EEC Treaty shall be supplemented by the following provisions:

#### *'Article 100 B*

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

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

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

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

#### **Subsection II — Monetary capacity**

#### *Article 20*

1. A new Chapter 1 shall be inserted in Part Three, Title II of the EEC Treaty, reading as follows:

*'Chapter 1  
Cooperation in economic and  
monetary policy  
(Economic and Monetary Union)*

*Article 102 A*

*1. In order to ensure that convergence of economic and monetary policies which is necessary for the further development of the Community, Member States shall cooperate in accordance with the objectives of Article 104. In so doing, they shall take account of the experience acquired in cooperation within the framework of the European Monetary System (EMS) and in developing the ECU, and shall respect existing powers in this field.*

*2. In so far as further development in the field of economic and monetary policy necessitates institutional changes, the provisions of Article 236 shall be applicable. The Monetary Committee and the Committee of Governors of the Central Banks shall also be consulted regarding institutional changes in the monetary area.'*

2. Chapters 1, 2 and 3 shall become Chapters 2, 3 and 4 respectively.

***Subsection III — Social policy***

*Article 21*

The EEC Treaty shall be supplemented by the following provisions:

*'Article 118 A*

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

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

*Such directives shall avoid imposing administrative, financial and legal*

*constraints in a way which would hold back the creation and development of small and medium-sized undertakings.*

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

*Article 22*

The EEC Treaty shall be supplemented by the following provisions:

*'Article 118 B*

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

**Subsection IV — Economic and social cohesion**

*Article 23*

A Title V shall be added to Part Three of the EEC Treaty, reading as follows:

*'Title V*

*Economic and social cohesion*

*Article 130 A*

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

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

*Article 130 B*

*Member States shall conduct their economic policies, and shall coordinate them, in such a way as, in addition, to attain the objectives set out in Article 130 A. The implementation of the common policies and of the internal market shall take into account the objectives set out in Article 130 A and Article 130 C and shall contribute to their achievement. The Community shall support the achievement of these objectives by the action it takes through the structural Funds (European Agriculture Guidance and Guarantee Fund, Guidance Section, European Social Fund, Euro-*

*pean Regional Development Fund), the European Investment Bank and the other existing financial instruments.*

*Article 130 C*

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

*Article 130 D*

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

*Article 130 E*

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

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

***Subsection V — Research and technological development***

*Article 24*

A Title VI shall be added to Part Three of the EEC Treaty, reading as follows:

*'Title VI**Research and technological development**Article 130 F*

1. *The Community's aim shall be to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at an international level.*

2. *In order to achieve this, it shall encourage undertakings including small and medium-sized undertakings, research centres and universities in their research and technological developments activities; it shall support their efforts to cooperate with one another, aiming, in particular, at enabling undertakings to exploit the Community's internal market potential to the full, in particular through the opening up of national public contracts, the definition of common standards and the removal of legal and fiscal barriers to that cooperation.*

3. *In the achievement of these aims, particular account shall be taken of the connection between the common research and technological development effort, the establishment of the internal market and the implementation of common policies, particularly as regards competition and trade.*

*Article 130 G*

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

(a) *implementation of research, technological development and demonstration programmes, by promoting cooperation with undertakings, research centres and universities;*

(b) *promotion of cooperation with third countries and international organizations in the field of Community research, technological development, and demonstration;*

(c) *dissemination and optimization of the results of activities in Community research, technological development, and demonstration;*

(d) *stimulation of the training and mobility of researchers in the Community.*

*Article 130 H*

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

*Article 130 I*

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

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

*Article 130 K*

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

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

*Article 130 L*

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

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

*Article 130 M*

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

*Article 130 N*

*In implementing the multiannual framework programme, the community may make provision for cooperation in Community research, technologi-*

*cal development and demonstration with third countries or international organizations.*

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

#### *Article 130 O*

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

#### *Article 130 P*

*1. The detailed arrangements for financing each programme, including any Community contribution, shall be established at the time of the adoption of the programme.*

*2. The amount of the Community's annual contribution shall be laid down under the budgetary procedure, without prejudice to other possible methods of Community financing. The estimated cost of the specific programmes must not in aggregate exceed the financial provision in the framework programme.*

#### *Article 130 Q*

*1. The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt the provisions referred to in Articles 130 I and 130 O.*

