

# The European Union: Where is it Now?

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## TABLE OF CONTENTS

Introduction .....	926
Part One: A Brief History Lesson .....	927
A. The Late 1940's through 1958 .....	928
1. General Agreement on Tariffs and Trade (GAAT) (1947) .....	928
2. Benelux Customs Convention (1948) .....	928
3. Council of Europe (1948) .....	929
4. Organization for European Economic Cooperation (OEEC) (1948) .....	930

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Both authors have been instrumental in the development of an academic program between the Duquesne University School of Law and the Law School of University College Dublin in Dublin, Ireland on the topic of the law of the European Union. Indeed, the Law Schools appear to be the first to cosponsor continuing legal education on this topic. Also, the authors are assisting in the development of a curriculum on the law of the European Union at Duquesne University School of Law. This Article and a forthcoming Article are prepared for the Duquesne Law Review to reaffirm both the authors' and Duquesne Law School's continued commitment to education on the law of the European Union.

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5. North Atlantic Treaty Organization and Western European Union (1948-1955) . . .	931
6. European Coal and Steel Community (Treaty of Paris) (1951) . . . . .	932
7. European Defense Community Treaty (1952)	933
B. Treaties from 1958 to 1985 . . . . .	933
1. The European Economic Community and Euratom (Treaties of Rome) (1958) . .	933
2. European Free Trade Association (1960) . . .	936
3. Activities of the EEC . . . . .	936
a. Activities Pursuant to the EEC Treaty . .	937
b. Changes in the Community Itself . . . . .	940
i. New Members . . . . .	940
ii. Structural Changes within the Community . . . . .	941
C. Treaties from 1985 to 1992 . . . . .	942
D. Treaties from 1992 to Present . . . . .	944
1. Economic Action . . . . .	945
2. Expansion of Authority and Political Dimensions . . . . .	946
3. New Members . . . . .	947
4. The Current Climate . . . . .	948
E. Conclusion . . . . .	949
 Part Two: The Law of the European Community . .	 949
A. Primary Sources of Law . . . . .	950
1. The Basic Treaties . . . . .	950
2. Accession Treaties . . . . .	951
3. Budgetary Treaties . . . . .	952
4. Amendments . . . . .	952
B. Secondary Sources of Law . . . . .	953
1. Treaties with Third Countries and Conventions . . . . .	953
2. Subsidiarity Doctrine . . . . .	954
3. Other Authority for Actions by Community Institutions . . . . .	955
a. Special Powers . . . . .	955
b. Implied Powers . . . . .	956
c. New Powers . . . . .	956
4. Decisions of the European Court of Justice .	957
C. Conclusion . . . . .	957
 Part Three: The Institutions of the European Community . . . . .	 958
A. The European Parliament . . . . .	959

B. The Council .....	960
C. The Commission .....	963
D. The Court of Justice .....	964
1. The Court of Justice: The Court; Advocates General; and Court of First Instance .....	965
2. The Court of Justice; Its Procedures and Its Working Languages .....	966
3. The Court of Justice: Its Jurisdiction .....	967
4. Judicial Review .....	969
a. Supremacy and Direct Effect .....	969
b. General Principles of Law .....	970
c. Fundamental Rights .....	971
5. Conclusion .....	972
E. Other Institutions .....	973
F. Provisions Common to Several Institutions: Regulations, Directives, Decisions, Recommendations, Opinions and Budget Proposals .....	973
G. Conclusion .....	975
Part Four: Conclusion .....	975
Appendix One: Summary of the Treaty on European Union (TEU) .....	977
Appendix Two: Discussion of Article G of the Treaty on European Union (TEU) which Amends the EEC Treaty .....	985
Appendix Three: Glossary of Terms and Abbreviations .....	1004
Appendix Four: Timeline .....	1007

## INTRODUCTION

In four decades, western Europe has, by the force of economics, not Bismarck's iron and blood, united along economic, social and political venues. The western European marketplaces emerging from the devastation of World War II began to integrate with the concomitant benefit of a standard of economic well-being theretofore unknown. Economic cooperation has quite naturally led to a political union which is rapidly developing a formalized status. Given this extraordinary metamorphosis, peace continues to prevail in western Europe, which is indeed a historical anomaly.<sup>1</sup>

The unifying theme underlying the cooperation of the nations of western Europe in the European Economic Community<sup>2</sup> has been that economic union quite necessarily leads to political union and both work in unison to preserve peace. Western Europe has become an arena of concerted economic, social, cultural and now political union as the European Union.<sup>3</sup>

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1. Excellent sources on European Union law include Roger J. Goebel, *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, 18 FORDHAM INT'L L.J. 1092-190 (1995), GEORGE A. BERMAN ET AL., CASES AND MATERIALS ON EUROPEAN COMMUNITY LAW (1993), DESMOND DINAN, EVER CLOSER UNION?—AN INTRODUCTION TO THE EUROPEAN COMMUNITY (1994), P.S.R.F. MATHIJSEN, A GUIDE TO EUROPEAN COMMUNITY LAW (5th ed. 1990), DEREK W. URWIN, THE COMMUNITY OF EUROPE—A HISTORY OF EUROPEAN INTEGRATION SINCE 1945 (1993), JOHN USHER, CASES AND MATERIALS ON THE LAW OF THE EUROPEAN COMMUNITIES (3d ed. 1993), M. VAN EMPEL ET. AL., LEADING CASES ON THE LAW OF THE EUROPEAN COMMUNITIES (5th ed. 1990).

For a list of additional books and articles on European Community law, see BERMAN ET AL, *supra*, at 20-21.

2. The European Economic Community was created by the Treaty Establishing the European Economic Community (the "EEC Treaty" or the "Treaty of Rome"). See TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 11 (as amended by the Single European Act (the "SEA"), July 1, 1987, 2 C.M.L.R. 741 (1987)) [hereinafter EEC TREATY]. In 1992, the EEC Treaty was further amended by the Treaty on European Union (the "TEU" or the "Treaty of Maastricht"). See TREATY ON EUROPEAN UNION, Feb. 7, 1992, 1 C.M.L.R. 719 (1992), 31 I.L.M. 247 [hereinafter TEU]. The TEU established the European Union and made significant changes in the three main predecessor treaties, including the EEC Treaty. The EEC Treaty as amended by the TEU is called the Treaty Establishing the European Community (the "ECT"). See TEU art. G.A(1). See also TREATY ESTABLISHING THE EUROPEAN COMMUNITY, 1 C.M.L.R. 537 (1992) (conveniently compiling the EEC Treaty as amended by both the SEA and the TEU) [hereinafter ECT]. See *infra* apps. 1 and 2 for a basic explanation of the TEU and ECT.

3. Political integration is now in the spotlight. See TEU tit. V (Provisions on a Common Foreign and Security Policy); TEU tit. VI (Provisions on Cooperation in the Fields of Justice and Home Affairs).

A political union has been a goal in some form since the founding of the European Community. The Preamble to the 1957 EEC Treaty states that one of its goals is the achievement of "an ever closer Union among the peoples of Europe." See

This is the first of two articles on the European Union. The purpose of this Article is to help educate the reader generally about the historical development and the law of the European Union. Part One sets out a brief history of the European Union.<sup>4</sup> Parts Two and Three overview the Union's sources of law and its institutions.

The purpose of the second Article will be to probe whether a "Bill of Rights" should be adopted by the European Union. Assuming the past presages what will be the future, as the European Union evolves toward a closer union, greater emphasis will be placed on harmonizing the laws of Member States in the context of just and equal treatment of the citizens of Europe.<sup>5</sup> In the second Article, the authors suggest that even assuming a judiciary committed to such values, a Bill of Rights would be a catalyst to the achievement of a "more perfect" European Union.

#### PART ONE: A BRIEF HISTORY LESSON

The following is a summary of the highlights of the history of the evolution of the European Union. From the late 1940's through the present day, the western European nations have refrained from investing in war machines and battling each other for disputed territories and have, instead, worked toward a common union. Cooperation began tentatively in certain sectors of the economy and has expanded to include common defense concerns.

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EEC TREATY pmb. In 1983, the ten Heads of State and Government signed the Solemn Declaration on European Union which expressed their determination to "achieve a comprehensive and coherent common political approach." 16 Bull. EC 1983-6, at 24. Political union was a goal in the drafts preceding the TEU.

4. Since the TEU, the countries forming a part of the European Community are collectively called, for the first time, the "European Union" and the citizens of those countries have European Union citizenship. See TEU arts. A, G; ECT arts. 8-8e. The European Union is now organized under a single institution with three sources of support: (1) the European Community; (2) TEU art. J—cooperation among Member States in the common foreign and security policy; and (3) TEU art. K—cooperation between the Member States in justice and home affairs. Goebel, *supra* note 1, at 1110.

The term "Community" has been used to refer to the cooperative agreements established in the EEC Treaty, the Treaty Establishing the Coal and Steel Community (the "ECSC Treaty") and the Treaty Establishing the European Atomic Energy Community (the "Euratom Treaty") and their implementing institutions. Because this Article has a heavy focus on the ECT (the EEC Treaty amended by the TEU), when the term "Community" is used, it will be in reference to the ECT and the term "European Community" will be used as that is the term used in the ECT. The term "Union" will generally be used to describe matters addressed by the TEU other than its amendments to the EEC Treaty.

5. See *infra* Part I.D.2. regarding the new concept of European citizenship. See also ECT arts. 8-8e, as discussed, *infra* app. 2.C.

### A. *The Late 1940's through 1958*

Political instability and the incalculable loss of life and property were the context of the first efforts toward a union in western Europe.<sup>6</sup> Europe, divided by the victorious allies at the conclusion of World War II, was plagued internally with economic and social problems.<sup>7</sup> It was also haunted externally by the palpable threat of Soviet aggression, reflected by the coup d'etat in Czechoslovakia in 1948, the Berlin blockade in 1948-1949, and the Soviets' development of nuclear weapons.<sup>8</sup> In this context, European leaders acted to bring some economic and political stability to Europe.

#### 1. *General Agreement on Tariffs and Trade (GATT) (1947)*

The first joint effort occurred in October of 1947 with the signing in Geneva by twenty-three states of the General Agreement on Tariffs and Trade ("GATT").<sup>9</sup> These countries immediately began negotiations on over one hundred bilateral treaties affecting over one-half of the world's trade.<sup>10</sup>

#### 2. *Benelux Customs Convention (1948)*

The exiled governments of Belgium, Luxembourg and the Netherlands met in London and reached an agreement, known as the Benelux Customs Convention, to consolidate into one economic entity.<sup>11</sup> This agreement constituted the first postwar economic arrangement among European countries. By 1948, internal customs duties among the three countries had been abolished and a common, external tariff on all imports had been established.<sup>12</sup> The objective of the Convention—the establishment of a common trading area—was achieved in 1958 with the formation of the Benelux Union.<sup>13</sup>

The 1948 Treaty of Brussels<sup>14</sup> was another significant move

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6. URWIN, *supra* note 1, at 7.

7. *Id.* at 13.

8. BERMAN ET AL., *supra* note 1, at 3.

9. URWIN, *supra* note 1, at 17. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 55 U.N.T.S. 187.

10. URWIN, *supra* note 1, at 17.

11. BERMAN ET AL., *supra* note 1, at 3.

12. URWIN, *supra* note 1, at 39-40.

13. Treaty Instituting the Benelux Economic Union, Feb. 3, 1958, 381 U.N.T.S. 165.

14. Treaty of Brussels, Mar. 17, 1948, 19 U.N.T.S. 51.

toward western European integration. The Treaty of Brussels was a fifty-year pact among Great Britain, France and the Low Countries<sup>15</sup> for combined self-defense and collaboration in economic, social and cultural matters.<sup>16</sup> The advocates of European integration would use this treaty as a foothold to continuously push toward their goal of a stable, unified western Europe.<sup>17</sup>

### 3. Council of Europe (1948)

In reaction to the increasing support for European unity, a Congress of Europe was called at the Hague in May of 1948.<sup>18</sup> The resulting Statute of the Council of Europe was signed as the Treaty of Westminster on May 5, 1949 by representatives of ten states.<sup>19</sup> Arrangements were made to establish permanent offices in Strasbourg.<sup>20</sup> The Council of Europe was, and continues to be, led by a Committee of Ministers and by parliamentary representatives from each nation sitting as a Consultative Assembly.<sup>21</sup>

The Council's objective has always been to achieve "a greater unity among its members for the purpose of safeguarding and realizing the ideals and principles which are their common heritage and facilitating their economic and social progress."<sup>22</sup> Although the Council of Europe has no legislative power, it does have the power of persuasion within the constituent governments.<sup>23</sup> This power enabled it to make important political recommendations to its member governments in diverse areas such as social security, vocational training, equal pay and trade union rights.<sup>24</sup> The Council of Europe thus became western Europe's first, (and has remained its largest), postwar political organization.<sup>25</sup>

The Council of Europe's most important achievements were in the area of human and social rights. The Council authored the European Convention for the Protection of Human Rights and Fundamental Freedoms which was signed in November of

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15. The Low Countries are Belgium, Luxembourg and the Netherlands.

16. URWIN, *supra* note 1, at 32.

17. *Id.* at 33.

18. *Id.*

19. *Id.* at 34. See Statute of Council of Europe, May 5, 1949, 87 U.N.T.S.

103.

20. URWIN, *supra* note 1, at 34.

21. BERMANN ET AL., *supra* note 1, at 3.

22. URWIN, *supra* note 1, at 35.

23. BERMANN ET AL., *supra* note 1, at 3.

24. *Id.* at 4 (citing the Council of Europe's 1961 European Social Charter).

25. URWIN, *supra* note 1, at 35.

1950.<sup>26</sup> The Council also issued the 1961 European Social Charter, which proposed standards for social security, vocational training, equal pay and trade union rights.<sup>27</sup> Further, it has promulgated other conventions dealing with insider trading, data protection, prevention of torture, spectator violence and transfrontier television.<sup>28</sup> The Council of Europe, now composed of twenty-six countries, continues to keep alive the hope of a common European identity.<sup>29</sup>

#### 4. *Organization for European Economic Cooperation (OEEC)* (1948)

The foreign policy of the United States in the post-World War II era fashioned a new order in Europe. The United States wished to coordinate the administration of aid under the European Recovery Programme—the Marshall Plan as it is commonly known.<sup>30</sup> In response, the sixteen recipient countries formed an intergovernmental body, the Organization for European Economic Cooperation (the “OEEC”) in April of 1948.<sup>31</sup> The OEEC immediately focused on the European Recovery Programme in an attempt to identify an efficient method of allocating American aid among the recipient countries.<sup>32</sup> Although the OEEC remained an intergovernmental body whose primary concerns were cooperation and coordination rather than union, the OEEC fostered new modes of thinking and laid a solid foundation for future developments.<sup>33</sup>

By 1959, the OEEC's original objectives had, for the most part, been met.<sup>34</sup> Almost all international trade had been liberalized.<sup>35</sup> European currencies had generally become exchangeable with one another under the European Payments Union (the “EPU”), an agency established by the OEEC in 1950.<sup>36</sup> In 1958, the EPU was replaced by the broader European Monetary Agreement (the “EMA”), under which European

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26. BERMANN ET AL., *supra* note 1, at 4.

27. *Id.*

28. *Id.*

29. *Id.* The Council of Europe now includes Czechoslovakia, Hungary and Poland. *Id.*

30. *Id.*

31. URWIN, *supra* note 1, at 19. See Convention for European Economic Cooperation, Apr. 16, 1948, 888 U.N.T.S. 142.

32. URWIN, *supra* note 1, at 19. See MATHIJSEN, *supra* note 1, at 6.

33. URWIN, *supra* note 1, at 19-21.

34. *Id.* at 21.

35. *Id.*

36. *Id.* at 20.



currencies were convertible with the dollar.<sup>37</sup> It was now clearly recognized that the European economies were mutually dependent on one another.<sup>38</sup>

In 1960, Canada and the United States joined the former OEEC, which had changed its name in 1957 to the Organization for Economic Cooperation and Development (the "OECD").<sup>39</sup> Although the OECD had no legislative powers, it issued recommendations that have impacted on the development of the "European economy" and national economic policies.<sup>40</sup> With the entry of Japan in 1964, the OECD has become a think tank of the advanced industrial democracies concerned with the effectiveness of the international economic system.<sup>41</sup>

##### 5. *North Atlantic Treaty Organization and Western European Union (1948-1955)*

The western European nations participated in other areas of common interest, particularly common defense and security. In 1949, these nations along with Canada and the United States created the North Atlantic Treaty Organization ("NATO") as a defensive military alliance.<sup>42</sup> It was structured to have an integrated military command organization and a mechanism for collective decision-making.<sup>43</sup>

A related agreement was the Western European Union Treaty (the "WEU"),<sup>44</sup> which was signed in October of 1954 by seven western European countries in order to promote collective self-defense and political collaboration for unity.<sup>45</sup> Although NATO was more prominent than the WEU during the Cold War era, NATO's *raison d'être* is currently being reexamined and the WEU is now receiving attention as the leaders of Europe proceed to design a common defense and security strategy.<sup>46</sup>

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37. *Id.* at 21-22.

38. URWIN, *supra* note 1, at 21-22

39. *Id.* at 22.

40. *Id.* at 21.

41. *Id.*

42. *Id.* at 22. In 1949, the twelve members of NATO consisted of the United States, Canada, Belgium, France, Britain, Denmark, Norway, Italy, the Netherlands, Portugal, Iceland and Luxembourg. *Id.* at 22-23. See North Atlantic Treaty, Apr. 4, 1949, 34 U.N.T.S. 243.

43. BERMANN ET AL., *supra* note 1, at 4.

44. Western European Union Treaty, Oct. 23, 1954, 211 U.N.T.S. 342.

45. BERMANN ET AL., *supra* note 1, at 4.

46. *Id.* at 5.

6. *European Coal and Steel Community (Treaty of Paris) (1951)*

The European Union grew out of a concern over the peaceful use of coal and steel resources in Europe.<sup>47</sup> Following World War II, France understandably wanted to prevent Germany from becoming a military power again. However, Great Britain and the United States saw a revitalized, rearmed Germany as protection against potential aggression by the Soviet Union.<sup>48</sup> The coal and steel industries were viewed as two vital parts of both economic and military rebuilding. Thus, a French-German partnership designed to regulate the production of coal and steel appeared to be in everyone's interests.<sup>49</sup>

Such a partnership was created by the 1951 Treaty of Paris<sup>50</sup> which established the European Coal and Steel Community (the "ECSC").<sup>51</sup> It was signed by the three Benelux countries (Belgium, the Netherlands and Luxembourg), as well as France, Germany and Italy.<sup>52</sup> The treaty placed the Franco-German coal and steel production under the direction of a common, nine-member High Authority.<sup>53</sup> The High Authority was composed of independent persons named by the participating national governments, and had responsibility for regulating the common market in coal and steel including the oversight of pricing, wages, investment, and competition.<sup>54</sup> The High Authority acted within an organization that was open to other European countries, and whose decisions were binding on the Member States without national consent.<sup>55</sup>

The goals of the ECSC were to regulate production and to promote free trade in the coal and steel industry and thus foster economic expansion, growth of employment and a rising standard of living in each of the Member States.<sup>56</sup> In its attempt to establish a free market in coal and steel, the ECSC prohibited government subsidies, quantitative restrictions, duties on imports and exports, regulations that discriminated among produc-

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47. *Id.*

48. *Id.*

49. See MATHIJSSEN, *supra* note 1, at 7.

50. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, 261 U.N.T.S. 140. This treaty is referred to as the "ECSC Treaty" or the "Treaty of Paris."

