

LIMITE

**PRESIDENCY NOTE**

**Subject: Simplification and codification of the Treaties**

As is clear from the Report from the Friends of the Presidency in the Annex, the technical discussions on simplification are nearly complete. Only a few issues are still unresolved. The state of play on these issues is given in the Annex to the Group's report. Representatives are asked to express their positions on these few outstanding points.

With regard to codification, the Presidency believes that there is unlikely to be enough support within the Conference for a merger of the EC, ECSC, EAEC and EU Treaties.

Since the Ministerial meeting in Rome, the Friends of the Presidency Group has been preparing the merger of the EC and EU Treaties as referred to in CONF 3849/97.

The Presidency proposes that this option (merger of the EC and EU Treaties) should be developed further, without prejudice to the decision to be taken in the Conference on whether the Union should be ascribed legal personality and, if appropriate, whether the legal personalities of the Union and the EC should be merged.

**Report from the Chair  
of the Friends of the Presidency Group  
on the simplification and codification of the Treaties**

Following the meetings of the Personal Representatives on 10 and 11 March 1997 and of the Intergovernmental Conference on 25 March 1997, the Friends of the Presidency Group has continued its discussions on the simplification and codification of the Treaties. It has completed its review of the different options and studied the question of the presentation of the fruit of this operation to the Amsterdam European Council. This report sets out the outcome of its discussions.

**Simplification**

The Group has completed its work on the simplification of the Treaties (see CONF 4141/97 [EC Treaty], CONF 4135/97 [ECSC Treaty] and CONF 4136/97 [EAEC Treaty]). The difficulties mentioned in point 8 of the report of 4 March 1997, and one new addition, have undergone thorough examination. The Presidency proposes that these difficulties should be settled in the way described in the Annex to this report. The solutions adopted do not entail any change in the legal situation as it now stands.

Regarding presentation of the results of the simplification operation, it is generally agreed within the Group that the results should be presented in the form of amendments to the Treaties in a section separate from that containing the substantive amendments adopted by the Conference. All the delegations consider that a text of the Treaties combining both the substantive amendments and the simplification amendments must be prepared and that this text must constitute the new version of the Treaties. The list of simplification amendments will undergo ratification but that procedure will not be necessary for the simplified text annexed to the Final Act. Most delegations consider that there should be a Treaty Article

specifying that the simplified text annexed to the Final Act is the authentic text of the Treaties. A few delegations, however, propose that that reference should not appear in the Treaty but in a declaration; in that case, the text annexed to the Final Act would not be an authentic text but merely a consolidated text.

### **Codification of the EC, ECSC, EAEC and EU Treaties**

Work on codification, which would entail merging the three Communities without amending the TEU, had already been completed when the previous report was submitted (see CONF 4122/97). If this option were adopted, the work could be finalized very quickly. The Group feels that if the decision is taken to proceed along this path, the results should be presented in the form of a new Treaty.

### **Codification of the EC and EU Treaties**

The Group considered the feasibility of this codification operation referred to in CONF 3849/97. On the basis of its discussions it found that this option presented no particular difficulties and could be finalized very quickly (see CONF 4133/97). The arrangements for presenting the results would be similar to those for simplification, i.e. simpler than those for codifying the four Treaties.

In conclusion, it is suggested that Personal Representatives and the Conference:

- note the progress made;
- decide on the arrangements for presenting the results of simplification;
- where appropriate, give guidance on the issues referred to in the Annex;
- comment on whether work should continue on codifying the four Treaties or on codifying the Treaty on European Union and the Treaty establishing the European Community.

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**Solutions proposed  
for the difficulties referred to  
in the report of 4 March 1997**

**Article 7a**

1. 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 [~~7b~~, 7c, 28], [57(2)], [59], [~~70(1)~~], [84, 99 **and** 100a ~~and 100b~~] and without prejudice to the other provisions of this Treaty.
2. 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.
3. **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 7b is deleted) <sup>(1)</sup>*

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<sup>(1)</sup>One delegation is maintaining a reservation on the deletion of Article 7b and the incorporation of its second paragraph as Article 7a(3).