*2. The Council shall, acting by a qualified majority on a proposal from the Commission, after consulting the Economic and Social Committee, and in cooperation with the European Parliament, adopt the provisions referred to in Articles 130 K, 130 L, 130 M, 130 N and 130 P(1). The adoption of these supplementary programmes shall also require the agreement of the Member States concerned.'*

### ***Subsection VI—Environment***

#### *Article 25*

**A Title VII shall be added to Part Three of the EEC Treaty, reading as follows:**

*Title VII  
Environment*

*Article 130 R*

*1. Action by the Community relating to the environment shall have the following objectives:*

- (i) to preserve, protect and improve the quality of the environment;*
- (ii) to contribute towards protecting human health;*
- (iii) to ensure a prudent and rational utilization of natural resources.*

*2. Action by the Community relating to the environment shall be based on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source, and that the polluter should pay. Environmental protection requirements shall be a component of the Community's other policies.*

*3. In preparing its action relating to the environment, the Community shall take account of:*

- (i) available scientific and technical data;*
- (ii) environmental conditions in the various regions of the Community;*
- (iii) the potential benefits and costs of action or of lack of action;*
- (iv) the economic and social development of the Community as a whole and the balanced development of its regions.*

*4. The Community shall take action relating to the environment to the extent to which the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.*

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

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

*Article 130S*

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

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

*Article 130 T*

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

*Chapter III***Provisions amending the Treaty establishing the European Atomic Energy Community.***Article 26*

The EAEC Treaty shall be supplemented by the following provisions:

*'Article 140 A*

- 1. At the request of the Court of Justice and after consulting the Commission and the European Parliament, the Council may, acting unanimously, attach to the Court of Justice a court with jurisdiction to hear and determine at first instance, subject to a right of appeal to the Court of Justice on points of law only and in accordance [sic] with the conditions laid down by the Statute, certain classes of action or proceeding brought by natural or legal persons. That court shall not be competent to hear and determine actions brought by Member States or by Community institutions or questions referred for a preliminary ruling under Article 150.*
- 2. The Council, following the procedure laid down in paragraph 1, shall determine the composition of that court and adopt the necessary adjustments and additional provisions to the Statute of the Court of Justice. Unless the Council decides otherwise, the provisions of this Treaty relating to the Court of Justice, in particular the provisions of the Protocol on the Statute of the Court of Justice, shall apply to that court.*
- 3. The Members of that court shall be chosen from persons whose inde-*

*pendence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the Governments of the Member States for a term of six years. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.*

4. *That court shall establish its rules of procedure in agreement with the Court of Justice. Those rules shall require the unanimous approval of the Council.*

*Article 27*

A second paragraph shall be inserted in Article 160 of the EAEC Treaty, worded as follows:

*'The Council may, acting unanimously at the request of the Court of Justice and after consulting the Commission and the European Parliament, amend the provisions of Title III of the Statute.'*

*Chapter IV*

**General provisions**

*Article 28*

The provisions of this Act shall be without prejudice to the provisions of the Instruments of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities.

*Article 29*

In Article 4(2) of the Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources, the words 'the level and scale of funding of which will be fixed pursuant to a decision of the Council acting unanimously' shall be replaced by the words '*the level and scale of funding of which shall be fixed pursuant to a decision of the Council acting by a qualified majority after obtaining the agreement of the Member States concerned.*'

This amendment shall not affect the legal nature of the aforementioned Decision.

*TITLE III*

**Provisions on European cooperation in the sphere of foreign policy**

*Article 30*

European Cooperation in the sphere of foreign policy shall be governed by the following provisions:

1. The High Contracting Parties, being members of the European Communities, shall endeavour jointly to formulate and implement a European foreign policy.

2. (a) The High Contracting Parties undertake to inform and consult each other on any foreign policy matters of general interest so as to ensure that their combined influence is exercised as effectively as possible through coordination, the convergence of their positions and the implementation of joint action.

(b) Consultations shall take place before the High Contracting Parties decide on their final position.

(c) In adopting its positions and in its national measures each High Contracting Party shall take full account of the positions of the other partners and shall give due consideration to the desirability of adopting and implementing common European positions.

In order to increase their capacity for joint action in the foreign policy field, the High Contracting Parties shall ensure that common principles and objectives are gradually developed and defined.

The determination of common positions shall constitute a point of reference for the policies of the High Contracting Parties.

(d) The High Contracting Parties shall endeavour to avoid any action or position which impairs their effectiveness as a cohesive force in international relations or within international organizations.