51. See BERMANN ET AL., *supra* note 1, at 5 n.3. The treaty was effective July 25, 1952. *Id.*

52. *Id.* at 5.

53. URWIN, *supra* note 1, at 49.

54. *Id.*

55. *Id.* at 50.

56. *Id.* at 49.

ers, purchasers, or consumers, and division of markets.<sup>57</sup>

The institutional design of the ECSC included: (1) a Special Council of Ministers who advised the High Authority; (2) a Common Assembly—consisting of delegates from each of the national parliaments—which gave an air of democratic accountability to the agreement; and (3) a Court of Justice to ensure implementation and enforcement of legislation.<sup>58</sup>

### 7. *European Defense Community Treaty (1952)*

Political tensions in Europe prompted the development of two short-lived treaties in 1952.<sup>59</sup> The first was the European Defense Community Treaty (the “EDC”), which was signed by the six signatories of the ECSC on May 27, 1952.<sup>60</sup> The EDC provided for a European Ministry of Defense and was structured similar to the ECSC.<sup>61</sup> The treaty was criticized for, among other things, a lack of democratic safeguards.<sup>62</sup>

The second treaty was the European Political Community Treaty (the “EPC”), created by the ministers of the ECSC countries in late 1952.<sup>63</sup> A statute for such a community was proposed along the lines of the ECSC and the EDC.<sup>64</sup> France withdrew in August of 1954 because of a reluctance to give up control of its armed forces.<sup>65</sup> It argued that without the United Kingdom, the EPC would allow a rearmed Germany to be free of political control.<sup>66</sup> Following Stalin’s death and the end of the Korean War, tensions eased and both the EDC and the EPC proposals collapsed.<sup>67</sup>

## B. *Treaties From 1958 to 1985*

### 1. *The European Economic Community and Euratom (Treaties of Rome) (1958)*

In early 1955, the Benelux countries proposed a common transportation infrastructure, coordination of atomic and other

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57. BERMANN ET AL., *supra* note 1, at 5.

58. *Id.* at 6.

59. *Id.*

60. *Id.*

61. *Id.*

62. BERMANN ET AL., *supra* note 1, at 6.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. BERMANN ET AL., *supra* note 1, at 6.

energy resources and the creation of a common market.<sup>68</sup> The foreign ministers of France, Italy and Germany endorsed the ideas in June of 1955 at a meeting in Messina, Italy.<sup>69</sup> This endorsement led to an intergovernmental conference called the Spaak Committee, named after its chair—prominent Belgian statesman Paul-Henri Spaak.<sup>70</sup> Thereafter, two treaties were signed in Rome on March 25, 1957 and sent to the national parliaments for ratification.<sup>71</sup> These were the Treaty Establishing the European Economic Community (the "EEC Treaty")<sup>72</sup> and the Treaty Establishing the European Atomic Energy Community (the "EAEC Treaty" or "Euratom Treaty").<sup>73</sup> The six signatory states—Belgium, France, Germany, Italy, Luxembourg and the Netherlands—ratified the two treaties which became effective January 1, 1958.<sup>74</sup>

The EEC Treaty, which was to remain in force indefinitely, identified the objectives of the EEC as coordination of economic and monetary policies, creation of free and fair competition and harmonization of the fiscal and social policies and the laws of all the Member States.<sup>75</sup> These objectives were to be reached through the creation of a common market and the coordination of the Member States' economies over an estimated period of twelve to fifteen years.<sup>76</sup> In order to assist the EEC in attaining its objectives, three funds were created: (1) a European Social Fund addressing employment opportunities and the standard of living; (2) a European Investment Bank addressing economic expansion by providing loans; and (3) a European Development Fund addressing overseas territories.<sup>77</sup>

The institutional framework created by the EEC Treaty was very similar to that created by the ECSC Treaty.<sup>78</sup> A convention was entered into establishing a Council of Ministers, a Commission, a single Assembly—later Parliament—and a single Court of Justice for all three Communities—the ECSC, the Euratom, and the EEC.<sup>79</sup> While a more detailed discussion of

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68. *Id.*

69. URWIN, *supra* note 1, at 75.

70. *Id.* at 27-28, 74-75.

71. *Id.* at 74-75.

72. *See* EEC TREATY.

73. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY, Mar. 25, 1957, 298 U.N.T.S. 167.

74. BERMAN ET AL., *supra* note 1, at 7.

75. *Id.* at 8.

76. URWIN, *supra* note 1, at 79-80.

77. *Id.* at 80.

78. *Id.* at 81.

79. BERMAN ET AL., *supra* note 1, at 23 (citing Convention on Certain Insti-

the institutions of the Community is set out in Part Three of this Article, the following briefly provides an overview of each institution as established under the EEC Treaty.

A Council of Ministers—empowered to enact legislation and make final policy decisions—consisted of a president and high ranking ministers from each Member State.<sup>80</sup> Within the Council, each Member State's vote is weighed according to population.<sup>81</sup> Different types of ratification—majority, qualified majority and unanimity—depend on the type of legislation.<sup>82</sup>

A nine member Commission was established with two representatives each from France, Italy and West Germany and one representative from each of the Benelux countries.<sup>83</sup> It has grown to a commission of twenty members, each serving five-year terms.<sup>84</sup> The representatives, although appointed by their respective national governments, are required to act devoid of any national loyalty, with only the best interests of the EEC in mind.<sup>85</sup> The Commission, based in Brussels, is responsible for initiating and recommending policy to the Council of Ministers, as well as ensuring that the provisions of the EEC Treaty and any policies issuing from the Council of Ministers are adhered to by the other EEC institutions and the Member States.<sup>86</sup>

The third institution was the European Parliament. The Parliament originally was a forum for debate and discussion about legislation.<sup>87</sup> The members of Parliament, elected as representatives of cross-border political parties, were and continue to be more loyal to their party interests than to the interests of their Member States.<sup>88</sup> The TEU enhanced the powers accorded to Parliament.<sup>89</sup>

The fourth institution was and continues to be the Court of Justice. The Court of Justice was empowered to interpret the meaning of the treaty, and uphold the balance among the four institutions of the EEC.<sup>90</sup> Each Member State is allowed one seat on the Court of Justice.<sup>91</sup> Each justice is to act indepen-

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tations Common to the European Communities, Mar. 25, 1957).

80. URWIN, *supra* note 1, at 82.

81. *Id.*

82. *Id.*

83. *Id.* at 81. By 1965, the EEC Commission had absorbed the parallel executive bodies established under the ECSC and the Euratom Treaties. *Id.*

84. BERMAN ET AL., *supra* note 1, at 19.

85. URWIN, *supra* note 1, at 81.

86. *Id.*

87. *Id.* at 82-83.

88. *Id.*

89. ECT arts. 137-138e.

90. URWIN, *supra* note 1, at 83.

91. See *infra* Part III.D for a discussion about the Court of Justice. The com-

dent of the influence of a Member State and to interpret the Treaty in the best interests of the Community as a whole.<sup>92</sup>

## 2. *European Free Trade Association (1960)*

Under the leadership of the United Kingdom, the remaining members of the OEEC reacted by establishing, on January 4, 1960, a free trade area in the form of the European Free Trade Association (the "EFTA"), or the Stockholm Convention.<sup>93</sup> EFTA linked Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the United Kingdom (the "outer seven" in contrast to the EEC's "inner six").<sup>94</sup> The EFTA countries desired to establish a free trade area among the member countries, thereby eliminating among its members trade barriers such as customs duties and import quotas.<sup>95</sup>

In 1992, EFTA and the European Community entered into an agreement that established a European Economic Area (the "EEA").<sup>96</sup> The agreement effectively brings non-Union EFTA countries,<sup>97</sup> except Switzerland, into the internal market of the European Community.<sup>98</sup>

## 3. *Activities of the EEC*

Over the next two decades, the Community engaged in a variety of activities that implemented the EEC Treaty, also known as the Treaty of Rome.<sup>99</sup> Indeed, it changed markedly itself through the addition of more Member States. It also changed internally in its institutional structure and through its expansion into political sectors.<sup>100</sup>

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position of the Court of Justice changed slightly following the Acts of Accession of Austria, Finland and Sweden. See *infra* Part I.D.3.

92. URWIN, *supra* note 1, at 83.

93. BERMANN ET AL., *supra* note 1, at 7. See Convention Establishing the European Free Trade Association, Jan. 4, 1960, 370 U.N.T.S. 5.

94. BERMANN ET AL., *supra* note 1, at 7.

95. *Id.* EFTA is not a customs union like the EC. *Id.* It does not have common external trade policies toward third countries, which are required for a customs union under GATT rules. *Id.*

96. *Id.* at 19.

97. Former EFTA countries Austria, Finland and Sweden, joined the Union as Member States as of January 1, 1995. Goebel, *supra* note 1, at 1093.

98. BERMANN ET AL., *supra* note 1, at 19.

99. *Id.*

100. *Id.* at 11.

*a. Activities Pursuant to the EEC Treaty*

The EEC Treaty articulated goals in Article 2 and outlined the means for achieving the goals in Article 3.<sup>101</sup> Article 2 stated that a common market was to be established and economic policies were to be harmonized.<sup>102</sup> Article 3 delineated the means: (1) the establishment of a common external tariff and commercial policy;<sup>103</sup> (2) the removal of barriers to the free movement of goods, persons, services and capital;<sup>104</sup> (3) the creation of common Community policy in key areas of the economy (agriculture and transport);<sup>105</sup> (4) the coordination of economic and monetary policy;<sup>106</sup> (5) the "harmonization" of the laws of the Member States to help the common market;<sup>107</sup> (6) the creation of a European Social Fund and a European Investment Bank to improve the employment opportunities and facilitate expansion of the Community;<sup>108</sup> and (7) the association with overseas countries and territories to increase trade.<sup>109</sup>

The Community focused early on tariff issues. It established the common external tariff and subsequently eliminated internal tariffs by July 1, 1968—eighteen months ahead of the deadline in the EEC Treaty.<sup>110</sup> The Community established a common commercial policy toward non-member countries, called "third countries."<sup>111</sup> It also began to represent the Member States in discussions about GATT by participating in the "Kennedy Round" of negotiations that successfully reduced tariff and other trade barriers in 1967.<sup>112</sup>

Activity toward the achievement of a common market also oc-

101. See EEC TREATY arts. 2-3.

102. EEC TREATY art. 2. The TEU added a third goal, the creation of an economic and monetary union. See ECT art. 2.

103. See EEC TREATY art. 3b.

104. *Id.* arts. 3a, 3c. These freedoms are often termed the "four freedoms" or "fundamental freedoms." BERMANN ET AL., *supra* note 1, at 315. The freedoms give people in business the freedom of decision-making and the freedom to compete by offering goods and services to a continent-wide circle of potential customers. Workers are given freedom to choose their place of work throughout the entire Community. EEC TREATY arts. 3a, 3c. Consumers are free to choose among the greatest possible variety of products, which results from increased competition. *Id.*

105. See EEC TREATY arts. 3d-f.

106. See *id.* art. 3g.

107. See *id.* art. 3h.

108. See *id.* arts. 3i-3j.

109. See *id.* art. 3k.

110. BERMANN ET AL., *supra* note 1, at 8.

111. *Id.* The Community entered into trade and foreign aid agreements with many third countries such as Greece, Turkey, and Yugoslavia, and with former colonies. *Id.*

112. URWIN, *supra* note 1, at 131.

curred. Various legislation was adopted between 1960 and 1962, usually in the form of directives, to organize the free movement of goods, workers, services and capital and the right of commercial establishment.<sup>113</sup> These directives often solidified Community "principles," such as the principle of freedom of investment and of national treatment or nondiscrimination.<sup>114</sup>

Some aspects of the common market achieved unity more quickly than others. For example, the Community issued directives in the 1960's and early 1970's aimed at standardizing safety and technical standards for food, drugs, cosmetics and "dangerous products."<sup>115</sup> In 1968, a directive granted all workers and their families the right to free movement, be they blue collar workers, agricultural workers, skilled labor, or management personnel.<sup>116</sup> Curiously, there was no progress during this same period toward removal of barriers to interstate banking, insurance and securities trade, transborder licensing of professionals, or development of a common transport policy.<sup>117</sup> However, in the 1970's, the Community made progress toward harmonizing corporate and securities law, banking and insurance law, and the professions of medicine and architecture.<sup>118</sup>

Some sectors were difficult to unify, particularly the agricultural sector. However, despite marked disagreement, market organization occurred.<sup>119</sup> The Community formed integrated European markets and protected the income of farmers and encouraged crop production to such an extent that in the 1970's the Community was a net exporter of agricultural products and had surpluses of a few commodities.<sup>120</sup>

A competition policy, similar in intent to the antitrust laws of the United States, was announced in the 1960's to implement Articles 85 and 86 of the EEC Treaty.<sup>121</sup> Through directives issued by the Council, the Commission was vested with the

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113. BERMANN ET AL., *supra* note 1, at 8-9. For example, the first and second capital directives, adopted in 1961 and 1962, provided for the free movement of capital in most commercial and personal transactions and established the principle of freedom of investment. *Id.*

114. *Id.* at 9.

115. *Id.*

116. *Id.*

117. *Id.*

118. BERMANN ET AL., *supra* note 1, at 9.

119. *Id.*

120. *Id.*

121. *Id.* Article 85 of the EEC Treaty aspired to control concerted practices which negatively affected trade between Member States. *See* ECT art. 85; *infra* app. 2. Article 86 aspired to control the abusive exercise of monopoly power which may affect such trade. *See* ECT art. 86; *infra* app. 2.



power to issue regulations, investigate and punish anti-competitive conduct, and to authorize such conduct when its economic benefits outweighed its risk.<sup>122</sup> The Commission enforced the EEC Treaty and secondary legislation and won major cases in the Court of Justice against cartels and market-partitioning license and distribution networks.<sup>123</sup>

Efforts in the social, environmental and consumer protection realms also occurred. In 1974, a social action program was developed which prompted regulation in the areas of employment law, women's rights and occupational health and safety.<sup>124</sup> The Court of Justice made social policy one of the Community's more active realms.<sup>125</sup>

Both environmental and consumer protection were addressed in action programs in 1974 because, although neither area was specifically addressed in the EEC Treaty, both were viewed as critical parts of the common market.<sup>126</sup> The EEC has adopted minimum standards for water and air quality, for limiting pollution and waste and for protecting wildlife.<sup>127</sup> Also, it has joined in many international agreements on these subjects.<sup>128</sup> In the consumer protection arena, the Commission issued over twelve harmonization directives designed to eliminate unfair business practices in various fields.<sup>129</sup>

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122. BERMAN ET AL., *supra* note 1, at 9.

123. See Case 23/67, S.A. Brasserie de Haecht v. Wilkin & Wilkin, 1967 E.C.R. 407; Case 48/69, Imperial Chemical Indus., Ltd. v. Commission (Dyestuffs), 1972 E.C.R. 619; Case 6/72, Continental Can Co. v. Commission, 1975 E.C.R. 495; Case 48/72, Brasserie de Haecht v. Wilkin-Janssen, 1973 E.C.R. 77; Case 15/74, Centrafarm BV v. Sterling Drug Inc., 1974 E.C.R. 1147; Joined Cases 6 & 7/73, Istituto Chemioterapico Italiano v. Commission, 1974 E.C.R. 223; Case 27/76, United Brands Co. v. Commission, 1978 E.C.R. 207; Joined Cases 209-215 & 218/78, Heintz van Landewyck Sarl v. Commission (FEDETAB), 1980 E.C.R. 3125; Case 322/81, NV Nederlandsche Banden-Industrie Michelin v. Commission, 1983 E.C.R. 3461; Joined Cases 96-102, 104, 105, 108 & 110/82, NV IAZ International Belgium v. Commission (ANSEAU-NAVEWA), 1983 E.C.R. 3369; Joined Cases 89, 104, 114, 116, 117 & 125-128/85, A. Ahlstrom Osakeyhto v. Commission (Wood Pulp), 1988 E.C.R. 5193.

124. BERMAN ET AL., *supra* note 1, at 10.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. BERMAN ET AL., *supra* note 1, at 10. For example, the Commission issued a 1985 directive on products liability which fixed strict liability as the general rule in the field. *Id.*

*b. Changes in the Community Itself*

*i. New Members*

Additional nations joined the Community during this period.<sup>130</sup> The first group included Denmark, Ireland and the United Kingdom, all of whom joined the Community pursuant to a treaty that was effective on January 1, 1973.<sup>131</sup> The next group included Greece in 1979,<sup>132</sup> and Spain and Portugal in 1985,<sup>133</sup> as each moved away from "military" right-wing governments.<sup>134</sup> The Berlin wall fell and Germany unified, so no formal accession of East Germany was necessary.<sup>135</sup> Thus, the number of Member States totaled twelve.<sup>136</sup>

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130. The Preamble to the EEC Treaty anticipated that other "peoples" of Europe might join the Community. See EEC TREATY pmb. See also *id.* art. 237 (providing the procedure for accession).

131. Treaty Concerning the Accession of the Kingdom of Denmark, Ireland the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Economic Community and to the European Atomic Energy Community, Jan. 22, 1972, 1972 O.J. (L 73) 59.

The efforts of Britain to join the Community were seriously frustrated by France, under the leadership of President de Gaulle. URWIN, *supra* note 1, at 104. In the 1960's, de Gaulle vetoed the United Kingdom's admission, arguing that the UK's close relationship with the United States weakened its commitment to Europe. *Id.* at 125.

When de Gaulle left power, his successor, George Pompidou, agreed, in 1969, with other heads of government, to the accession of four applicants—the United Kingdom, Ireland Denmark and Norway. *Id.* at 137. Three years later, the four signed a Treaty of Accession at Brussels. *Id.* at 140. Although Denmark, the United Kingdom and Ireland ratified the Treaty and entered the Community in 1973, Norway did not. *Id.* at 144. A majority in Norway voted in a referendum against joining, and, although a referendum was not constitutionally required, the government of Norway decided not to join the Community. *Id.*

132. See Treaty Concerning the Accession of the Hellenic Republic to the European Economic Community and the European Atomic Energy Community, May 28, 1979, 1979 O.J. (L 291) 9.

133. See Treaty Concerning the Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community, June 12, 1985, 1985 O.J. (L 302) 9.

134. URWIN, *supra* note 1, at 206. Greece joined, effective January 1, 1981. *Id.* at 207. Spain and Portugal joined in 1986. *Id.* at 211.

135. BERMANN ET AL., *supra* note 1, at 11. Accession is very complicated because the Community requires compliance with complex transitional rules for phasing in various parts of Community policy. *Id.* This was particularly true in the case of East Germany with the Community's adoption in late 1990 of legislation concerning East Germany's trade and the environment. *Id.* at 11-12.

136. MATHJSEN, *supra* note 1, at 11. Greenland ceased to be part of the European Community on February 1, 1985. *Id.* at 12. It had belonged since January 1, 1973 as part of the Kingdom of Denmark. *Id.* Greenland now has a special relationship within the Kingdom since the Home Rule Act of 1979 and the Greenland Government has exclusive competence for fishing, agriculture and stock farming. *Id.* See

*ii. Structural Changes within the Community*

The structure within the Community changed through treaties or internal agreements that provided for a single Council and Commission, a more democratic European Parliament and a new European Council.<sup>137</sup> A "Merger Treaty" was adopted in 1965 which simplified the structure of the three Communities.<sup>138</sup> The Treaty combined the ECSC's High Authority, the EEC's Commission and Euratom into a single Commission of the European Communities.<sup>139</sup> It also married the Councils of the three communities—the EEC, the ECSC, and the Euratom—into a single Council.<sup>140</sup> This structure complemented the single Court of Justice and Assembly that already existed as of 1957.