**Declaration on the natural preference between Member States and on Community preference** <sup>(2)</sup>

**The deletion of Article 44 of the EC Treaty, which contains a reference to the natural preference between Member States in connection with the setting of minimum prices during the transitional period, has no effect on the principle of Community preference as defined by the case-law of the Court of Justice.**

*Explanation:* The Court has ruled that the concept of Community preference is founded on Article 39(1)(b), insofar as this provision aims to protect producers' interests, and not on Article 44(2). The Community must take this principle into account, where necessary, when taking account of the other objectives of Article 39. The declaration, which is couched in neutral terms, specifies that the Court's case-law is not called into question (see also the detailed explanations in the note in CONF 4140/97).

**Article 109f** (deletion of references to the Committee of Governors, which no longer exists) <sup>(3)</sup>

1. At the start of the second stage, a European Monetary Institute, (...)

The President shall be appointed by common accord of the governments of the Member States at the level of Heads of State or Government, on a recommendation from, ~~as the case may be, the Committee of Governors of the central banks of the Member States (hereinafter referred to as "Committee of Governors")~~ or the Council of the EMI, and after consulting the European Parliament and the Council. The President shall be selected from among persons of recognized standing and professional experience in monetary or banking matters. Only nationals of Member States may be President of the EMI. The Council of the EMI shall appoint the Vice-President.

The Statute of the EMI is laid down in a Protocol annexed to this Treaty.

~~The Committee of Governors shall be dissolved at the start of the second stage.~~

2. The EMI shall: (...)

(...)

8. Where this Treaty provides for a consultative role for the ECB, references to the ECB shall be read as referring to the EMI before the establishment of the ECB.

~~Where this Treaty provides for a consultative role for the EMI, references to the EMI shall be read, before 1 January 1994, as referring to the Committee of Governors.~~

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<sup>(2)</sup>One delegation wants the Treaty to incorporate a specific reference to the natural preference between Member States. Most other delegations are against such a specific addition.

<sup>(3)</sup>One delegation still has a reservation on the deletion of the reference to the Committee of Governors.

**Article 138** (insertion of Articles 1, 2 and 3(1) of the Act concerning election of the Parliament) <sup>(4)</sup>

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

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

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

**3. Representatives shall be elected for a term of five years.**

**4. The European Parliament shall draw up proposals (...)**

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<sup>(4)</sup>One delegation pointed out that since there existed a difference in territorial scope between the EC Treaty and the Act concerning the election of representatives of the European Parliament, the question of inserting these provisions should be closely scrutinized. Another delegation also expressed its concerns. A technical solution could be to annex to the EC Treaty Annex II to the Act, which deals with the territorial application of the Act within one Member State.

**Article 207** (national contributions to the budget)

The budget shall be drawn up in the unit of account determined in accordance with the provisions of the regulations made pursuant to Article [209].

~~The financial contributions provided for in Article [200(1)] shall be placed at the disposal of the Community by the Member States in their national currencies.~~

~~The available balances of these contributions shall be deposited with the Treasuries of Member States or with bodies designated by them. While on deposit, such funds shall retain the value corresponding to the parity, at the date of deposit, in relation to the unit of account referred to in the first paragraph.~~

~~The balances may be invested on terms to be agreed between the Commission and the Member State concerned.~~ <sup>(5)</sup>

~~The regulations made pursuant to Article [209] shall lay down the technical conditions under which financial operations relating to the European Social Fund shall be carried out.~~

**Article 223** (arms) <sup>(6)</sup>

1. The provisions of this Treaty (...)

**2. The Council may, acting unanimously on a proposal from the Commission, make changes to this list, which it fixed on 15 April 1958, of products to which the provisions of paragraph 1(b) apply.**

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<sup>(5)</sup>One delegation is opposed to the deletion of the second, third and fourth paragraphs. It was explained that these provisions have been obsolete since the repeal of Article 200 by the TEU. The arrangements whereby Member States make their financial contributions available are nowadays entirely governed by the Financial Regulation.

<sup>(6)</sup>Two delegations are still scrutinizing this new wording.