3. (a) The Ministers for Foreign Affairs and a member of the Commission shall meet at least four times a year within the framework of European Political Cooperation. They may also discuss foreign policy matters within the framework of Political Cooperation on the occasion of meetings of the Council of the European Communities.

(b) The Commission shall be fully associated with the proceedings of Political Cooperation.

(c) In order to ensure the swift adoption of common positions and the implementation of joint action, the High Contracting Parties shall, as far as possible, refrain from impeding the formation of a consensus and the joint action which this could produce.

4. The High Contracting Parties shall ensure that the European Parliament is closely associated with European Political Cooperation. To that end the Presidency shall regularly inform the European Parliament of the foreign policy issues which are being examined within the framework of Political Cooperation and shall ensure that the views of the European Parliament are duly taken into consideration.

5. The external policies of the European Community and the policies agreed in European Political Cooperation must be consistent.

The Presidency and the Commission, each within its own sphere of competence, shall have special responsibility for ensuring that such consistency is sought and maintained.

6. (a) The High Contracting Parties consider that closer cooperation on questions of European security would contribute in an essential way to the development of a European identity in external policy matters. They are ready to coordinate their positions more closely on the political and economic aspects of security.

(b) The High Contracting Parties are determined to maintain the technological and industrial conditions necessary for their security. They shall work to that end both at national level and, where appropriate, within the framework of the competent institutions and bodies.

(c) Nothing in this Title shall impede closer cooperation [sic] in the field of security between certain of the High Contracting Parties within the framework of the Western European Union or the Atlantic Alliance.

7. (a) In international institutions and at international conferences which they attend, the High Contracting Parties shall endeavour to adopt common positions on the subjects covered by this Title.

(b) In international institutions and at international [sic] con-

ferences in which not all the High Contracting Parties participate, those who do participate shall take full account of positions agreed in European Political Cooperation.

8. The High Contracting Parties shall organize a political dialogue with third countries and regional groupings whenever they deem it necessary.

9. The High Contracting Parties and the Commission, through mutual assistance and information, shall intensify cooperation between their representations accredited to third countries and to international organizations.

10. (a) The Presidency of European Political Cooperation shall be held by the High Contracting Party which holds the Presidency of the Council of the European Communities.

(b) The Presidency shall be responsible for initiating action and coordinating and representing the positions of the Member States in relations with third countries in respect of European Political Cooperation activities. It shall also be responsible for the management of Political Cooperation and in particular for drawing up the timetable of meetings and for convening and organizing meetings.

(c) The Political Directors shall meet regularly in the Political Committee in order to give the necessary impetus, maintain the continuity of European Political Cooperation and prepare Ministers' discussions.

(d) The Political Committee or, if necessary, a ministerial meeting shall convene within forty-eight hours at the request of at least three Member States.

(e) The European Correspondents' Group shall be responsible, under the direction of the Political Committee, for monitoring the implementation of European Political Cooperation and for studying general organizational problems.

(f) Working groups shall meet as directed by the Political Committee.

(g) A Secretariat based in Brussels shall assist the Presidency in preparing and implementing the activities of European Political Cooperation and in administrative matters. It shall carry out its duties under the authority of the Presidency.

11. As regards privileges and immunities, the members of the

European Political Cooperation Secretariat shall be treated in the same way as members of the diplomatic missions of the High Contracting Parties based in the same place as the Secretariat.

12. Five years after the entry into force of this Act the High Contracting Parties shall examine whether any revision of Title III is required.

#### *TITLE IV*

##### **General and final provisions**

###### *Article 31*

The provisions of the Treaty establishing the European Coal and Steel Community, the Treaty establishing the European Economic Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the provisions of Title II and to Article 32; they shall apply to those provisions under the same conditions as for the provisions of the said Treaties.

###### *Article 32*

Subject to Article 3(1), to Title II and to Article 31, nothing in this Act shall affect the Treaties establishing the European Communities or any subsequent Treaties and Acts modifying or supplementing them.

###### *Article 33*

1. This Act will be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification will be deposited with the Government of the Italian Republic.

2. This Act will enter into force on the first day of the month following that in which the instrument of ratification is deposited of the last Signatory State to fulfil that formality.

###### *Article 34*

This Act, drawn up in a single original in the Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and

Spanish languages, the texts in each of these languages being equally authentic, will be deposited in the archives of the Government of the Italian Republic, which will remit a certified copy to each of the Governments of the other Signatory States.