In 1971, the Community became more fiscally independent with a change in the way it received its contributions from Member States. In the past, Member States contributed certain amounts to the Community, thereby creating intense national-political pressures.<sup>141</sup> This system was replaced by the Community's "own resources" system which automatically assigns to the Community all the customs, duties, agricultural levies and a share of each Member State's value added tax revenues.<sup>142</sup>

The European Parliament became more democratic and involved in Community matters.<sup>143</sup> Although Article 138 of the EEC Treaty assumed that Parliament would be elected by the people, it was composed only of representatives from national parliaments until the mid-1970's.<sup>144</sup> The first elections by the people were held in June of 1979 following five years of efforts to have such elections.<sup>145</sup>

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Commission Opinion on the Status of Greenland, 1982 O.J. (C 221) 31; The Text of Amending Treaty with Various Council Regulations, 1985 O.J. (L 29) 1.

137. BERMAN ET AL., *supra* note 1, at 12.

138. *Id.* (citing Treaty Establishing a Single Council and a Single Commission of the European Communities, Apr. 8, 1965, 4 I.L.M. 776).

139. *Id.*

140. *Id.*

141. MATHIJSEN, *supra* note 1, at 9.

142. *Id.* (citations omitted). The "own resources system" became effective on January 1, 1971, after ratification by the six national Parliaments. *Id.*

143. BERMAN ET AL., *supra* note 1, at 12. Also, in 1975 the Treaties were amended to give Parliament, as of 1977, a small role along with the Council in adopting the Community's budget. *Id.*

144. *Id.*

145. *Id.* In December of 1974, the Heads of State decided at the Paris Summit to adopt a system of direct elections; legal action was taken by an act of the Council in 1976, with the first election of Members of Parliament occurring in June of

On April 5, 1977, a commitment to democracy was reaffirmed when the European Parliament, the Council and the Commission issued a Joint Declaration on Fundamental Rights with which the Heads of State and of Government joined in a Declaration on Democracy.<sup>146</sup> In that Declaration, the parties confirmed their commitment to ensure that the values of their legal, political and moral order are respected and to safeguard the principles of representative democracy, of the rule of law, of social justice and of respect for human rights.<sup>147</sup>

Finally, a European Council was created following a 1969 summit meeting of the Heads of State and of Government of each of the Member States at the Hague.<sup>148</sup> The European Council resulted from an agreement among Member States that intergovernmental meetings on major policy issues of common concern to the Community should be held on a regular basis.<sup>149</sup> During the 1970's, the European Council began a program of cooperation among the Member States in foreign policy that was known as European Political Cooperation (the "EPoC").<sup>150</sup> Both the European Council and the EPoC were formally recognized or institutionalized in the Single European Act, effective on July 1, 1987.<sup>151</sup>

### C. *Treaties from 1985 to 1992*

Efforts continued toward institutional and procedural reform and the complete integration of the internal market. Progress slowed and sometimes stalled due to the requirement of unanimity in the adoption of most Community legislation.<sup>152</sup> Dissatisfaction resulted during the 1970's and 1980's from efforts to develop a common agricultural policy and to resolve annual budgetary problems.<sup>153</sup> The Member States finally relaxed the unanimity requirement, better managed the budget crisis and re-

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1979. *Id.* See Act Concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage, 1976 O.J. (L 278) 1.

146. MATHIJSEN, *supra* note 1, at 11 (citing 11 Bull. EC 3-1978, at 5).

147. *Id.* They stated that the application of these principles implies a political system of pluralist democracy. *Id.*

148. Goebel, *supra* note 1, at 1093 n.2.

149. *Id.* Since 1974, the Heads of State and of Government, accompanied by their foreign ministers, have met at "summit meetings" two or three times a year as the European Council. *Id.*

150. BERMAN ET AL., *supra* note 1, at 13. The EPoC's jurisdiction was expanded by the SEA to include security. *Id.*

151. Goebel, *supra* note 1, at 1093 n.2 (citation omitted).

152. BERMAN ET AL., *supra* note 1, at 12-14.

153. *Id.* at 13-14.

committed themselves to the goal of an internal market through institutional and procedural change.<sup>154</sup>

In the mid-1980's, the European Parliament, Council and Commission all conducted activities toward a greater union in Europe. In 1984, in a Draft Treaty Establishing the European Union, the Parliament supported significant constitutional reforms.<sup>155</sup> The Council, in 1985, commissioned its own study (named the Dooge report after the Irish senator who chaired the committee).<sup>156</sup> The Commission submitted to the European Council its own White Paper on Completing the Internal Market.<sup>157</sup> In June of 1985 at Milan, both the Dooge report and the White Paper were approved by the European Council which instructed the Council to act on 279 White Paper proposals.<sup>158</sup> The White Paper received support from financial and business leaders.<sup>159</sup>

A new treaty named the Single European Act (the "SEA"), dated July 1, 1987, amended the EEC Treaty.<sup>160</sup> The main goal of the SEA was the completion of a single internal market by 1992 through a focus on economic and social cohesion—through a Regional Development Fund—research and technological development, the environment, occupational safety and health, and the creation of an Economic and Monetary Union.<sup>161</sup> Further, all technical, legal and fiscal barriers to trade between Member States were to be eliminated under the SEA.<sup>162</sup>

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154. *Id.* at 14.

155. *Id.* (citing 1984 O.J. (C 77) 33). The Draft Treaty was to replace the three basic Community treaties with a single constitutional document establishing a European federal government. *Id.* It also would have substantially increased the legislative, appointive and budgetary powers of Parliament. *Id.* The increase in powers in the Parliament was at the expense of the Council of Ministers and would also have required a significant transfer of new legislative powers from Member States to the Community. *Id.*

156. *Id.*

157. BERMANN ET AL., *supra* note 1, at 14. The Commission, under the leadership of its new French Social President, Jacques Delors, and a British Tory Commissioner, Lord Cockfield, issued the White Paper which called for adoption, before the end of 1992, of legislation to enable the development of a more fully integrated market. Goebel, *supra* note 1, at 1100-01.

158. Goebel, *supra* note 1, at 1101.

159. *Id.*

160. BERMANN ET AL., *supra* note 1, at 15. Pursuant to Article 236 of the EEC Treaty, an intergovernmental conference for amendments to the EEC Treaty was held in Luxembourg in the Fall of 1985. *Id.* at 14. See EEC TREATY art. 236. The conference was held even though Denmark, Greece and the United Kingdom voted against holding it. BERMANN ET AL., *supra* note 1, at 14. However, all twelve members participated and many agreements reflect significant compromises, including the SEA. *Id.* at 14-15.

161. EEC TREATY art. 102a. See MATHIJSEN, *supra* note 1, at 13.

162. EEC TREATY art. 8a; see also ECT art. 7a.

The SEA also added important procedural changes to the Community. The new "parliamentary cooperation procedure" gave Parliament a share in the legislative process.<sup>163</sup> Council was authorized to legislate in many areas by a qualified majority vote instead of a unanimous vote.<sup>164</sup> Greater authority was delegated from the Council to the Commission.<sup>165</sup>

#### *D. Treaties from 1992 to Present*

The European Council met in Dublin in June of 1990 and agreed to open two intergovernmental conferences in Rome in December of 1990.<sup>166</sup> The first conference dealt with the concept of a European Monetary Union, and the second conference focused on proposals for political union, increases of "Community competencies" and institutional and procedural reforms.<sup>167</sup> The conferences were divisive due in part to British opposition to many of the proposals and to support among Member States in favor of the proposals.<sup>168</sup> Both conferences reported on the key issues to the Maastricht European Council in December of 1991.<sup>169</sup> A compromise agreement was reached and the TEU was formally signed at Maastricht, Netherlands, on February 7, 1992 and effective on January 1, 1993.<sup>170</sup>

The TEU carries the Community forward into a "new stage in the process of creating an ever closer union among the peoples of Europe."<sup>171</sup> The Member States accepted the concept of a "European Union" whose foundation would be a "European Community" (the "EC")—replacing the former "European Economic Community."<sup>172</sup>

Under the TEU, the European Union is viewed as supported

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163. BERMANN ET AL., *supra* note 1, at 15; *see also* MATHJSEN, *supra* note 1, at 13.

164. BERMANN ET AL., *supra* note 1, at 15.

165. *Id.* Since 1987, almost all of the legislation proposed in the 1985 White Paper has been adopted, even in program areas that had been stymied for years, e.g., banking, insurance, transport, intellectual property and taxation. *Id.* at 15-16.

166. Goebel *supra*, note 1, at 1109 (citing Bull. EC 6-1990, at 7-10). The agenda items for the two conferences were set by the European Council at its Rome meeting on December 14-15, 1990. *Id.* (citing 23. Bull. EC 12-1990, at 7-11).

167. *Id.*

168. BERMANN ET AL., *supra* note 1, at 15.

169. Goebel, *supra* note 1, at 1109.

170. *Id.* (citing 24 Bull. EC 12-1991 at 7-8). The ratification processes were testy due in part to hesitation over the scale and pace of political integration and the fears of too much centralization. BERMANN ET AL., *supra* note 1, at 18.

171. TEU art. A.

172. *Id.* art. G(A)1.

by three pillars.<sup>173</sup> The first pillar is the European Community (the EC, the Euratom and the ECSC collectively) which represents all of the institutional structure and scope of operations including the new Economic and Monetary Union (the "EMU").<sup>174</sup> The second pillar is Article J of the TEU—the Common Foreign and Security Policy.<sup>175</sup> The third pillar is Article K of the TEU—Cooperation in Justice and Home Affairs.<sup>176</sup>

### 1. Economic Action

Under the EMU, according to the TEU and related protocols, in the 1990's Member States are to coordinate their economic and monetary policies to eliminate deficit spending and to reduce inflation.<sup>177</sup> In 1994, the European Monetary Institute (the "EMI") was created to coordinate the activities of various central banks and to make recommendations on general monetary policy.<sup>178</sup> Member States without independent central banks must create them.<sup>179</sup>

In 1996, the European Council will decide whether to start the third phase in 1997 or later.<sup>180</sup> This phase would create a European System of Central Banks (the "ESCB"), analogous to the Federal Reserve System, with a European Central Bank (the "RECB").<sup>181</sup> In 1999, the European Council is to replace the national currencies with a single currency, presumably the ECU, an artificial currency unit.<sup>182</sup>

173. Goebel, *supra* note 1, at 1110.

174. *Id.* See TEU art. G. For the EMU provisions, see ECT arts. 102a-109m.

175. TEU art. J. Under Article J, the European Council sets the guidelines on foreign and security policy which the Council is to execute in a specific way, usually with a unanimous vote and sometimes with a qualified majority vote. *Id.* See *infra* app. 1.F.

176. TEU art. K. Article K asks for coordination and cooperation in justice affairs. *Id.* The Council is to act pursuant to a unanimous vote, unless the Council decides unanimously to adopt implementing measures by a qualified majority vote. See Goebel, *supra* note 1, at 1110 n.72. The Court of Justice, under Article L of the TEU, does not have jurisdiction—with one exception—over issues arising under Articles J and K of TEU. *Id.* See also *infra* app. 1.G.

177. ECT arts. 3a(1), 109f(1)-(2).

178. *Id.* art. 109f(1)-(2).

179. *Id.* art. 3a (addressing activities regarding economic and monetary union).

180. BERMANN ET AL., *supra* note 1, at 17.

181. *Id.* See also ECT arts. 4, 105-109b.

182. BERMANN ET AL., *supra* note 1, at 17. The UK protested and the Maastricht European Council decided that the UK could opt out of the monetary control exercised by the European Central Bank and out of the single currency system for as long as it wished, but without prejudice to joining in at a later date. *Id.*

## 2. *Expansion of Authority and Political Dimensions*

The TEU reflects the commitment of Member States to pursuing strategies of: (1) expanding the Union's arenas of activities; (2) making more efficient its decision-making processes; and (3) enhancing the structure for a common foreign and security policy.<sup>183</sup> The TEU expands the Union's influence to such matters as immigration, border, drug and crime control, and cooperation in justice;<sup>184</sup> public health;<sup>185</sup> education;<sup>186</sup> culture;<sup>187</sup> consumer protection;<sup>188</sup> research and technological development;<sup>189</sup> development cooperation with developing countries;<sup>190</sup> and trans-European networks.<sup>191</sup> Also, the TEU expands political cooperation among the nations of Europe and brings such cooperation to the level of the Union itself.<sup>192</sup>

The key procedural reform is the adoption of qualified majority voting.<sup>193</sup> The United Kingdom strongly opposed the application of such voting to it in the area of social legislation—e.g., labor regulation—and a compromise was struck in the form of a Protocol on Social Policy.<sup>194</sup> The Protocol enables the other eleven Member States to adopt social legislation by a qualified majority vote without that legislation applying to Britain.<sup>195</sup>

Substantive reforms include the grant of greater powers to Parliament and new provisions for European citizenship and civil rights.<sup>196</sup> The TEU gave Parliament the right to approve appointments to the Commission and to request the Commission to initiate legislative proposals.<sup>197</sup> The TEU expands Parliament's legislative role under the SEA "cooperation procedure" to new arenas and enhances its role in other arenas, such as the completion of the internal market.<sup>198</sup> It further gives Parliament a new "co-decision" process which operates as an

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183. TEU art. J.

184. *Id.* art. K.

185. ECT tit. X.

186. *Id.* tit. VII.

187. *Id.* tit. IX.

188. *Id.* tit. XI.

189. *Id.* tit. XV.

190. ECT tit. XVII.

191. *Id.* tit. XV.

192. TEU tit. V (Entitled Provisions for a Common Foreign and Security Policy).

193. BERMANN ET AL., *supra* note 1, at 16.

194. *Id.*

195. *Id.*

196. See ECT arts. 140, 143, 144, 189-189c.

197. *Id.* arts. 189-189c.

198. BERMANN ET AL., *supra* note 1, at 18.



effective veto over new legislation from the Commission.<sup>199</sup>

The TEU also devised the concept of European citizenship and grants rights to citizens of the European Union.<sup>200</sup> Those rights include the right to vote in and stand for local elections in one's place of residence, the right to travel freely within the territory of the union and the right to petition the European Parliament.<sup>201</sup>

### 3. *New Members*

Other countries have recently joined the Union. Austria, Finland, Norway and Sweden signed Treaties and Final Acts at Corfu on June 23, 1994.<sup>202</sup> However, while the people of Austria, Finland and Sweden affirmed the decision of their governments to become Member States, the Norwegian populace did not.<sup>203</sup> Consequently, on January 1, 1995, Austria, Finland and Sweden joined the European Union after agreeing to be bound by the TEU,<sup>204</sup> and the total number of Member States increased to fifteen.<sup>205</sup> The Union population has now grown to 370 million people.<sup>206</sup> Other nations may file or have filed applications.

Political changes in central and eastern Europe yielded newly independent nations—Czechoslovakia, Hungary, Poland and Romania. Other countries, including Switzerland, Turkey, Malta and Cyprus, have filed formal application for admission.<sup>207</sup>

The European Free Trade countries and the EEC enhanced their relationship<sup>208</sup> pursuant to the European Economic Area

199. ECT arts. 189-189c.

200. *Id.* arts. 8-8c.

201. *Id.*

202. Bull. EC 6-1994, at 86. See Dierk Booss & John Forman, *Enlargement: Legal and Procedural Aspects*, 32 COMMON MKT. L. REV. 95 (1995).

203. Goebel, *supra* note 1, at 1093.

204. *Id.* The Council stated that accession could occur only if the applicant state accepted the Maastricht Treaty. 25 Bull. EC 6-1992, at 10. This meant that even though the United Kingdom and Denmark had, by separate Protocols, opted out of the third stage of the European and Monetary Union provisions, Austria, Finland, Norway and Sweden could not. Goebel, *supra* note 1, at 1114. None of these applicants could invoke neutrality grounds to opt out of the Common Foreign and Security Policy. *Id.*

205. Goebel, *supra* note 1, at 1093.

206. *Id.* at 1095.

207. BERMANN ET AL., *supra* note 1, at 19.

208. Both EFTA and the Community are each other's main trading partners. Goebel, *supra* note 1, at 1105-06. Presently, EFTA's members are Iceland, Liechtenstein, Norway and Switzerland. *Id.* at 1103. Denmark, Portugal and the United Kingdom, original members of EFTA, subsequently joined the EC. *Id.*

A description of EFTA and its relationship with the Community is set out in

Agreement (the "EEA Agreement") signed in May of 1992<sup>209</sup> and ratified in 1993 by all signatories except Switzerland.<sup>210</sup> As of January 1, 1994, there is a new common market called the European Economic Area (the "EEA").<sup>211</sup> The agreement opens the Community markets to those non-EC states that accept Community legislation in sectors including trade, competition policy, environmental and consumer protection, securities, banking and insurance law, and social policy.<sup>212</sup> The Agreement even requires financial contributions by the EFTA States for lesser-developed Community regions.<sup>213</sup> Some believe that this agreement will pave the way for full membership by current non-EC nations.<sup>214</sup>

#### 4. *The Current Climate*

Three significant factors appear to have coalesced in the 1992-1995 time period that created cynicism within the population of the Union. The first was the political dimension. Resistance to the TEU grew both from opposition to the leadership of governments supporting the TEU and stiff political debate about the TEU, particularly in the United Kingdom.<sup>215</sup> The second was severe monetary fluctuations in France, thereby weakening confidence in monetary exchanges and slowing the process of establishing the European and Monetary Union.<sup>216</sup> The third was the unemployment plaguing almost all of western Europe.<sup>217</sup>

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E.P.M. Gardener, *The European Free Trade Association and the European Community*, 25 INT'L LAW. 187 (1991).

209. Goebel, *supra* note 1, at 1099 n.25 (citations omitted). The Commission submitted the draft EEA Agreement for prior review to the Court of Justice. *Id.* at 1104. The Court required amendments in order to ensure the supremacy of its own precedents and confirmed its view that the European Economic Community Treaty "constitutes the constitutional character of a Community based on the rule of law." *Id.* (citing European Economic Area Opinion 1/91, 1 C.M.L.R. 245 (E.C.J. 1991)).

210. The people of Switzerland narrowly denied (by a 50.3% vote) approval and Switzerland could not participate in the EEA Agreement. Goebel, *supra* note 1, at 1105-06.

211. Goebel, *supra* note 1, at 1105-06 (citing Bull. EC 1/2-1994, at 69-70).

212. *See id.* at 1107. The EFTA States, with the exception of Switzerland, agreed to accept pertinent Community measures adopted between August 1, 1991 and December 31, 1993. *Id.* at 1107 n.63 (citing Decision of the EEA Joint Committee Decision No. 7/94, Bull. EC 6-1994, at 87).