*In witness whereof, the Plenipotentiaries have signed this Act.*

Done at Luxembourg, 17 February 1986, and at The Hague, 28 February 1986.

*The Conference of the Representatives of the Governments of the Member States convened at Luxembourg on 9 September 1985,*

*which carried on its discussions in Luxembourg and Brussels and which met at the end thereof in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986, has adopted the following text*

## **I**

### **Single European Act**

## **II**

At the time of signing this text, the Conference adopted the declarations listed hereinafter and annexed to this Final Act:

1. Declaration on the powers of implementation of the Commission
2. Declaration on the Court of Justice
3. Declaration on Article 8 A of the EEC Treaty
4. Declaration on Article 100 A of the EEC Treaty
5. Declaration on Article 100 B of the EEC Treaty
6. General Declaration on Articles 13 to 19 of the Single European Act
7. Declaration on Article 118A(2) of the EEC Treaty
8. Declaration on Article 130D of the EEC Treaty
9. Declaration on Article 130 R of the EEC Treaty
10. Declaration by the High Contracting Parties on Title III of the Single European Act
11. Declaration on Article 30(10)(9) of the Single European Act.

The Conference also notes the declarations listed hereinafter and annexed to this Final Act:

1. Declaration by the Presidency on the time limit within which the Council will give its opinion following a first reading (Article 149(2) of the EEC Treaty)
2. Political Declaration by the Governments of the Member States on the free movement of persons
3. Declaration by the Government of the Hellenic Republic on Article 8 A of the EEC Treaty
4. Declaration by the Commission on Article 28 of the EEC Treaty
5. Declaration by the Government of Ireland on Article 57(2) of the EEC Treaty
6. Declaration by the Government of the Portuguese Republic on Articles 59, second paragraph, and 84 of the EEC Treaty
7. Declaration by the Government of the Kingdom of Denmark on Article 100A of the EEC Treaty
8. Declaration by the Presidency and the Commission on the monetary capacity of the Community
9. Declaration by the Government of the Kingdom of Denmark on European Political Cooperation.

#### **Declaration on the powers of implementation of the Commission**

The Conference asks the Community authorities to adopt, before the Act enters into force, the principles and rules on the basis of which the Commission's powers of implementation will be defined in each case.

In this connection the Conference requests the Council to give the Advisory Committee procedure in particular a predominant place in the interests of speed and efficiency in the decision-making process, for the exercise of the powers of implementation conferred on the Commission within the field of Article 100 A of the EEC Treaty.

#### **Declaration on the Court of Justice**

The Conference agrees that the provisions of Article 32d(1) of the ECSC Treaty, Article 168 A(1) of the EEC Treaty and Article 140 A(1) of the EAEC Treaty do not prejudge any conferral

of judicial competence likely to be provided for in the context of agreements concluded between the Member States.

**Declaration on Article 8 A of the EEC Treaty**

The Conference wishes by means of the provisions in Article 8 A to express its firm political will to take before 1 January 1993 the decisions necessary to complete the internal market defined in those provisions, and more particularly the decisions necessary to implement the Commission's programme described in the White Paper on the Internal Market.

Setting the date of 31 December 1992 does not create an automatic legal effect.

**Declaration on Article 100 A of the EEC Treaty**

In its proposals pursuant to Article 100 A(1) the Commission shall give precedence to the use of the instrument of a directive if harmonization involves the amendment of legislative provisions in one or more Member States.

**Declaration on Article 100 B of the EEC Treaty**

The Conference considers that, since Article 8 C of the EEC Treaty is of general application, it also applies to the proposals which the Commission is required to make under Article 100 B of that Treaty.

**General declaration on Article 13 to 19 of the Single European Act**

Nothing in these provisions shall affect the right of Member States to take such measures as they consider necessary for the purpose of controlling immigration from third countries, and to combat terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.

**Declaration on Article 118 A(2) of the EEC Treaty**

The Conference notes that in the discussions on Article 118 A(2) of the EEC Treaty it was agreed that the Community does not intend, in laying down minimum requirements for the protection of the safety and health of employees, to discriminate in a manner unjustified by the circumstances against employees in small and medium-sized undertakings.

**Declaration on Article 130 D of the EEC Treaty**

In this context the Conference refers to the conclusions of the

European Council in Brussels in March 1984, which read as follows:

'The financial resources allocated to aid from the Funds, having regard to the IMPs, will be significantly increased in real terms within the limits of financing possibilities.'

**Declaration on Article 130 R of the EEC Treaty:**

**Re paragraph 1, third indent**

The Conference confirms that the Community's activities in the sphere of the environment may not interfere with national policies regarding the exploitation of energy resources.

**Re paragraph 5, second subparagraph**

The Conference considers that the provisions of Article 130 R(5), second subparagraph do not affect the principles resulting from the judgment handed down by the Court of Justice in the *AETR* case.

**Declaration by the High Contracting Parties on Title III of the Single European Act**

The High Contracting Parties to Title III on European Political Cooperation reaffirm their openness to other European nations which share the same ideals and objectives. They agree in particular to strengthen their links with the member countries of the Council of Europe and with other democratic European countries with which they have friendly relations and close cooperation.

**Declaration on Article 30(10)(g)**

The Conference considers that the provisions of Article 30(10)(g) do not affect the Decision of the Representatives of the Governments of the Member States of 8 April 1965 on the provisional location of certain institutions and departments of the Communities.

**Declaration by the Presidency on the time limit within which the Council will give its opinion following a first reading (Article 149(2) of the EEC Treaty)**

As regards the declaration by the European Council in Milan, to the effect that the Council must seek ways of improving its decision-making procedures, the Presidency states its intention of completing the work in question as soon as possible.

**Political declaration by the Governments of the Member States on the free movement of persons**

In order to promote the free movement of persons, the Member States shall cooperate, without prejudice to the powers of the Community, in particular as regards the entry, movement and residence of nationals of third countries. They shall also cooperate in the combating of terrorism, crime, the traffic in drugs and illicit trading in works of art and antiques.

**Declaration by the Government of the Hellenic Republic on Article 8 A of the EEC Treaty**

Greece considers that the development of Community policies and actions, and the adoption of measures on the basis of Articles 70(1) and 84, must both take place in such a way as not to harm sensitive sectors of Member States' economies.

**Declaration by the Commission on Article 28 of the EEC Treaty**

With regard to its own internal procedures, the Commission will ensure that the changes resulting from the amendment of Article 28 will not lead to delays in responding to urgent requests for the alteration or suspension of Common Customs Tariff duties.

**Declaration by the Government of Ireland on Article 57(2) of the EEC Treaty**

Ireland, in confirming its agreement to qualified majority voting under Article 57(2), wishes to recall that the insurance industry in Ireland is a particularly sensitive one and that special arrangements have had to be made by the Government of Ireland for the protection of insurance-policy holders and third parties. In relation to harmonization of legislation on insurance, the Government of Ireland would expect to be able to rely on a sympathetic attitude from the Commission and from the other Member States of the Community should Ireland later find itself in a situation where the Government of Ireland considers it necessary to have special provision made for the position of the industry in Ireland.

**Declaration by the Government of the Portuguese Republic on Articles 59, second paragraph, and 84 of the EEC Treaty**

Portugal considers that as the change from unanimous to qualified majority voting in Articles 59, second paragraph, and 84

was not contemplated in the negotiations for the accession of Portugal to the Community and substantially alters the Community *acquis*, it must not damage sensitive and vital sectors of the Portuguese economy, and, wherever necessary, appropriate and specific transitional measures should be introduced to forestall the adverse consequences that could ensue for these sectors.

**Declaration by the Government of the Kingdom of Denmark on Article 100 A of the EEC Treaty**

The Danish Government notes that in cases where a Member State is of the opinion that measures adopted under Article 100 A do not safeguard higher requirements concerning the working environment, the protection of the environment or the needs referred to in Article 36, the provisions of Article 100 A(4) guarantee that the Member State in question can apply national provisions. Such national provisions are to be taken to fulfil the abovementioned aim and may not entail hidden protectionism.

**Declaration by the Presidency and the Commission on the monetary capacity of the Community**

The Presidency and the Commission consider that the provisions inserted in the EEC Treaty with reference to the Community's monetary capacity are without prejudice to the possibility of further development within the framework of the existing powers.

**Declaration by the Government of the Kingdom of Denmark on European Political Cooperation**

The Danish Government states that the conclusion of Title III on European Political Cooperation in the sphere of foreign policy does not affect Denmark's participation in Nordic cooperation in the sphere of foreign policy.