213. *Id.* at 1107. The contributions are to a Community cohesion fund which is to help lesser-developed regions of the Community meet the challenges of competitive pressures of a completed internal market. *Id.*

214. *Id.*

215. *Id.*

216. Goebel, *supra* note 1, at 1107.

217. *Id.*

The cynicism settled somewhat after Austria, Finland and Sweden joined the Union, thereby sparking a higher level of confidence that the Union will proceed toward its goals.<sup>218</sup>

### *E. Conclusion*

In four decades, western Europe has, by the force of economics, united along economic, social and political venues. Economic cooperation has led to political union which is rapidly developing into formalized status. With Europe in the process of implementing the European Community Treaty, the 20th century concludes in Europe with a structured economic union and the clear probability of some form of political unity. Many forces, some yet unseen, will test and challenge the Union. Although the authors believe the Union's structure is sound, the scope of this Article does not appropriately lend itself to discussion or analysis of the great challenges the Union faces.

## PART TWO: THE LAW OF THE EUROPEAN COMMUNITY

Two principles pervade all aspects of the law in the Union—the rule of law and democracy. The European Union operates within a highly structured and principled legal environment, which in turn reflects the traditional commitment to the rule of law of its Member States. All the activities of both the individual Member States and the European Union must be legitimate both from a legal and a democratic perspective.<sup>219</sup>

The European Union is not founded on a single “constitution” but on three separate treaties.<sup>220</sup> Its primary and secondary sources of law consist of these three founding treaties, other treaties, and various legal instruments and customs.<sup>221</sup> All of the written documents are bound together by fundamental values.

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218. *Id.* at 1113-15.

219. On April 5, 1977, the Community reaffirmed its commitment to democracy when the European Parliament, the Council and the Commission issued a Joint Declaration on Fundamental Rights and the heads of Member States joined in a Declaration on Democracy. MATHIJSEN, *supra* note 1, at 11. In the Declarations, the parties confirmed their commitment to ensure that the values of their legal, political and moral order were respected and to safeguard the principles of representative democracy, the rule of law, social justice and respect for human rights. *Id.* The parties noted that “the application of these principles implies a political system of pluralistic democracy.” *Id.*

220. *See infra* Part IIA.

221. *See id.*

### A. Primary Sources of Law

The primary sources of law of the EC are three basic treaties which created the ECSC, Euratom and the EEC. Other treaties also comprise the primary sources, including accession treaties with new Member States, budgetary treaties, trade association agreements with third countries, and legally binding acts adopted by the Community institutions.<sup>222</sup>

#### 1. The Basic Treaties

The three basic treaties and their amendments create legal institutions and procedures that are independent of those of the Member States.<sup>223</sup> Member States have continuously streamlined Union institutions and processes of law for almost four decades<sup>224</sup> culminating in important changes pursuant to the 1992 Maastricht Treaty.<sup>225</sup> Even the adoption of the names "European Union" and "European Community" reflect a consciousness about operating as an independent entity.<sup>226</sup>

Occasionally, the basic treaties are referred to as "constitutive treaties," but they are not constitutions in the true sense.<sup>227</sup>

222. BERMANN ET AL., *supra* note 1, at 27.

223. *Id.* at 22.

224. *Id.* In 1957, in order to avoid duplication of institutions, the Community entered into a convention establishing a single Assembly (later, the Parliament) and a single Court of Justice for all three Communities. *Id.* at 23. In 1965, in order to eliminate duplication, the Member States executed a "Merger Treaty" which combined the ECSC High Authority and the Commissions of the EEC and Euratom into a single Commission of the European Communities and merged the Councils of the three communities into a single Council. See Treaty Establishing a Single Council and a Single Commission of the European Communities, 1967 O.J. (L 152) 1.

225. See *infra* apps. 1 & 2. When the TEU modified the Community's institutional structures, the TEU amended each of the basic treaties; the basic treaties were not replaced with a new treaty. BERMANN ET AL., *supra* note 1, at 24. The Member States decided in 1991 that the ECSC Treaty will be allowed to lapse when it expires in 2002 and then the EEC Treaty will govern the industries currently regulated under the ECSC Treaty. *Id.* While Euratom will continue its existence until abolished, it is now part of the European Union with the European Community as the key focus. *Id.*

226. After the "mergers" in 1958 and 1965, the Community institutions described themselves as a single "European Economic Community." BERMANN ET AL., *supra* note 1, at 18. After the TEU was signed in Maastricht, the description of "European Community" was adopted, reflecting the expansion of the Community into non-economic arenas such as defense, the environment, etc. *Id.*

227. BERMANN ET AL., *supra* note 1, at 22. Illustrative of the basic treaties' constitutive nature is their treatment by the Court of Justice. Although the basic treaties are separate, the court may consult one as an interpretative aid to another. See, e.g., Case 13/60, Geitling Ruhrkohlen Verkaufsgesellschaft mbH v. High Auth., 1962 E.C.R. 83. The court has also explicitly referred to the EEC Treaty as the

Rather, these treaties are products of international agreements and consequently must be appropriately ratified by the people of each Member State.<sup>228</sup> If a country's constitution or legislation does not permit the transfer of "competences" or power provided under the treaties, that country has to cause appropriate changes in its law or constitution.<sup>229</sup>

## 2. Accession Treaties

Another source of primary law is accession treaties. Accession treaties are the vehicles by which applicants for membership become new Member States.<sup>230</sup> The Union's requirements of accession mandate actions by the applicant, the institutions of the Union—Council, Commission and Parliament—and each Member State.<sup>231</sup> All applicants must agree to the Act of Accession which contains the Community's terms and conditions of accession.<sup>232</sup> The Council has to unanimously approve an application for admission,<sup>233</sup> following a favorable opinion of the Commission and the approval of a majority of Parliament.<sup>234</sup> Finally, since an accession treaty is entered into between the applicant state and the existing Member States—not the Community or the Union as an entity—each Member State must ratify the accession treaty in accordance with its own national procedures.<sup>235</sup>

Accession of new states are governed by the principle—*acquis communautaire*.<sup>236</sup> This French term means that when nations become Member States, they are not to question or substantially modify the institutional structure, scope, policies or rules of the Community—and now the Union.<sup>237</sup>

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Community's "basic constitutional charter." See Case 294/83, Parti ecologiste "Les Verts" v. Parliament, 1986 E.C.R. 1339.

228. BERMANN ET AL., *supra* note 1, at 22 n.2. In this context, each signatory nation must follow its own constitutional procedure to be a party to such agreement. TEU art. R(1).

229. BERMANN ET AL., *supra* note 1, at 22.

230. TEU art. O.

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.*

235. TEU art. D.

236. Goebel, *supra* note 1, at 1095.

237. *Id.* The *acquis communautaire* was first recognized when Denmark, Ireland and the United Kingdom joined the Community. *Id.* at 1095-96. Then, after the Hague Summit of Heads of State and Government, on December 1-2, 1969, affirmed the principle it became a fundamental basis of accession agreements. *Id.* at 1096 nn.11-12 (citing Act Concerning the Conditions of Accession and the Adjustments to

The TEU formalized the concept of *acquis communautaire* as a stated Community objective.<sup>238</sup> In a 1992 report, the Commission expanded the applicability of *acquis communautaire* in order to encompass "the contents, principles and political objectives of the Treaties, including the [TEU]."<sup>239</sup> The Commission also considers decisional law of the Court of Justice to be on par with treaties, legislation, declarations, and resolutions.<sup>240</sup> New Member States must accept the TEU's controversial Economic and Monetary Union and the Common Foreign and Security Policy.<sup>241</sup> This broader approach to *acquis communautaire* was accepted in the terms of the 1994 Act of Accession whereby Austria, Finland and Sweden joined the Union.<sup>242</sup>

### 3. Budgetary Treaties

The treaties on budgetary matters sped the movement of Member States from a loose confederation of nations to partners operating as a community.<sup>243</sup> For example, the First Budgetary Treaty of 1970 changed the system of financing the community from one requiring Member States to make individual contributions to one giving the European Economic Community its own resources through the collection of duties, tariffs, etc.<sup>244</sup> The budgetary treaties function as the economic cement that keeps the Community together during economically difficult times.

### 4. Amendments

Amendments to the treaties likewise become a primary source of law.<sup>245</sup> Member States or the Commission may propose

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the Treaties, 1972 O.J. (L 73) 5 (Denmark, Ireland, Norway and the United Kingdom), Act Concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties art. 4, 1979 O.J. (L 291) 17 (Greece), and Act Concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Adjustments to the Treaties arts. 2-5, 1985 O.J. (L 302) 23 (Spain and Portugal)).

238. See TEU art. B.

239. Goebel, *supra* note 1, at 1096 (citation omitted).

240. *Id.*

241. *Id.*

242. *Id.* See *supra* Part I.D.3. for a discussion of this Act of Accession.

243. DINAN, *supra* note 1, at 417.

244. MATHIJSEN, *supra* note 1, at 9 (citations omitted). The "own resources system" became effective on January 1, 1971, after ratification by the six national Parliaments. *Id.* The First Budgetary Treaty was followed by a Second Budgetary Treaty of 1975 which gave Parliament limited budgetary powers. BERMANN ET AL., *supra* note 1, at 25.

245. An amendment process governs the process of amendment of any treaty the Union has or may enter. See TEU art. N. Interestingly, Article N of the TEU

amendments and Council, after consulting Parliament and the Commission, may convene a conference of representatives from the Member States to consider proposed amendments.<sup>246</sup> All amendments to the basic treaties must be ratified by the Member States.<sup>247</sup>

### B. *Secondary Sources of Law*

The secondary sources of law for the European Community are the legally binding acts adopted by the institutions of the Community. These sources include the treaties to which the community itself is a party—treaties with third countries and “conventions” or agreements among Member States. However, there is due regard for the autonomy of each Member State in the doctrine of subsidiarity.<sup>248</sup> Secondary sources of law also include regulations, directives and decisions issued by the Council or the Commission and the acts of the Community institutions pursuant to their exercise of “special powers” or “implied powers.” Finally, secondary sources include the decisions of the European Court of Justice.

#### 1. *Treaties with Third Countries and Conventions*

Occasionally, the European Community, as an entity, enters into treaties with other nations. Such agreements include the trade and association agreements with third countries.<sup>249</sup> These agreements constitute some of the Community’s secondary sources of law.

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provides for an intergovernmental conference to be held in 1996 to consider further amendments to TEU. *See id.*

246. TEU art. N. Council can convene such a conference with majority, not unanimous, consent of its members. EEC TREATY art. 148(1). Once such a conference is convened, however, participants are required to act for the common good of the Community. BERMANN ET AL., *supra* note 1, at 26. In 1985, Council convened the Luxembourg Conference that produced the SEA over the minority objection of Denmark, Greece and the United Kingdom. *Id.* The three countries agreed to the SEA. *Id.*

247. BERMANN ET AL., *supra* note 1, at 26.

248. *See infra* Part II.B.2 for a discussion of the subsidiarity doctrine.

249. *See* EEC TREATY arts. 113, 238 (authorizing such agreements). *See also* BERMANN ET AL., *supra* note 1, at 27 (citing Case 12/86, *Demirel v. Stadt Schwabisch Gmund*, 1987 E.C.R. 3747 (interpretation of Articles 7 and 12 of the Association Agreement between the EEC and Turkey—freedom of movement of workers), Case 104/81, *Hauptzollant Mainz v. C.A. Kupferberg & Cie K.G.a.A.*, 1982 E.C.R. 3641 (interpreting the free trade agreements with EEC—tax discrimination) and Case 181/73, *Haegeman v. Belgian State*, 1974 E.C.R. 449 (interpreting the agreement of association between EEC and Greece regarding the importation of wine from Greece into Belgium and Luxembourg)).

Conventions are measures agreed to by Member States without the imprimatur of the European Community through its institutions.<sup>250</sup> Member States are authorized "so far as is necessary" to negotiate reciprocal agreements regarding nondiscrimination against Community citizens, taxation of multinational entities, corporate recognition, and the enforcement of judgments and arbitral awards.<sup>251</sup>

In some instances, agreed-to conventions are not in force; in others, they are. For example, a Convention on the Mutual Recognition of Companies and Legal Persons, signed on February 29, 1968, and a Patent Convention,<sup>252</sup> signed on December 15, 1975, are not yet in force.<sup>253</sup> On the other hand, the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters—more commonly known as the Brussels Convention<sup>254</sup>—governing the jurisdiction and enforcement of foreign judgments in the courts of Member States, is considered Community law.<sup>255</sup> The Brussels Convention limits the jurisdictional bases the Member State courts can invoke against nationals of other Member States and obligates Member State courts to enforce the judgments of other Member State courts whenever certain minimal conditions are met.<sup>256</sup> In 1975, the Member States entered into a Protocol to the Convention conferring jurisdiction on the Court of Justice to render preliminary rulings on the interpretation of this Convention.<sup>257</sup>

## 2. *Subsidiarity Doctrine*

The doctrine of subsidiarity allows Member States to legislate internally on matters normally within the purview of Community law, if internal law is an equally effective means of achieving Community goals.<sup>258</sup> There are two sides to the subsidiarity doctrine coin: when Community objectives can be satisfactorily attained by individual action of Member States, the Member

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250. BERMANN ET AL., *supra* note 1, at 27-28.

251. *Id.* at 28.

252. Community Patent Convention, Dec. 15, 1975, 1976 O.J. (L 17) 1.

253. BERMANN ET AL., *supra* note 1, at 28-29 & n.8 (citations omitted).

254. *Id.*

255. *Id.* at 28 (citing Joined Cases 9 & 10/77, Bavaria Fluggesellschaft Schwabe & Co. KG and Germanair Bedarfsluftfahrt GmbH & Co. KG v. Eurocontrol, 1977 E.C.R. 1517).

256. *Id.*

257. *Id.* (citing Protocol Concerning the Interpretation by the Court of Justice of the Convention of 27 Sept. 1968 on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, 1975 O.J. (L 204) 32).

258. BERMANN ET AL., *supra* note 1, at 46.



States may act; where Community objectives cannot be satisfactorily attained by individual action of the Member States, it is appropriate for the Community to act.<sup>259</sup> In other words, the Community has jurisdiction "subsidiary" to that of the individual Member States.<sup>260</sup>

The concept of "subsidiarity" was first explicitly provided for in the 1987 SEA in the area of environmental regulation.<sup>261</sup> Now, subsidiarity is a formal limitation on all Community law.<sup>262</sup> If the Community does take action, Community action "shall not go beyond what is necessary to achieve the objectives of this Treaty."<sup>263</sup> Subsidiarity is now, the authors suggest, a critical consideration for the Community in deciding whether to exercise its authority.

### 3. *Other Authority for Actions by Community Institutions*

The three founding treaties do not confer on the Community and its institutions any "general power to take all measures necessary to achieve the objectives of the treaty." Authority to act was either based on "special powers" expressly conferred by the treaties or "implied powers" under Article 235 of the ECT.<sup>264</sup> The TEU also gives Community institutions broad powers in new areas.<sup>265</sup>

#### a. *Special Powers*

Each treaty confers "special" powers depending on the nature of the tasks assigned.<sup>266</sup> Great powers are given in the transportation area where any appropriate provisions may be enacted,<sup>267</sup> in agricultural policy,<sup>268</sup> and with regard to freedom of

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259. *Id.*

260. *Id.*

261. *Id.* The SEA formally granted the European Community legislative powers over environmental policy. EEC TREATY arts. 130r-t. However, such powers were to be exercised when the environmental objectives could be achieved better at the Community level than at the level of the Member States. *Id.* art. 130r(4). Denmark and Germany urged the adoption of this provision because they both feared that a Community-wide environmental policy might lower their national environmental standards. BERMANN ET AL., *supra* note 1, at 46.

262. *See* ECT art. 3b.

263. *Id.*

264. *See* EEC TREATY art. 235. "The SEA and TEU have [substantially] reduce[d] the need for Article 235." BERMANN ET AL., *supra* note 1, at 31.

265. TEU art. D; ECT art. 4.

266. *See* ECT art. 75(1).

267. *Id.* art. 75(1)(a).

268. *Id.* art. 43.

movement of workers.<sup>269</sup> However, limited authority is given in the area of competition law.<sup>270</sup>

### *b. Implied Powers*

The Community treaties also grant, in addition to certain special powers to act, "implied powers" to act when necessary to attain one of the objectives of a treaty.<sup>271</sup> These powers have enabled the Commission to act in areas that treaties did not address, such as price regulation,<sup>272</sup> the environment,<sup>273</sup> and in external affairs with regard to non-Member States.<sup>274</sup>

### *c. New Powers*

The TEU also builds on the powers conferred by the three original treaties. The European Community can now exercise new powers relating to the internal market and other social, cultural and political matters.<sup>275</sup> Euratom's powers remain confined to the economic aspects of research and safety in relation

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269. *Id.* art. 48.

270. *Id.* arts. 85-94.

271. *See* ECT art. 235. Article 235 provides:

If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.

*Id.* Article 235 does not confer on the institutions any general power enabling them to carry out tasks which are outside the objectives laid down in the treaties. *See id.*

272. BERMANN ET AL., *supra* note 1, at 24, 31 (citing Case 8/55, Federation Charbonniere de Belgique v. High Auth. ("Fedechar"), 1956 E.C.R. 245). In *Fedechar*, a federation of Belgian coal producers challenged a regulation issued by the High Authority which fixed the price of Belgian coal, arguing that the ECSC Treaty did not authorize price fixing by the High Authority. *Fedechar*, 1956 E.C.R. at 247. The Court ruled for the High Authority, finding that it has the implied powers to take actions necessary in order to effectuate the goals of Article 26 of the ECSC, and that price fixing was an appropriate exercise of such powers. *Id.* at 299-304.

273. The Commission has acted to protect the environment and consumers through the establishment of a European Regional Fund which is designed to support programs that "close the gap" between the developed and underdeveloped regions of the Community. Other areas in which the Commission has acted under its implied powers include the establishment of the European Monetary Cooperation Fund and research programs outside the European Atomic Energy Community. The Community was specifically given jurisdiction in these fields by the SEA.

274. The Court of Justice held that the Community has the implied power to cooperate with international organizations in fixing fishing quotas and to assume obligations under international law. Case 76/3, Cornelis Kramer and Others, 1976 E.C.R. 1279. The Court inferred the necessary external competence of the Community from its competence for fisheries under the common agricultural policy. *Id.*

275. *See* ECT arts. 102a-130y.

to the peaceful use of nuclear energy and the common market in nuclear materials and equipment.<sup>276</sup> The ECSC remains competent for questions affecting the common market in coal and steel until it expires in the year 2002.<sup>277</sup> The TEU adds specific powers for the European Union in matters of common foreign and security policy and justice and home affairs.<sup>278</sup>

#### 4. *Decisions of the European Court of Justice*

A key source of "secondary law" is the law derived from the decisions of the European Court of Justice. The court has express powers to review actions by or requests from Community institutions as well as individuals or legal persons affected by the actions of such institutions.<sup>279</sup>

The European Court of Justice has also announced its own doctrines which include "unwritten general principles of law," derived from continental administrative law standards and certain fundamental rights—such as basic human rights—that the court requires all Community institutions, Member States and other parties to respect.<sup>280</sup> The "principles of law" and "fundamental rights" include the principles of or concerns for proportionality, supremacy, equal treatment, legal certainty, non-retroactivity, and legitimate expectations.<sup>281</sup> They also include the protection of "fundamental rights" that the court has recognized—rights which are typically more political or social than economic in character and include what are termed "human rights."

#### C. *Conclusion*

Two principles that thread through all aspects of the law in the Community are a commitment to the rule of law and to democracy. All the activities of both the individual Member States as well as the European Community must be legitimate from a legal and democratic view.

The law of the European Community consists of primary and secondary sources of law. The primary sources of law for the European Community include the three basic treaties creating the ECSC, EEC and Euratom, other basic treaties, such as ac-

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276. TEU art. I.

277. BERMANN ET AL., *supra* note 1, at 24.

278. TEU arts. J-K.

279. See ECT arts. 164-188.

280. See *infra* Part III.D. for a discussion of the Court of Justice.

281. See *id.*

cession treaties with new Member States and budgetary treaties and amendments to the basic treaties.

The secondary sources of law for the European Community are the legally binding acts adopted by the institutions of the Community. These sources include the treaties to which the community itself is a party, e.g., treaties with third countries and "conventions" or agreements among Member States. Secondary sources of law also include regulations, directives and decisions issued by the Council or the Commission as well as the acts of Community institutions pursuant to their exercise of "special powers" or "implied powers." The doctrine of subsidiarity, though, is a limitation to the legitimate actions of the Community and of its institutions. Finally, the law derived from the decisions of the European Court of Justice is a key source of secondary law. The court has express powers to review action by or requests from Community institutions and individuals or legal persons affected by the actions of such institutions and has announced its own doctrines which include unwritten general principles of law and certain fundamental rights—including basic human rights—that the court requires all Community institutions to respect.

### PART THREE: THE INSTITUTIONS OF THE EUROPEAN COMMUNITY<sup>282</sup>

The Community's institutional structure is composed of common institutions that have been established by and derive their power from the three separate treaties, as amended.<sup>283</sup> The tasks of the Community are to be carried out by: (1) a European Parliament; (2) a Council of Ministers; (3) a European Commission; (4) a Court of Justice; and (5) a Court of Auditors.<sup>284</sup>

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282. See DINAN, *supra* note 1, at 199-314. Other sources of the information discussed in this Part of this Article include DOMINIK LASOK & JOHN W. BRIDGE, AN INTRODUCTION TO THE LAW & INSTITUTIONS OF THE EUROPEAN COMMUNITIES (3d ed. 1987) and DOMINIK LASOK & JOHN W. BRIDGE, LAW & INSTITUTIONS OF THE EUROPEAN COMMUNITIES (5th ed. 1991).

283. The treaties are the ECSC, Euratom and EEC Treaty as amended by the TEU, which enhanced the powers of some of the institutions. See *supra* Part II.A.1. References in this Part continue to be to ECT, which is the EEC Treaty as amended by TEU.

284. DINAN, *supra* note 1, at 295. In addition, there also exists the Economic and Social Committee, Committee of the Regions, Court of First Instance, and European Investment Bank. *Id.*

### A. *The European Parliament*<sup>285</sup>

Originally known as the Assembly, the European Parliament consists of representatives of the people of the Member States.<sup>286</sup> Prior to 1979, the members were delegates from the respective national parliaments.<sup>287</sup> Since then, the members have been elected by direct universal suffrage in a uniform procedure.<sup>288</sup> Currently, the European Parliament totals 624 members.<sup>289</sup>

Meeting sessions are held annually.<sup>290</sup> Parliamentary action at such meetings is by absolute majority (except where otherwise provided by provisions of ECT).<sup>291</sup> A large portion of the Parliament's workload is prepared and implemented by various Parliamentary committees.<sup>292</sup>

Citizens, however, may petition the Parliament,<sup>293</sup> and an Ombudsman appointed by the Parliament is to receive complaints from citizens concerning Community institutions, except the Courts of Justice and of First Instance acting in their judicial roles, and to investigate these complaints or to investigate on its own.<sup>294</sup>

Parliament has no decision-making authority over legislation and acts in an essentially advisory/supervisory role.<sup>295</sup> Council, however, is required in several instances to act "in cooperation with the European Parliament."<sup>296</sup> By a complicated "cooperation procedure,"<sup>297</sup> Council, acting by a qualified majority, may adopt a "common position" subsequent to the receipt of a proposal from the Commission and the opinion of the European Parliament in the normal manner.<sup>298</sup> Parliament is then given the opportunity to reply before Council takes any final action by suggesting amendments that the Commission may incorporate

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285. See ECT arts. 137-144.

286. *Id.* art. 137.

287. *Id.* art. 138(1).

288. *Id.* art. 138(3).

289. Goebel, *supra* note 1, at 1130-31. The 1989-1994 Parliament membership of 518 increased to 624 in 1995 as a result of the addition of Austria (20 members), Finland (16 members) and Sweden (21 members) and Council Decision 93/81. *Id.*

290. ECT art. 139.

291. *Id.* arts. 141-142.

292. Goebel, *supra* note 1, at 1130-31.

293. ECT art. 138d.

294. *Id.* art. 138e(1).

295. *Id.* art. 138b.

296. See, e.g., *id.* arts. 7, 49, 54(2), 56(2), 57, 100a, 100b, 118a, 130e, 130q(2).

297. See *id.* arts. 189-189c. See also *infra* Part III.C.

298. See ECT arts. 189-189c.

into its re-examination proposal.<sup>299</sup> Council must then act by unanimity if it wishes to amend this re-examined, i.e., Parliament-amended, proposal.<sup>300</sup>

Parliament has important supervisory powers and thus, political control over the Commission. The Commission is required to respond to Parliamentary questions<sup>301</sup> and must present an annual report for debate in the Parliament.<sup>302</sup> The Commission may be compelled to resign as a body subsequent to a Parliamentary motion of censure.<sup>303</sup> Though its role is still considered primarily advisory, the Parliament has, at least, been given shared decision-making authority over the budget.<sup>304</sup> Parliamentary assent is a requisite for the conclusion of association agreements.<sup>305</sup>

### B. *The Council*<sup>306</sup>

The Council is to ensure that the objectives of the treaty are attained.<sup>307</sup> Consequently, as a Community institution, the Council must always act in the Community's interests.

Council is composed of a representative of each Member State at the ministerial level who is authorized to commit the government of that State.<sup>308</sup> The office of President is held in turn by each Member State in the Council for a term of six months in a predetermined, modified alphabetical order, with the President being served by representatives from the immediate past and next presidents' staffs.<sup>309</sup>

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299. *See id.*

300. *See id.*

301. *Id.* art. 140.

302. *Id.* art. 143.

303. ECT art. 144.

304. *Id.* art. 228, ¶ 3. This "power" is in conjunction with that of the Commission.

305. *Id.*

306. *Id.* arts. 145-148, 150-154.

307. *Id.* art. 145.

308. ECT art. 146.

309. *See id.* art. 146, amended by the Act Concerning the Conditions of Accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the Adjustments to the Treaties on Which the European Union is Founded art. 12, 1994 O.J. (C 241) 21. When Austria, Finland and Sweden joined, the rotation system changed from a strict alphabetical one to one which required one of the five largest states to assume the presidency at least once in every third six-month period. Goebel, *supra* note 1, at 1127-28 (citing Council Decision of 1 Jan. 1995, art. 1(1), 1995 O.J. (L 1) 220). This is designed to give the largest states the presidency more often and to assure that one of the largest states is always a participant in the three-person system of leadership. *Id.* at 1128-29.

Council meetings occur when they are convened by its president or at the request of a member of the Commission.<sup>310</sup> The work of the Council is prepared by a Committee of Permanent Representatives of the Member States.<sup>311</sup> Council is assisted by the General Secretariat, under the direction of a Secretary-General.<sup>312</sup>

Council actions require a unanimous vote, and occasionally a simple majority vote or a weighted qualified majority vote.<sup>313</sup> Unanimity becomes more difficult with the addition of each new Member State so there is movement away from decisions requiring a unanimous vote.<sup>314</sup> Council acts by simple majority when adopting its own rules of procedure or in voting to request the Commission to present a proposal for legislation.<sup>315</sup>

A qualified majority vote is used to enact most legislation regulating the internal market, consumer protection<sup>316</sup> or the environment,<sup>317</sup> or moving to the next phase of the EMU.<sup>318</sup> In qualified majority voting, a Member State's vote is weighted, in part, by its economic power and population, with a modicum of fairness to the smaller states whose populations are greatly undersized in comparison to the larger Member States.<sup>319</sup> France, Germany, Italy and the United Kingdom each have a maximum of ten votes, Spain has eight votes, Belgium, Greece, the Netherlands and Portugal each have five votes, Denmark and Ireland have three votes, and Luxembourg has two votes.<sup>320</sup> With the 1995 entrance of three new Member States—Austria and Sweden with four votes each and Finland with three votes—the total number of weighted votes is eighty-seven.<sup>321</sup> Generally, there are five large states with eight to ten votes each, six medium-sized states with four to five votes each,

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310. ECT art. 147.

311. *Id.* art. 151.

312. *Id.*

313. *Id.* art. 148. See Goebel, *supra* note 1, at 1120.

314. Goebel, *supra* note 1, at 1121.

315. *Id.* at 1120. Article 151 of the ECT does not require a qualified majority vote when Council adopts its rules of procedure. *Id.* at 1120 n.113 (citing ECT art. 151). Article 152 of the ECT does not require a qualified majority vote when Council makes the requests to the Commission. *Id.* (citing ECT art. 152). Therefore, under Article 148(1) of the ECT, Council may act by a simple majority because no other majority is stated. *Id.* (citing ECT art. 148(1)).

316. ECT art. 129a.

317. *Id.* art. 130s.

318. *Id.* art. 109(f)(1). For the phases of the EMU, see *supra* Part I.D.1.

319. Goebel, *supra* note 1, at 1122.

320. *Id.*

321. *Id.* at 1123.

and four small states with two to three votes each.<sup>322</sup>

The unsettled issue is the number of votes that constitutes a qualified majority vote after the 1995 increase. This issue is critical because the TEU authorizes Council to make many more decisions by qualified majority instead of unanimous decision.<sup>323</sup> While the Heads of State and Government regard a qualified voting majority at somewhere about the two-thirds mark to ensure that a number of large states back the measure, the large states balked in the early 1990's because they did not want to be outvoted.<sup>324</sup>

The deadlock was broken by the Joanina Convention that established that if a negative vote on any proposal hits the current blocking minority figure of twenty-three but is less than the new blocking minority of twenty-seven, the Council "will do all in its power to reach, within a reasonable time . . . a satisfactory solution that could be adopted by at least 68 votes."<sup>325</sup> Yet, the future operation of Council in close votes is still not clear due to the ambiguity of the terms "reasonable" and "all in its power" in the Joanina Compromise, Council's characterization of the Compromise as a "political declaration"<sup>326</sup> and the planned examination of this issue at the 1996 Intergovernmental Conference.<sup>327</sup>

Although Council is the decision-making body, it can only act, in most instances, on a Commission proposal and often only after consultation, or action in accordance with the Parliament.<sup>328</sup> Council may also request the Commission to under-

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322. *Id.*

323. *Id.* The drafters of the TEU sought to make Council more efficient and democratic by displacing unanimity with qualified majority votes on legislative matters. *Id.*

324. Goebel, *supra* note 1, at 1121.

325. *Id.* At a Council meeting at Joanina, Greece, on March 26-27, 1994, the leaders designed a compromise to resolve the deadlock as to the number and kind of votes that constituted a qualified majority vote. Council Decision of 29 Mar. 1994, art. 1, 1994 O.J. (C 105) 1.

326. The resolution is somewhat ambiguous because the terms "a reasonable time is" and "all in its power" are not defined. Goebel, *supra* note 1, at 1126. Council criticized the Joanina Compromise as a "political declaration," questioning its legally binding impact. *Id.* (citations omitted).

327. Goebel, *supra* note 1, at 1126 n.131 (citations omitted).

328. ECT arts. 145, 153. Articles 189b and 189c of the ECT establish different procedures for the adoption of an act. *Id.* arts. 189b-189c.

When Council acts on a proposal from the Commission, unanimity is required for an act constituting an amendment to that proposal, subject to Article 189b(4) and (5). *Id.* art. 189a. Article 189b(4)-(5) deals with the Conciliation Committee. *See id.* art. 189b(4)-(5). This Committee has the responsibility of reaching agreement on a joint text. *Id.* art. 189b(4). It is composed of members of the Council or their representatives and an equal number of representatives of the European



take studies and propose rules.<sup>329</sup> Council has the power of the purse in that it determines the salaries, allowances and pensions of the President and members of the Commission, and of the President, Judges, Advocates-General and Registrar of the Court of Justice.<sup>330</sup>

Council and the European Council are different. The European Council, established in 1974,<sup>331</sup> makes decisions at the highest political level by resolving intractable political problems and by leading the Community.<sup>332</sup> The European Council is composed of the Heads of State and Government of each of the Member States, together with the President of the Commission.<sup>333</sup> When a Member State is president of the Council, its Head of State or Government is the president of European Council.<sup>334</sup>

### C. *The Commission*<sup>335</sup>

The Commission is to "ensure the proper functioning and development of the common market."<sup>336</sup> In its duty as Community "watch-dog," the Commission is to "ensure that the Treaty and the measures taken by the institutions are applied."<sup>337</sup>

The Commission is to formulate recommendations or proposals<sup>338</sup> or deliver opinions on matters dealt within the treaty if the treaty expressly provides or the Commission considers it

Parliament. *Id.* The Commission is to participate in the proceedings of the Conciliation Committee and to take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. *Id.* If within six weeks of being convened, the Committee approves a joint text, the European Parliament acting by an absolute majority of the votes cast and the Council, acting by a qualified majority can adopt the joint text. *Id.* art. 189b(5).

329. *Id.* arts. 152-153.

330. *Id.* art. 154.

331. *See supra* Part I.B.3.b.ii for a discussion of the European Council.

332. TEU art. D.

333. *Id.*

334. *Id.*

335. *See* ECT arts. 155-163.

336. *Id.* art. 155. In the years since the 1989 revolution in Eastern Europe, the Commission is generally regarded as an international player whose stature has been heightened dramatically. The Commission has assumed the role of primary interlocutor for the Community in its dealings with the emerging democracies within Central and Eastern Europe as well as the former Soviet Republics. The Commission's increased prominence in U.S.-Community relations came subsequent to the Transatlantic Declaration in November of 1990. The protracted Uruguay Round of GATT focused attention on the Commission's strengthened position in international trade negotiations.

337. *Id.*

338. *See id.* art. 189b(2) (directing the Commission to submit a proposal to the European Parliament and the Council).

necessary.<sup>339</sup> Further, it has its own power of decision and is also to participate in measures taken by Council and the European Parliament, when required by the Treaty.<sup>340</sup> Also, it must publish an annual general report on the activities of the Community.<sup>341</sup> Finally, the Commission and the Council are required to consult with each other and settle their methods of cooperation by common accord.<sup>342</sup>

The Commission currently has twenty members, all of whom are to be chosen for their general competence and independence.<sup>343</sup> Commissioners must be independent in the performance of their duties, neither seeking nor accepting instructions from any government or any other body.<sup>344</sup> The Commission is to include at least one but not more than two nationals from each Member State.<sup>345</sup> The Commissioners are appointed by a common accord of the governments of the Member States, after consultation with the nominee for President of the Commission, for renewable five-year terms.<sup>346</sup> Their nominations must be approved by the European Parliament.<sup>347</sup>

The President of the Commission is appointed by common accord of the governments of the Member States, after consultation with the European Parliament.<sup>348</sup> The Commission may appoint a Vice-President or two Vice-Presidents from among its members.<sup>349</sup> Finally, voting of the Commission is by majority vote.<sup>350</sup>

#### *D. The Court of Justice*

The purpose of this section is to discuss the Court of Justice in a way that sets the stage for discussion in the second Article concerning the critical role the court has in both the development and securing of fundamental rights. The responsibility for

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339. *Id.*

340. ECT art. 189b(2). Article 189a of the ECT also provides that as long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Community act. *See id.* art. 189a(2).

341. *Id.* art. 156.

342. *Id.* art. 162.

343. *See id.* art. 157. Article 157 of the ECT was amended by the Act of Accession to increase the membership of the Commission at 21 and then re-amended to 20. *See* Council Decision of 1 January 1995 art. 9, 1995 O.J. (L 1) 1.

344. ECT arts. 157, 160.

345. *Id.* art. 157.

346. *Id.* art. 158(1).

347. *Id.* art. 158(2).

348. *Id.*

349. ECT art. 161.

350. *Id.* art. 163.

interpretation and application of the ECT is with the Court of Justice, which is assisted by the Court of First Instance.<sup>351</sup>

*1. The Court of Justice: The Court; Advocates General; and Court of First Instance*

The Court of Justice is composed of fifteen judges and is assisted by eight Advocates-General and a Court of First Instance. The two most important criteria for appointment as Judges or Advocates-General are recognized judicial competence and independence.<sup>352</sup>

The Court of Justice is composed of fifteen judges, one from each Member State.<sup>353</sup> Each Member State selects its own judge after consulting with the other Member States.<sup>354</sup> A judge sits for six years according to a system of appointment of one-half of the judges every three years.<sup>355</sup> The Judges elect the President of the court from among their number for a term of three years.<sup>356</sup>

The Court is assisted by eight Advocates-General.<sup>357</sup> One is named by each of the largest states (France, Germany, Italy, the United Kingdom and Spain) and three are rotated by lot among the other States.<sup>358</sup> Each Advocate-General is to act with "complete impartiality and independence to make in open court, reasoned submission on cases brought before the Court of Justice, in order to assist the Court in the performance" of its duties.<sup>359</sup> An Advocate-General sits for six years and, every three years, three are replaced.<sup>360</sup>

A Court of First Instance, composed of fifteen members, is attached to the Court of Justice.<sup>361</sup> Its jurisdiction is to hear and

351. *Id.* arts. 164-188. The Court of First Instance is responsible for deciding certain classes of direct action or proceedings brought by natural or legal persons. *Id.* art. 168a. In these instances, a right of appeal to the Court of Justice on points of law is retained. *Id.*

352. *Id.* art. 167.

353. *Id.* art. 165, amended by the 1994 Act of Accession and the Council Decision of 1 January 1995, 1995 O.J. (L 1) 1 (adjusting instruments concerning the accession of New Member States to the European Union) [hereinafter The 1995 Amendments]. See Goebel, *supra* note 1, at 1132.

354. ECT art. 165.

355. *Id.* art. 167. Retiring judges are eligible for reappointment. *Id.*

356. *Id.*

357. *Id.* art. 166, amended by The 1995 Amendments, *supra* note 353. See Goebel, *supra* note 1, at 1132.

358. ECT art. 166, amended by The 1995 Amendments, *supra* note 353.

359. *Id.*

360. *Id.* Retiring Advocate Generals are eligible for reappointment. *Id.*

361. *Id.* art. 168a as amended by The 1995 Amendments, *supra* note 353. See

determine, at first instance, certain classes of actions or proceedings, subject to a right of appeal to the Court of Justice on points of law only and in accordance with other conditions.<sup>362</sup>

## 2. *The Court of Justice: Its Procedures and Its Working Languages*

While the Court of Justice may sit in plenary session upon request by a Member State or a Community institution that is a party to the proceedings, it almost always forms chambers, "each consisting of three or five Judges, either to undertake certain preparatory inquiries or to adjudicate on particular categories of cases in accordance with rules laid down for these purposes."<sup>363</sup> Its activities are governed by a Protocol on the Statute of the Court of Justice, which is authorized by Article 188,<sup>364</sup> and by its Rules of Procedure.<sup>365</sup> A review of both the Protocol and the Rules leads one to conclude that they are designed to preserve the court's independence, the international nature of its work and the efficiency of the court.

The official language of a case is usually chosen by the applicant; however, preliminary reference cases under Article 177<sup>366</sup> use the language of the national court or tribunal which refers the matter to the court.<sup>367</sup> The judgments and orders of the Court of Justice and the Court of First Instance are published in all of the official languages which are: Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish.<sup>368</sup>

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Goebel, *supra* note 1, at 1133 n.161.

362. ECT art. 168. Retiring members are also eligible for reappointment. *Id.* art. 168a (3).

363. *Id.* art. 165.

364. *Id.* art. 188. See A Protocol on the Statute of the European Court of Justice of the European Economic Community, Apr. 17, 1957, 298 U.N.T.S. 147, amended by Council Decision 88/591, 1989 O.J. (C 215) 1.

365. Rules of Procedure of the Court of Justice of the European Communities, 1991 O.J. (L 176) 7.

366. See *infra* note 376 and accompanying text.

367. Rules of Procedure of the Court of Justice of the European Communities art. 29(2), 1991 O.J. (L 176) 7.

368. See The 1995 Amendments, *supra* note 353, art. 3.

### 3. *The Court of Justice: Its Jurisdiction*

The court functions like other supreme courts but with greater jurisdiction. Its responsibility is to “ensure that in the interpretation and application of this Treaty the law is observed.”<sup>369</sup> The following briefly overviews the court’s jurisdiction as provided in Articles 169 through 188. (A more in-depth discussion is set out in the next Article.) The court has:

- jurisdiction over cases brought by the Commission against a Member State for an alleged failure to fulfill an obligation under the Treaty.<sup>370</sup>
- jurisdiction over cases brought by a Member State against a Member State for an alleged failure to fulfill an obligation under the Treaty.<sup>371</sup>
- the power to require the Member State to “take the necessary measures to comply with the judgement of the Court of Justice” and to require such State to pay a penalty.<sup>372</sup>
- jurisdiction to review the legality of acts adopted by the institutions of the European Union where the proceedings are brought by persons who are the subject of the institution’s act or are directly affected by such act.<sup>373</sup> If the court finds that the act is not legal, it has the power to declare the act or the regulation void.<sup>374</sup>
- jurisdiction to hear actions asserting the European Parliament, the Council or the Commission has unlawfully failed to act and the power to require the institution to take the necessary measures to comply with the judgement of the court.<sup>375</sup>
- the power to deliver legally binding preliminary rulings on questions which have been referred by courts or tribu-

369. ECT art. 164.

370. *Id.* art. 169.

371. *Id.* art. 170.

372. *Id.* art. 171(1)-(2). The article 171 procedure is without prejudice to article 170. *Id.*

373. *Id.* art. 173.

374. ECT art. 173.

375. *Id.* arts. 175-176.

nals in Member States, i.e. "preliminary references" on issues concerning: (1) the interpretation of the Treaty; (2) the validity and interpretation of actions of the institutions of the Community and the ECB; and (3) the interpretation of the statutes by bodies established by an act of the Council, where those statute so provided, and advisory opinions on the legality of conventions the Community intends to conclude with Member States or international organizations.<sup>376</sup>

- jurisdiction in disputes relating to compensation for damage respecting non-contractual liability<sup>377</sup> and matters between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.<sup>378</sup>
- jurisdiction over disputes involving the European Investment Bank respecting: (1) the fulfillment by Member States of obligations under the Statute of the European Investment Bank; (2) measures adopted by the Board of Governors of the Bank; and (3) the fulfillment by national central banks of obligations under the ECT and the Statute of the ESCB.<sup>379</sup>
- jurisdiction to give judgment, pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Community whether the contract is governed by public or private law<sup>380</sup> or in any dispute between Member States which relates to the subject matter of the ECT Treaty if the dispute is submitted to it under a special agreement between the parties.<sup>381</sup>
- jurisdiction to hear special pleas that acts are illegal, called "pleas of illegality" which term is derived from the

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376. *Id.* art. 177. There are mandatory and discretionary preliminary references. Mandatory reference must occur where such question is raised in a case pending before a court or tribunal of a Member State against whose decision there is no judicial remedy under national law. *Id.* Discretionary reference may occur if such a question is raised before any court or tribunal of a Member State and if that court or tribunal considers that a decision on the question is "necessary to enable it to give judgment." *Id.*

377. *Id.* art. 178.

378. *Id.* art. 179.

379. ECT art. 180.

380. *Id.* art. 181.

381. *Id.* art. 182.

French administrative law phrase "exception d'illegalite."<sup>382</sup>

- the power to order the suspension of the contested act if the Court considers that circumstances so require,<sup>383</sup> to prescribe any necessary interim measures,<sup>384</sup> and, to have its judgments enforced.<sup>385</sup>

#### 4. *Judicial Review*

As can be seen from the above, Community institutions and Member States alike are bound by the court's interpretations of Community law. In addition to the express powers reviewed above, the court is guided in its decision making by its recognition of: (1) supremacy and direct effect; (2) general principles of law, derived in part from continental administrative law standards; and (3) certain fundamental rights (including basic human rights) that the court requires all Community institutions to respect.

##### a. *Supremacy and Direct Effect*

Supremacy and direct effect are concepts that are part of the Community's legal system and describe the relationship between the law of the Community and Member States. There is no express supremacy clause in the treaties that catapults Community law above or superior to national law in the event of conflicts. Preemption issues arise in the area of agricultural and competition law and in efforts to harmonize the laws of Member States. The court, therefore, has developed a doctrine of supremacy which holds that Community law should take precedence irrespective of which law is later in time.<sup>386</sup>

The court has also ruled that the its rulings have direct ef-

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382. *Id.* art. 184. Article 184 contains a longer period of time to challenge regulations adopted by certain Community institutions and, thus, collateral attack at the regulation can occur even though direct challenge under Article 173 is not permitted. *Id.* See also BERMANN ET AL., *supra* note 1, at 118.

383. ECT art. 185.

384. *Id.* art. 186.

385. *Id.* art. 187. Note that the court has no jurisdiction—with one exception—over matters covered by Article J of the TEU (Common Foreign and Security Policy) and article K of the TEU (Cooperation in Justice and Home Affairs).

386. BERMANN ET AL., *supra* note 1, at 192-93.

fect—national authorities must comply with the court's rulings and national courts must apply Community law. When the court declares a national law incompatible with Community law, all competent national authorities are automatically prohibited from applying the national law and are not to wait for its repeal by a constitutionally appropriate process.<sup>387</sup>

### *b. General Principles of Law*

The general "principles of law" that govern judicial decision-making include: proportionality; equal treatment; legal certainty; non-retroactivity; and legitimate expectations. In all of this, the Court of Justice considers relevant Community norms as authority in its decision-making efforts.

When the court reviews Community action, the doctrine of proportionality is triggered to determine whether there is a less constraining means of achieving the same result. A proportionality analysis means that the court weighs the goals of the Community action and the means used, and balances the same against the burden on the citizen.<sup>388</sup> If the action is outweighed by the burden, Community action can be struck down.<sup>389</sup>

The court recognizes a principle of equal treatment (or non-discrimination) and applies a general principle of equality to all situations, even in the absence of a treaty provision requiring equal treatment.<sup>390</sup> Further, the principle of equality has been used to define the meaning and scope of many provisions of primary and secondary Community law which prohibit discrimination.<sup>391</sup>

The principles of non-retroactivity and legitimate expectations are indicators of legal certainty and thus part of the Community

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387. In order to assure legal certainty, it is necessary that such law be repealed or amended by the national legislature and oral or administrative directives are not sufficient to do so. Case 167/73, *Commission v. France*, 1974 E.C.R. 359. See A. G. TOTH, *THE OXFORD ENCYCLOPEDIA OF EUROPEAN COMMUNITY LAW* 503 (1990).

388. Case 261/81, *Rau*, 1982 E.C.R. 3961. See also TOTH, *supra* note 387, at 434. That burden is evaluated by determining whether it causes an obstacle to the free movement of goods, persons, services and capital. *Id.*

389. See TOTH, *supra* note 387, at 433-45.

390. No treaty has such a provision for all purposes. TOTH, *supra* note 387, at 189.

391. TOTH, *supra* note 387, at 189. However, while the principle of equality is binding on the Community in its internal affairs, it is not in its external affairs; there is no obligation to give equal treatment in dealings with third countries. *Id.* at 194.



legal order; their violation infringes on Treaty law.<sup>392</sup> Community institutions may not apply regulations retroactively where such application would cause private parties serious economic loss that they cannot avoid by adjusting their conduct.<sup>393</sup> Legitimate expectations that are justified and reasonable<sup>394</sup> are also part of the Community legal order as an indicator of legal certainty.<sup>395</sup>

### *c. Fundamental Rights*

Fundamental rights are principles that attach to individual citizens (or companies) in their dealings with the Community. These rights are typically more political or social than economic in character and include what are termed "human rights."<sup>396</sup> While this topic is the subject of the second Article, mention is made here of the agreements and protocols of the Community or among Member States which deal with human rights:

- The Convention for the Protection of Human Rights and Fundamental Freedoms (1953);<sup>397</sup>
- Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (1954);<sup>398</sup>
- Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1968);<sup>399</sup>
- Joint Declaration by the European Parliament, The Council and the Commission (1977);<sup>400</sup>

392. BERMANN ET AL., *supra* note 1, at 130.

393. *Id.* at 140. Where the regulatory action is foreseeable, retroactive regulatory action does not violate this principle because legal certainty and reliance are not disturbed. Case 108/81, *Amylum v. Council*, 1982 E.C.R. 3107 (regulation expressly stated that it would be applied retroactively).

394. Reasonableness is measured by an objective standard of the ordinarily prudent person in the plaintiff's situation. BERMANN ET AL., *supra* note 1, at 140.

395. Case C-368/89, *Crispoltoni v. Fattoria Autonoma Tabacchi di Citta di Castello*, 1991 E.C.R. 3695. Also, this principle has been used to require that regulations be worded in an unambiguous fashion. Case 169/80, *Administration des Douanes v. SA Gondrand Freres*, 1981 E.C.R. 1931.

396. Case 29/69, *Stauder v. City of Ulm. Sozialamt*, 1969 E.C.R. 419.

397. The Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221.

398. Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Mar. 20, 1952, 213 U.N.T.S. 262.

399. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 16, 1963, E.T.S. No. 46.

400. Joint Declaration by the European Parliament, The Council and the Com-

- Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1985);<sup>401</sup>
- Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1988);<sup>402</sup>
- Social Policy Charter, 1989 and the Protocol on Social Policy.<sup>403</sup>

### 5. Conclusion

The Court of Justice is composed of fifteen judges, one from each Member State. The court is assisted by eight Advocates-General. A Court of First Instance is attached to the Court of Justice and is the court of first resort in a number of areas. The Court of Justice sits in plenary session where a Member State or a Community institution that is a party to the proceedings so requests. Otherwise, the court usually forms chambers.

The court's overall responsibility is to insure that in the interpretation and application of the TEU, the law is observed. In this regard, it has broad authorities in most aspects of Community activity particularly since Community institutions and Member States alike are bound by the Court's interpretations of Community law. In addition to the express powers of the treaty, the court is guided in its decision-making by its recognition of: (1) supremacy and direct effect; (2) general principles of law, such as proportionality, equal treatment, non-retroactivity and legitimate expectations; and (3) certain fundamental rights of individuals (including basic human rights) which all Community institutions and litigants are to respect.

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mission Concerning the Protection of Fundamental Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1977 O.J. (C 103) 1 (signatories stress the prime importance they attach to the protection of fundamental rights as derived from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms).

401. Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty, Apr. 28, 1988, E.T.S. 114.

402. Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Extending the List of Civil and Political Rights, Nov. 22, 1984, 24 I.L.M. 435.

403. See Protocol on Social Policy annexed to Treaty on European Union, reprinted in 31 I.L.M. 357-58 (1992); Agreement on Social Policy Concluded Between Member States of the European Community with the Exception of the United Kingdom of Great Britain and Northern Ireland annexed to Treaty on European Union, reprinted in 31 I.L.M. 358-60.

### *E. Other Institutions*

The Community has other institutions. The financial affairs of the Community are examined by a Court of Auditors, a body that possesses an official status equivalent to the primary institutions.<sup>404</sup> The European Investment Bank functions as an independent financial body within the Community.<sup>405</sup>

There are two advisory committees with which Community institutions must consult where the treaty so provides. The Economic and Social Committee provides formal advice concerning vocational interests within the decision-making process.<sup>406</sup> The newly formed Advisory Committee of the Regions, composed of representatives of regional and local bodies, represents sub-national interests.<sup>407</sup>

### *F. Provisions Common to Several Institutions: Regulations, Directives, Decisions, Recommendations, Opinions and Budget Proposals*

There is a shared responsibility for Community affairs. The European Parliament acting jointly with the Council, the Council and the Commission are to "make regulations and issue directives, make decisions, make recommendations or deliver opinions."<sup>408</sup> Regulations have a general application and are binding in their entirety and directly applicable to all Member States.<sup>409</sup> Directives are binding regarding the result to be achieved on the Member State to which it is addressed but leaves to the national authorities the choice of form and method.<sup>410</sup> Decisions are binding on those to whom they are addressed.<sup>411</sup> Recommendations and opinions have no binding force.<sup>412</sup>

Regulations, directives and decisions adopted jointly by the European Parliament and the Council and acts adopted by the Council or the Commission are to state the reasons on which

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404. ECT arts. 188a-188c.

405. *Id.* arts. 198d-198e.

406. *Id.* arts. 193-198.

407. *Id.* arts. 198a-198c.

408. *Id.* art. 189.

409. ECT art. 189.

410. *Id.*

411. *Id.*

412. *Id.*

they are based, and refer to any proposals or opinions which were required to be obtained pursuant to the treaty<sup>413</sup> and to comply with other procedural requirements, such as proper execution and publication.<sup>414</sup>

Budget proposals originate from the Commission and are determined by Council and must be agreed to by the Member States. A balanced budget is to be prepared for each financial year<sup>415</sup> and without prejudice to other revenues, is to be financed wholly from its own resources.<sup>416</sup> Council, acting unanimously on a proposal from the Commission<sup>417</sup> and after consulting the European Parliament, is to set out the system of own resources of the Community.<sup>418</sup> Council is then to recommend the unanimously adopted proposal to the Member States for adoption in accordance with their respective constitutional requirements.<sup>419</sup> The Commission then implements the budget in accordance with properly adopted Council regulations<sup>420</sup> and other treaty provisions.<sup>421</sup>

Each Member State must then make financial contributions in accordance with the proposal.<sup>422</sup> Also, each State is to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their

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413. *Id.* art. 190.

414. ECT art. 191. Decisions which impose a pecuniary obligation on persons other than Member States are enforceable. *Id.* art. 192. The rules of civil procedure of the forum state are applicable to any such actions for enforcement. *Id.* The order for the enforcement of the decision must be appended to the decision without formality, other than verification of the authenticity of the decision by the nation authority which the government of each Member State was to have designated for this purpose to the Commission and to the Court of Justice. *Id.*

Only the Court of Justice may suspend an enforcement order. *Id.* However, the courts of interested states have jurisdiction over complaints regarding abuse of enforcement. *Id.*

415. *Id.* arts. 199, 202-204.

416. *Id.* art. 201.

417. *Id.* Article 201a of the ECT imposes budgetary discipline on the Commission by prohibiting it from making proposals that are likely to have appreciable implications for the budget except where the proposal is capable of being financed with the Community's own resources. *See id.* art. 201a.

418. *Id.* art. 201.

419. ECT art. 201.

420. *Id.* arts. 205, 209.

421. *Id.* art. 206.

422. *Id.* art. 201.

own financial interests and to cooperate with each other in doing the same.<sup>423</sup>

### *G. Conclusion*

The Community's institutional structure is composed of: (1) a European Parliament; (2) a Council; (3) a Commission; (4) a Court of Justice; and (5) a Court of Auditors. These institutions are empowered with the ability to adopt acts that are legally binding on the Member States, institutions and individuals. Although the above discussion deals with most Community institutions, it did not focus in depth on the Court of Justice. The Court of Justice will be discussed more extensively in the forthcoming Article.

## PART FOUR: CONCLUSION

In four decades, western Europe has united along economic, social and political venues. With Europe in the process of implementing the European Community Treaty, the 20th century concludes in Europe with a structured economic union and the clear probability of political unity.

The two principles that thread through all aspects of the law in the Community are a commitment to the rule of law and democracy. The primary sources of law of the European Community consist of the three basic treaties creating the ECSC, EEC and Euratom, accession treaties with new Member States, budgetary treaties, amendments to the basic treaties, and the TEU and the TEU's amendments. The secondary sources of law for the European Community are the legally binding acts of its institutions as well as their exercise of "special powers" or "implied powers." Finally, Community law flows from the decisions of the European Court of Justice which has both express and implied powers to review actions or requests of Community institutions as well as individuals or legal persons affected by the actions of such institutions.

In the next Article, the authors will examine whether a "Bill of Rights" should be adopted by the European Union. Assuming the past is a predictor of the future, as the Union evolves toward a closer economic, social and political union, greater emphasis will be placed on harmonizing the laws of Member States in the context of just and equal treatment of the citizens of Europe. Even assuming a judiciary committed to these values, the au-

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423. *Id.* art. 209a.

thors suggest in the second Article that a Bill of Rights, although not necessary, would be a catalyst to the Union contemplated by the amended Treaty on European Union.

APPENDIX ONE: SUMMARY OF THE TREATY ON EUROPEAN UNION  
(TEU)

*Signed at Maastricht, Netherlands on February 7, 1992*

An exhaustive treatment of the Treaty on European Union (the "TEU")<sup>424</sup> is beyond the scope of this Article. The following is provided for those readers who seek to gain a basic understanding of what the TEU encompasses and how it is organized.

*A. Outline of Provisions*

Preamble

Title I. Common Provisions

- Article A Establishment of European Union (EU)
- Article B EU's objectives
- Article C EU served by a single institutional framework
- Article D European Council is to define general political guidelines for EU's development
- Article E European Parliament, the Council, the Commission and the Court of Justice are to exercise their powers under all constitutive treaties
- Article F EU is to respect national identities of Member States and fundamental rights as guaranteed by the 1950 Rome Convention and as they result from the constitutional traditions common to the Member States

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424. The TEU made substantial changes, among other things, in the EEC Treaty, including the change of its name to the European Community Treaty (the "ECT") and the redefinition of the Community from "European Economic Community" to "European Community." See TEU pmbl.

The analysis in this Appendix relates only to the TEU as signed in Maastricht in 1992, and does not address the Acts of Accession relating to the joining of Austria, Finland and Sweden and the amendments to the TEU by such Acts.

Title II. Provisions Amending the Treaty Establishing the European Economic Community with a View to Establishing the European Community.

Article G For the amended EEC Treaty, now called the European Community Treaty, see Appendix Two

Title III. Provisions Amending the Treaty Establishing the European Coal and Steel Community

Article H Amends the ECSC Treaty

Title IV. Provisions Amending the Treaty Establishing the European Atomic Energy Community

Article I Amends Euratom Treaty

Title V. Provisions on a Common Foreign and Security Policy.

Article J A common foreign and security policy is set out in new Article J and Articles J.1-.11.

Title VI. Provisions on Cooperation in the Fields of Justice and Home Affairs

Article K Cooperation in the fields of justice and home affairs is governed in new Articles K and K.1-.9.

Title VII. Final Provisions

Articles L-S Contain some final provisions, some of which provide:

- the government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded;
- a conference of representatives of the governments of the Member States shall be convened in 1996 to examine whether provisions of the Treaty should be revised;
- and, any European State may apply to become a Member of the Union in accordance with the proper procedures.

### *B. Preamble*

In the Preamble, the thirteen Member States resolved to "mark a new stage in the process of European integration under-



taken with the establishment of the European Communities.<sup>425</sup> They also recalled the historic importance of ending the division of the European Continent and the need to create firm bases for the construction of the future Europe.<sup>426</sup>

The signatories to the TEU confirmed their commitment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law.<sup>427</sup> They made clear their desire to deepen the solidarity among their people while respecting their history, culture and traditions and to enhance the democratic and efficient functions of the Community's institutions.<sup>428</sup>

They also resolved to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union, including a single and stable currency.<sup>429</sup> They determined to promote economic and social progress for their people by accomplishing an internal market, cohesion and environmental protection and by implementing policies ensuring that advances in economic integration are accompanied by parallel progress in other fields.<sup>430</sup>

The signatories then resolved to establish a citizenship common to nations of their countries, to implement a common foreign and security policy including the eventual framing of a common defense policy which might, in time, lead to a common defense, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world.<sup>431</sup> The TEU signers also reaffirmed their objective to facilitate the free movement of persons, and ensuring the safety and security of their people by including provisions on justice and home affairs in the Treaty.<sup>432</sup> Finally, the signatories agreed to continue the process of creating an ever closer union among the people of Europe in which decisions are "taken as closely as possible to the citizen in accordance with the principle of subsidiarity."<sup>433</sup>

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425. TEU pmbi.

426. *Id.*

427. *Id.*

428. *Id.*

429. *Id.*

430. TEU pmbi.

431. *Id.*

432. *Id.*

433. *Id.* The signatories of the EEC Treaty expressed much less ambition in their Preamble to that Treaty. They were determined to "lay the foundations of an ever closer union among the peoples of Europe" by eliminating the economic and social barriers which divide Europe. EEC TREATY pmbi. The essential objectives, they stated, are the "constant improvement of the living and working conditions of their

*C. Title I—Common Provisions**1. Article A*

The first action taken by the signatories to the ECT was to "establish among themselves a European Union, hereinafter called the Union." This Union is founded on the European Communities and supplemented by the policies and forms of cooperation established by the TEU. The Union's task is to "organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples."<sup>434</sup>

*2. Article B*

The Union's objectives are:

- to promote economic and social progress which is balanced and sustainable through: (1) the creation of an area without internal frontiers; (2) the strengthening of economic and social cohesion; and (3) the establishing of economic and monetary union, culminating in a single currency;
- to assert the Community's identity on the international scene, including the implementation of a common foreign and security policy and eventually a common defense policy;
- to strengthen the protection of the rights and interests of the nationals of the Member States through the creation of a citizenship of the Union;

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peoples." *Id.* The signatories recognized that these objectives call for "concerted action in order to guarantee steady expansion, balanced trade and fair competition." *Id.*

The EEC Treaty signatories also were "anxious to strengthen the unity of their economies and to ensure harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions." *Id.* They desired to "contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade." *Id.* They intended "to confirm the solidarity which binds Europe and the overseas countries" and desired "to ensure the development of their prosperity, in accordance with the Charter of the United Nations." *Id.* They then resolved to pool "their resources to preserve and strengthen peace and liberty" and called "upon the other peoples of Europe who share their ideal to join in their efforts." *Id.* For these reasons, they decided to create the European Economic Community. *Id.*

434. ECT art. A.

- to develop close cooperation on justice and home affairs; and
- to maintain and build on the *acquis communautaire* through intergovernmental conferences and the like in order to determine to what extent the policies and forms of cooperation in the Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and institutions of the Community.<sup>435</sup>

The objectives of the Union are to be achieved through the terms, conditions and timetables set out in the ECT while respecting the principle of subsidiarity.<sup>436</sup>

### 3. Article C

A single institutional framework serves the Union to ensure the consistency and continuity of its activities in order to attain the Treaty's objectives while respecting and building on the *acquis communautaire*.<sup>437</sup> The Union, in particular, is to ensure the consistency of its external activities as a whole in the context of external relations, security, economic and development policies.<sup>438</sup> The Council and the Commission are responsible for ensuring such consistency.<sup>439</sup> They are to ensure the implementation of these policies, each in accordance with its respective powers.<sup>440</sup>

### 4. Article D

The European Council is to provide the Union with the necessary impetus for its development and to define the general political guidelines thereof.<sup>441</sup> The Council is to bring together the Heads of State or Government of the Member States and the President of the Commission and is to be assisted by the Ministers for Foreign Affairs of the Member States and by a Member of the Commission.<sup>442</sup> The Council must meet at least twice a

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435. *Id.* art. B.

436. *Id.* art. 3b.

437. TEU art. C. See *supra* Part II.A.2. for an explanation of *acquis communautaire*.

438. TEU art. C.

439. *Id.*

440. *Id.*

441. *Id.* art. D.

442. *Id.*

year under the chairmanship of the Heads of State and of Government of the Member State which holds the Presidency of the Council.<sup>443</sup> The Council is to submit to the European Parliament a report after each of its meetings and a yearly written report on the progress achieved by the Union.<sup>444</sup>

#### 5. Article E

The European Parliament, the Council, the Commission and the Court of Justice are to exercise their powers under the conditions and for the purposes provided for by the provisions of the basic treaties, as amended, and by the TEU.<sup>445</sup>

#### 6. Article F

The Union must respect the national identities of its Member States, whose systems of government are founded on the principles of democracy.<sup>446</sup> The Union must also respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950, and as they result from the constitutional traditions common to the Member States as general principles of Community law.<sup>447</sup> Finally, the Union shall provide itself with the means necessary to attain its objectives and carry through its policies.<sup>448</sup>

#### *D. Title II—Provisions Amending the Treaty Establishing the European Economic Community with a View to Establishing the European Community*

Article G of the TEU (also known as Title II of the TEU) amends the EEC Treaty and establishes the European Community.<sup>449</sup>

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443. TEU art. D.

444. *Id.*

445. *Id.* art. E.

446. *Id.* art. F.

447. *Id.*

448. TEU art. F.

449. *See infra* app. 2 (outlining Article G of TEU which amends the EEC Treaty, and, inter alia, renames it the ECT).

*E. Titles III and IV—Amendments to the ECSC and Euratom Treaties*

Article H of the TEU (also known as Title III of the TEU) amends the ECSC Treaty and Article I of the TEU (also known as Title IV of the TEU) amends the Euratom.<sup>450</sup> Neither are addressed herein.

*F. Title V—Provisions on a Common Foreign and Security Policy*

Articles J-J.11 of the TEU (also known as Title V of the TEU) establishes a common foreign and security policy. The objectives of this policy are: (1) to safeguard the common values, fundamental interests and independence of the Union; (2) to strengthen the security of the Union and its Member States; (3) to preserve peace and strengthen international security; (4) to promote international cooperation; and (5) to develop and consolidate democracy, the rule of law, and respect for human rights and fundamental freedoms.<sup>451</sup>

*G. Title VI—Provisions on Cooperation in the Fields of Justice and Home Affairs*

Articles K-K.9 of the TEU (also known as Title VI of the TEU) establishes cooperation in the fields of justice and home affairs. Matters of common interest include: (1) asylum policy,<sup>452</sup> rules covering the crossing by persons of the external borders of Member States;<sup>453</sup> (2) immigration policy,<sup>454</sup> policy regarding nationals of third countries,<sup>455</sup> (3) the combatting of drug addiction,<sup>456</sup> and (4) the combatting of fraud on an international scale.<sup>457</sup> There is to be judicial cooperation in civil and in criminal matters,<sup>458</sup> and customs cooperation.<sup>459</sup> Also, there is to be police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including customs cooperation in connection

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450. TEU arts. H-I.

451. *Id.* art. J.1(2).

452. *Id.* art. K.1(1).

453. *Id.* art. K.1(2).

454. *Id.* art. K.1(3).

455. TEU art. K.1(3).

456. *Id.* art. K.1(4).

457. *Id.* art. K.1(5).

458. *Id.* art. K.1(6)-(7).

459. *Id.* art. K.1(8).

with a Union-wide system for exchanging information within a European Police Office (Europol).<sup>460</sup>

*H. Title VII—Final Provisions*

Articles L-S of the TEU provide in part that:

The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded . . . .;<sup>461</sup>

. . . .

A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided . . . .;<sup>462</sup>

. . . .

[And a]ny European State may apply to become a Member of the Union [in accordance with the proper procedures].<sup>463</sup>

Finally, seventeen Protocols, which have binding legal effect, and thirty-three Declarations are annexed to the TEU.

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460. TEU art. K.1(9).

461. *Id.* art. N(1).

462. *Id.* art. N(2).

463. *Id.* art. O.

APPENDIX TWO: DISCUSSION OF ARTICLE G OF THE TREATY ON  
EUROPEAN UNION (TEU) WHICH AMENDS THE EEC TREATY

Article G of the TEU (also called Title II of the TEU) amends the EEC Treaty with a view to establishing the European Community.<sup>464</sup> The following reflects the amendments to the EEC Treaty by the TEU and thus reflects the ECT as it is presently constituted.

Throughout the former EEC Treaty, the term "European Economic Community" is replaced with the term "European Community" and the amended treaty is called the "European Community Treaty" (the "ECT").<sup>465</sup>

*A. Outline of Provisions*

Part One—"Principles"

- |              |   |
|--------------|---|
| Articles 2-3 | Principles and activities and goals of the Community  |
| Article 3a   | Community activity includes the adoption of an economic policy based on the coordinations of economic policies of Member States and the irrevocable fixing of exchange rates leading to the ECU |
| Article 3b   | Community is to act in accordance with the principle of subsidiarity  |
| Article 4    | Community tasks are carried out by the Parliament, Council, Commission, Court of Justice and Court of Auditors  |
| Article 4a   | European System of Central Banks and a central bank is established  |
| Article 4b   | European Investment Bank established  |

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464. As explained previously in this Article, amendments to the EEC Treaty by the TEU are cited in this Article by their ECT citation.

The analysis in this Appendix relates only to the TEU as signed in Maastricht in 1992, and does not address the Acts of Accession relating to the joining of Austria, Finland and Sweden and the amendments to the TEU by such Acts.

465. TEU art. G.A(1).

- Article 5 Member States to take all appropriate measures to fulfill obligations
- Article 6 Discrimination on nationality grounds prohibited
- Articles 7  
7a, 7b, 7c Common market to be progressively established

Part Two—Citizenship of the Union

- Articles 8,  
8a, 8b-8e Citizenship of Union established with rights of free movement, residence, voting, standing for election to Parliament and petition to the Parliament or Ombudsman

Part Three—Community Policies

Title I. Free Movement of Goods (Articles 9-37)

Articles 9-11. Introductory Provisions

Chapter 1. The Customs Union (Articles 12-29)

- Section 1. Elimination of Customs Duties between Member States  
Articles 12-17

- Section 2. Setting up of the Common Customs Tariff  
Articles 18-29

- Chapter 2. Elimination of Quantitative Restrictions between Member States  
Articles 30-37

Title II. Agriculture (Articles 38-47)

Title III. Free Movement of Person, Services and Capital  
(Articles 48-66, 73a-73h)

- Chapter 1. Workers  
Articles 48-51

- Chapter 2. Rights of Establishment  
Articles 52-58



Chapter 3. Services  
Articles 59-66

Chapter 4. Capital  
Articles 73a-73h (These Articles replaced EEC Articles 67-73.)

Title IV. Transport (Articles 74-84)

Title V. Common Rules on Competition, Taxation and Approximation of Laws (Articles 85-102)

Chapter 1. Rules on Competition (Articles 85-94)

Section 1. Rules Applying to Undertakings  
Articles 85-90

Section 2. Dumping  
Article 91

Section 3. Aids Granted by States  
Articles 92-94

Chapter 2. Tax Provisions  
Articles 95-99

Chapter 3. Approximations of Laws  
Articles 100, 100a-100d, 101-102

Title VI. Economic and Monetary Policy (Articles 102a-109m)

Chapter 1. Economic Policy  
Articles 102a, 103, 103a, 104, 104a-104c

Chapter 2. Monetary Policy  
Articles 105, 105a, 106-108, 108a, 109

Chapter 3. Institutional Provisions  
Articles 102a-109d

Chapter 4. Transitional Provisions  
Articles 109e-109m

## Title VII. Common Commercial Policy (Articles 110-116)

Article 110 Establishment of common customs union and the harmonious development of world trade

Article 111 repealed

Article 112 progressively harmonize the systems of granting of aid for exports to third countries

Article 113 common commercial policy based on uniform principles re: tariff rates, trade agreements, export policy and trade protections

Article 114 repealed

Article 115 Commission is to take measures to deflect differences in economic matters among the Member States

Article 116 repealed

## Title VIII. Social Policy, Education, Vocational Training and Youth (Articles 117, 118, 118a-118b, 119-27.)

## Chapter 1. Social Provisions

Articles 117, Improved working conditions and  
118, 118a- standard of living for workers  
118b, 120-122

Article 119 Equal pay for equal work and without discrimination on the basis of sex

## Chapter 2. The European Social Fund

Articles 123-125 Fund established to enable workers to make the employment of workers easier, etc.

## Chapter 3. Education, Vocational Training and Youth

Articles 126-127 Development of quality education and vocational opportunities

## Title IX. Culture (Article 128)

Title X. Public Health (Article 129)

Title XI. Consumer Protection (Article 129a)

Title XII. Trans-European Networks (Articles 129b-129d)

Title XIII. Industry (Article 130)

Title XIV. Economic and Social Cohesion (Articles 130a-130e)

Title XV. Research and Technological Development (Articles 130f-130p)

Title XVI. Environment (Articles 130r-t)

Title XVII. Development Cooperation  
Articles 130u-130y Community should foster sustainable  
development in developing countries

Part Four—Association of the Overseas Countries and Territories  
(Articles 131-136a)

Part Five—Institutions of the Community (Articles 137-246)

Title I. Provisions Governing the Institutions

Chapter 1. The Institutions

Section 1. The European Parliament  
Articles 137, 138a-138e, 144

Section 2. The Council  
Articles 145-154 (Article 149 repealed)

Section 3. The Commission  
Articles 155-163

Section 4. The Court of Justice  
Articles 164-188

Section 5. The Court of Auditors  
Articles 188a-188c (replacing Articles 206-206a)

Chapter 2. Provisions Common to Several Institutions  
Articles 189, 189a-189c describe the new co-decision  
189a-189c, 190- procedure as well as other types of legisla-  
192 tive procedures.

Chapter 3. The Economic and Social Committee  
Articles 193-198

Chapter 4. The Committee of the Regions  
Articles 198a-198c

Chapter 5. European Investment Bank  
Articles 198d-198e, 199

Title II. Financial Provisions  
Articles 199, 201, 201a—Articles 200, 206a and 206b  
202-205, 206-209, 209a—repealed.

#### Part Six. General and Final Provisions (Articles 210-240)

Setting up of the Institutions  
Articles 241-228, 228a, 235 Articles 236 and 237  
238-248 repealed

#### *B. Part One: Principles—Articles 2-7c*

In Part One of the ECT, the principles of the Community are set out in Articles 2 through 7c.<sup>466</sup> Articles 2, 3, 3a and 3b delineate the goals, activities and principles of the Community.<sup>467</sup> Article 4 creates the five institutions of the Community.<sup>468</sup> Articles 4a and 4b deal with the banking systems of the Community.<sup>469</sup> Article 5 imposes requirements on Member States toward the achievement of the Community goals.<sup>470</sup> Article 6 prohibits discrimination on the basis of nationality,<sup>471</sup> and Articles 7, 7a, 7b and 7c provide a timetable for the progressive establishment of a common market and an internal market.<sup>472</sup>

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466. ECT arts. 2-7c.

467. *Id.* arts. 2-3b.

468. *Id.* art. 4.

469. *Id.* arts. 4a-4b.

470. *Id.* art. 5.

471. ECT art. 6.

472. *Id.* arts. 7-7c.

*1. Articles 2, 3, 3a, 3b and 4*

Article 2 of the ECT outlines the task and goals of the Community:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.<sup>473</sup>

Article 3 activities, as they relate to the purposes of Article 2, include:

- the elimination, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;<sup>474</sup>
- a common commercial policy;<sup>475</sup>
- an internal market free of obstacles to the free movement of goods, persons, services and capital;<sup>476</sup>
- measures concerning the entry and movement of persons in the internal market as provided for in Article 100c;<sup>477</sup>
- a system that ensures competition in the internal market is not distorted;<sup>478</sup>
- the approximation of the laws of Member States to the extent required for the functioning of the common market;<sup>479</sup>

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473. *Id.* art. 2.

474. *Id.* art. 3(a).

475. *Id.* art. 3(b).

476. ECT art. 3(c).

477. *Id.* art. 3(d).

478. *Id.* art. 3(g).

479. *Id.* art. 3(h).

- a policy in the social sphere comprising a European Social Fund;<sup>480</sup>
- the strengthening of economic and social cohesion;<sup>481</sup>
- a policy in the sphere of development cooperation;<sup>482</sup> and
- measures in the spheres of energy, civil protection and tourism.<sup>483</sup>

Article 3a of the ECT mandates that Member States and the Community adopt an economic policy which closely coordinates the economic policies of the Member States,<sup>484</sup> which irrevocably fixes exchange rates leading to a single currency—the European Currency Unit (the “ECU”)<sup>485</sup>—and which complies with the guiding principles of stable prices, sound public finances and monetary conditions, and a sustainable balance of payments.<sup>486</sup>

Article 3b of the ECT adopts the concept of subsidiarity, thereby mandating that subsidiarity must be considered by the Community in deciding to exercise its authority.<sup>487</sup> If the Community does exercise authority, Community action “shall not go beyond what is necessary to achieve the objectives of this Treaty.”<sup>488</sup>

Article 4 defines the Community’s institutions—a European

480. *Id.* art. 3(i).

481. ECT art. 3(j).

482. *Id.* art. 3(q).

483. *Id.* art. 3(t).

484. *Id.* art. 3a(1). This coordination is to occur on the internal market of the Community, on the definition of common objectives and in accord with the principle of an open market economy with free competition. *Id.*

485. *Id.* art. 3a(2). Article 3a of the ECT requires:

[T]he irrevocable fixing of exchange rates leading to the introduction of a single currency, the ECU, and the definition and conduct a single monetary policy and exchange rate policy the primary objective of both of which shall be to maintain price stability and without prejudice to this objective, to support the general economic policies in the Community, in accordance with the principle of an open market economy with free competition.

*Id.*

486. ECT art. 3a(3).

487. *Id.* art. 3b. Article 3b of the ECT provides:

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

*Id.*

488. *Id.*

Parliament, a Council, a Commission, a Court of Justice, and a Court of Auditors—all of which are to act within the limited power conferred by the treaty.<sup>489</sup> The Council and the Commission are assisted by two advisory committees—an Economic and Social Committee and a Committee of the Regions.<sup>490</sup>

Articles 4a and 4b deal with the banking systems of the Community. Article 4a establishes a European System of Central Banks (the “ESCB”) and a European Central Bank (the “ECB”).<sup>491</sup> Both are directed to act within the limits of the ECT and the Statute of the ESCB and of the ECB—referred to as the Statute of the ESCB.<sup>492</sup> Article 4b establishes a European Investment Bank which likewise is to act within the limits of the ECT and the Statute.<sup>493</sup>

## 2. Articles 5, 6, 7, and 7a-c

Article 5 of the ECT mandates that Member States take all appropriate measures in a way that facilitates the achievement of the Community’s tasks to ensure fulfillment of the Member States’ obligations under the ECT or resulting from action taken by the Community’s institutions.<sup>494</sup> The Member States are directed to abstain from any measure which could jeopardize the attainment of the objectives of the ECT.<sup>495</sup>

Article 6 of the ECT prohibits discrimination on the basis of nationality within the scope of the application of the ECT.<sup>496</sup> The Council may, acting in accordance with procedure in Article 189 of the ECT, adopt rules designed to prohibit such discrimination.<sup>497</sup>

Article 7 of the ECT provides for a timetable for the progressive establishment of a common market.<sup>498</sup> Articles 7a, 7b and 7c require the Community to adopt measures with the aim of progressively establishing an internal market,<sup>499</sup> and mandate

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489. *Id.* art. 4(1).

490. *Id.* art. 4(2).

491. ECT art. 4a.

492. *Id.*

493. *Id.* art. 4b.

494. *Id.* art. 5.

495. *Id.*

496. ECT art. 6.

497. *Id.* In effect, the Council may adopt a proposal from the Commission and in cooperation with the European Parliament, by a qualified majority, designed to prohibit such discrimination.

498. *Id.* art. 7. “The common market shall be progressively established during a transitional period of twelve years.” *Id.*

499. *Id.* art. 7a. “The internal market shall comprise an area without internal

the Commission to report to Council on the progress made.<sup>500</sup> They also require the Commission to take into account, when making its reports and proposals to the Commission, the extent of effort that certain economies exhibiting differences in development will have to sustain during the period of establishment of the internal market.<sup>501</sup>

*C. Part Two: Citizenship of the Union—Article 8*

Articles 8-8e of the ECT address citizenship of the Union. Every person holding the nationality of a Member State is a citizen of the Union with rights conferred by the ECT.<sup>502</sup> Every citizen of the Union, subject to the limits set out in the ECT, has the right to move and reside freely in any Member State.<sup>503</sup> Every citizen of the Union residing in a Member State of which the citizen is not a national has the right to vote and be a candidate at municipal elections in the Member State of residence, under the same conditions as nationals and subject to Council's detailed arrangements.<sup>504</sup> Also, such a person has the right to vote and to stand as a candidate in elections to the European Parliament in the Member State of residence, under the same conditions as nationals of the State and subject to Council's detailed arrangements.<sup>505</sup>

Where the citizen of the Union is in the territory of a third country and the State where the citizen is a national is not represented in that country, the citizen of the Union is entitled to protection by the diplomatic or consular authorities of any Member State on the same conditions as the nationals of that State.<sup>506</sup> Every citizen of the Union is entitled to petition the European Parliament in accordance with Article 138d and to the Ombudsman established in accordance with Article 138e.<sup>507</sup> Finally, the Commission is to report to the European Parliament, the

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frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the [ECT].” *Id.*

500. *Id.* art. 7b.

501. ECT art. 7c.

502. *Id.* art. 8(1)-(2).

503. *Id.* art. 8(a).

504. *Id.* art. 8b(1).

505. *Id.* art. 8b(2).

506. ECT art. 8c. Member States were to establish the necessary rules among themselves and start the international negotiations required to secure this protection. *Id.*

507. *Id.* art. 8d.



Council and the Economic and Social Committee every three years on the application of Part Two, Citizenship of the Union.<sup>508</sup>

*D. Part Three: Community Policies—Articles 9-130*

Articles 9 through 130 of the ECT (also called Part Three of the ECT) include seventeen titles covering the free movement of goods,<sup>509</sup> agriculture,<sup>510</sup> free movement of persons, services and capital,<sup>511</sup> transport,<sup>512</sup> common rules on competition, taxation and approximation of laws,<sup>513</sup> economic and monetary policy,<sup>514</sup> common commercial policy,<sup>515</sup> social policy, education, vocational training and youth,<sup>516</sup> culture,<sup>517</sup> public health,<sup>518</sup> consumer protection,<sup>519</sup> trans-European networks,<sup>520</sup> industry,<sup>521</sup> economic and social cohesion,<sup>522</sup> research and technological development,<sup>523</sup> environment,<sup>524</sup> and development cooperation.<sup>525</sup>

*1. Title I—Free Movement of Goods: Articles 9-37*

*Title II—Agriculture: Articles 38-47*

The free movement of goods, guaranteed by Title I, is assured by the elimination of customs and quantitative restrictions. Articles 9 through 11 prohibit customs duties on imports or exports from or to Member States, and require common customs tariffs with third countries and free circulation of goods from those countries among the States.<sup>526</sup> Articles 12 through 29 provide for customs union through the elimination of customs duties for

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508. *Id.* art. 8e.  
 509. *Id.* arts. 9-37.  
 510. *Id.* arts. 38-47.  
 511. ECT arts. 48-73.  
 512. *Id.* arts. 74-84.  
 513. *Id.* arts. 85-102.  
 514. *Id.* arts. 102a-109m.  
 515. *Id.* arts. 110-116.  
 516. ECT arts. 117-128.  
 517. *Id.* art. 128.  
 518. *Id.* art. 129.  
 519. *Id.* art. 129a.  
 520. *Id.* arts. 129b-129d.  
 521. ECT arts. 130.  
 522. *Id.* arts. 130a-130e.  
 523. *Id.* arts. 130f-130p.  
 524. *Id.* arts. 130r-130t.  
 525. *Id.* arts. 130u-130y.  
 526. ECT art. 10.

Member States<sup>527</sup> and the setting up of a common customs tariff.<sup>528</sup> Articles 30 through 37 provide for the elimination of quantitative restrictions between Member States.<sup>529</sup> Title II extends the common market to agriculture and trade in agricultural products in Articles 38 through 47.<sup>530</sup>

2. *Title III—Free Movement of Person, Services and Capital:*  
*Articles 48-66, 73a-73h*  
*Title IV—Transport: Articles 74-84*

Title III ensures the free movement of workers, services and capital. Workers are guaranteed free movement among the Member States<sup>531</sup> and are protected against discrimination based on nationality with regard to employment, remuneration and other conditions of work and employment, except for employment in the public service.<sup>532</sup> Nationals of Member States cannot be restricted on freedom of establishment, e.g., the right to take up and pursue activities as self-employed persons.<sup>533</sup> The freedom to provide services, which includes activities of the professions, is also guaranteed.<sup>534</sup> Member States and institutions of the Community are charged to implement activities to secure the progressive abolishment of any restrictions on such freedoms and other activities.<sup>535</sup>

Restrictions on the movement of capital and on payments between Member States and between Member States and third countries are prohibited.<sup>536</sup> There are, however, some temporary accommodations for restrictions applicable to third countries regarding direct investment, including investment in real estate, establishment, the provision of financial services, the admission of securities to capital markets and taxation.<sup>537</sup>

Title IV provides for a common transport policy.<sup>538</sup> Common rules are to be laid down for international transport to or from the territories of Member States or passing across such territo-

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527. *Id.* art. 12-17.

528. *Id.* arts. 18-29.

529. *Id.* arts. 30-37.

530. *Id.* arts. 38-47.

531. ECT arts. 48-51.

532. *Id.* art. 48.

533. *Id.* arts. 52-58.

534. *Id.* arts. 59-66.

535. *See id.* arts. 49-51, 54-58, 59 & 62-66.

536. ECT art 73a. The TEU amended the ECT by replacing Articles 67-73 with Articles 73b-73g.

537. *Id.* arts. 73c-73h.

538. *Id.* arts. 74-84.

ries, and regarding the conditions under which non-resident carriers may operate transport services within a Member State, measures to improve transport safety and other appropriate provisions.<sup>539</sup> Transport by rail, road and inland waterway are covered; Council may decide whether to extend coverage to sea and air transport.<sup>540</sup>

### 3. *Title V—Common Rules on Competition, Taxation and Approximation of Laws: Articles 85-102*

This title is somewhat analogous to American antitrust laws. It prohibits all agreements and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market.<sup>541</sup> An exception is permitted where the agreement or practice contributes to improving the production or distribution of goods or to promoting technical or economic progress while allowing consumers a fair share of the resulting benefit and does not impose any restrictions which are not indispensable to the attainment of the Treaty's objectives or give the participants the possibility of eliminating competition respecting a substantial part of the products in question.<sup>542</sup>

Abuse of a dominant position within the common market or in a substantial part of it<sup>543</sup> and dumping<sup>544</sup> are prohibited. Although state-granted aid which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods is incompatible with the common market, other state-granted aid is not.<sup>545</sup>

No Member State can impose taxes on the products of another Member State in excess of that imposed on similar domestic products or in a way that protects other products.<sup>546</sup> Also, other tax-related provisions are addressed.<sup>547</sup> The laws, regulations or

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539. *Id.* art. 75.

540. *Id.* art. 84.

541. ECT art. 85.

542. *Id.* art. 85.

543. *Id.* arts. 86-90.

544. *Id.* art. 91.

545. *Id.* art. 92. For example, state-granted aid that promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment is compatible with the common market. *Id.* art. 92.3(a). Also, where the aid is to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the community to an extent that is contrary to the common interest. *Id.* art. 92.3(d). *See id.* arts. 92-94.

546. ECT arts. 95-99.

547. These deal with turnover taxes, excise duties and other forms of indirect

administrative action in Member States are to be coordinated or approximated to promote the establishment or functioning of the common market.<sup>548</sup>

4. *Title VI—Economic and Monetary Policy: Articles 102a-109m*

Member States are required to conduct their economic policies with a view to contributing to the achievement of the objectives of the Community.<sup>549</sup> The Member States and the Community are directed to act in accordance with the principle of an open market economy with free competition that favors an efficient allocation of resources and is in compliance with the goals and principles of Articles 2 and 3a.<sup>550</sup> Community-wide economic policy is to be coordinated.<sup>551</sup>

Tight controls on credit, debt and government deficits are Community policy. Generally speaking, overdraft facilities in favor of Community institutions or bodies, central governments and public authorities are prohibited,<sup>552</sup> privileged access by Community institutions or bodies to financial institutions is prohibited,<sup>553</sup> the Community is not responsible for the obligations of the governments of Member States and a Member State is not responsible for the obligations of another Member State<sup>554</sup> and Member States are to avoid excessive government deficits.<sup>555</sup>

The rights, policies and procedures of the European System of Central Banks (the "ESCB") and the European Central Bank (the "ECB")<sup>556</sup> are then detailed.<sup>557</sup> An advisory committee and a Monetary Committee are established to report to the Commission.<sup>558</sup>

There are provisions for transitional measures.<sup>559</sup> A European Monetary Institute (the "EMI") is established, among other things, to coordinate monetary policies of Member States, to

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taxation. See ECT art. 99.

548. ECT arts. 100-102.

549. *Id.* art. 102a.

550. *Id.*

551. *Id.* art. 103(1).

552. *Id.* art. 104(1).

553. ECT art. 104a(1).

554. *Id.* art. 104b(1).

555. *Id.* art. 104c(1).

556. See *id.* art. 4.

557. *Id.* arts. 105-109b.

558. ECT art. 109c(1). Article 109d of the ECT provides for certain powers in the Council or Member State to request the Commission to make recommendations or proposals as appropriate. See *id.* art. 109(d).

559. *Id.* art. 109e.

strengthen cooperation between national central banks, and to take over the tasks of the European Monetary Cooperation Fund and to facilitate the use of the ECU.<sup>560</sup> Provisions exist for management by the Community of the economy of the Community including financial crises of Member States.<sup>561</sup>

5. *Title VII—Common Commercial Policy: Articles 110-116*

The commercial policy is to harmoniously develop world trade, progressively abolish restrictions on international trade and lower customs barriers.<sup>562</sup> The policy is to be based on uniform principles, particularly regarding changes in tariff rates and tariff agreements, export policy and measures to protect trade, e.g., in the event of dumping or subsidies.<sup>563</sup>

6. *Title VIII—Social Policy, Education, Vocational Training and Youth: Articles 117, 118, 118a, 118b, 119-127*

The Member States agreed to promote improved working conditions and standard of living for workers to make harmonization possible while improvement is being maintained.<sup>564</sup> The areas include: (1) employment, labor law and working conditions; (2) basic and advanced vocational training; (3) social security; (4) prevention of occupational accidents and diseases; (5) occupational hygiene; and (6) the right of association and collective bargaining between employers and workers.<sup>565</sup>

A European Social Fund, administered by the Commission<sup>566</sup> has the task of rendering the employment of workers easier, increasing geographical and occupational mobility within the Community and assisting in the adaptation to industrial and production system changes, particularly through vocational training and retraining.<sup>567</sup> The Council is responsible for implementing decisions relating to the Fund.<sup>568</sup>

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560. *Id.* art. 109f(1)-(2).

561. *Id.* arts. 109h-109m.

562. *Id.* arts. 110, 112.

563. ECT arts. 113, 115.

564. *Id.* art. 117.

565. *Id.* art. 118. *See id.* arts. 118a-b & 119-122.

566. *Id.* art. 124.

567. *Id.* art. 123. *See id.* arts. 126-127.

568. ECT art. 125.

*7. Titles IX through XVII—Culture; Public Health; Consumer Protection; Trans-European Networks; Industry; Economic and Social Cohesion; Research and Technological Development; Environment; and Development Cooperation: Articles 128-130y.*

The Community is to contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.<sup>569</sup> This is to be achieved by, among other things,<sup>570</sup> the dissemination of knowledge and history of European people, cultural exchanges, and artistic and literary creation.<sup>571</sup>

The Community is also to contribute in many other aspects of life. It is to contribute to ensuring a high level of human health protection by encouraging cooperation between the Member States and, if necessary, lending support to their actions.<sup>572</sup> Consumer protection is to be attained through measures adopted in the context of completing the internal market and protecting the health, safety and economic interests of consumers.<sup>573</sup> European networks are to be developed in the areas of transport, telecommunications and energy infrastructures, and interconnection and inter-operability of national networks and access to such networks.<sup>574</sup>

Competitiveness of the Community's industry is to be ensured.<sup>575</sup> The Community is to develop actions that strengthen economic and social cohesion, particularly with the aim of reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions, including rural areas.<sup>576</sup> Member States are to do the same.<sup>577</sup> The European Regional Development Fund is intended to help redress main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.<sup>578</sup> Finally, a Cohesion Fund is to be set up to provide financial contributions to projects in the

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569. *Id.* art. 128(1).

570. *Id.* art. 124.

571. *Id.* art. 128(2).

572. *Id.* art. 129.

573. ECT art. 129a.

574. *Id.* arts. 129b-129d.

575. *Id.* art. 130.

576. *Id.* art. 130a.

577. *Id.* art. 130b.

578. ECT art. 130c. The Council is to implement its decisions. *Id.* art. 130e.

fields of environment and trans-European networks for transport infrastructure.<sup>579</sup> The Council is to define the tasks, priorities, organization, policies and procedures of the Funds.<sup>580</sup>

The Community is to strengthen the scientific and technological bases of Community industry and encourage it to become more competitive at the international level.<sup>581</sup> Community environmental policy is to contribute to the pursuit of protecting and improving the quality of the environment, protecting human health, rational use of natural resources and promoting measures at the international level to deal with regional or worldwide environmental problems.<sup>582</sup> Community policy in the area of development cooperation is to foster sustainable economic and social development in developing countries—especially the most disadvantaged—the smooth and gradual integration of the developing countries into the world economy, and the campaign against poverty in the developing countries.<sup>583</sup>

*E. Part Four: Association of the Overseas Countries and Territories—Articles 131-136a*

This part states that “[t]he Member States agree to associate with the Community the non-European countries and territories which have special relations with Belgium, Denmark, France, Italy, the Netherlands and the United Kingdom (‘countries and territories’).”<sup>584</sup> The purpose is to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole.<sup>585</sup>

*F. Part Five: Institutions of the Community—Articles 137-209a*<sup>586</sup>

*G. Part Six: General Provisions—Articles 210-248*

A variety of matters are dealt with in Part Six of the ECT, some of which are set out here. The Council and the Court of Justice determine rules regarding language.<sup>587</sup> Nondisclosure by

579. *Id.* art. 130d.

580. *Id.*

581. *Id.* art. 130f.

582. *Id.* art. 130r(1).

583. ECT art. 130u(1).

584. *Id.* art. 131.

585. *See id.* arts. 131-136a.

586. *See supra* Part III.

587. ECT art. 217.

institution and committee members of information covered by obligations of professional secrecy is mandated.<sup>588</sup> Resolution of disputes of Member States is to be only through the methods set out in the ECT.<sup>589</sup> Protocols annexed to the Treaty are considered an integral part of it.<sup>590</sup>

The Community is able to hold legal personality,<sup>591</sup> to acquire and dispose of movable and immovable property, to be a party to legal proceedings and to have legal status in each Member State.<sup>592</sup> The Community enjoys, in the territories of the Member States, privileges and immunities as are necessary for the performance of its tasks.<sup>593</sup> Member States are to protect other nationals as they do their own and to avoid double taxation.<sup>594</sup>

The liability of the Community is covered in Article 215. Its contractual liability is to be governed by the law applicable to the contract in question.<sup>595</sup> In non-contractual contexts the Community's liability is in accordance with the general principles common to the laws of the Member States. Also, it must make good any damage caused by its institutions or by its servants in the performance of their duties.<sup>596</sup>

The Member States are to consult each other and to take steps needed to protect the common market from measures a Member State may properly decide to take<sup>597</sup> in the event of war and other events.<sup>598</sup> The events include: (1) serious internal disturbances affecting the maintenance of law and order; (2) serious international tension constituting a threat of war; or (3) in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.<sup>599</sup>

The Community is authorized to enter association agreements with third states, a union of States or an international organization.<sup>600</sup> It is to maintain appropriate relations with the United

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588. *Id.* art. 214.

589. *Id.* art. 219.

590. *Id.* art. 239.

591. *Id.* art. 210.

592. ECT art. 211.

593. *Id.* art. 218.

594. *Id.* art. 220.

595. *Id.* art. 215. The United Nations Convention on the Uniform Sale of Goods often applies to commercial sales of goods.

596. *Id.* Personal liability of Community's servants toward the Community is governed by the provisions in the Staff Regulations or the Conditions of Employment applicable to them. *Id.*

597. ECT art. 224.

598. *Id.*

599. *Id.*

600. *Id.* arts. 228, 238.



Nations, with all international organizations,<sup>601</sup> with the Council of Europe,<sup>602</sup> and with the Organization for Economic Cooperation and Development.<sup>603</sup>

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601. *Id.* art. 229.  
602. ECT art. 230.  
603. *Id.* art. 231.

## APPENDIX THREE: GLOSSARY OF TERMS AND ABBREVIATIONS

*The Council*—The Council is an institution of the Community which is to ensure that the objectives of the Treaty on European Union (the "TEU") are attained. Council is composed of a representative of each Member State at the ministerial level who is authorized to commit the government of that State.

*The Council of Europe*—A Congress of Europe was called at the Hague in May of 1948 and the resulting Statute of the Council of Europe was signed as the Treaty of Westminster on May 5, 1949 by representatives of ten states. The Council of Europe only has the power of persuasion and was western Europe's first, and with a composition of 26 countries continues to be its largest, postwar political organization. The Council of Europe's most important achievements were in the area of human and social rights e.g., the European Convention for the Protection of Human Rights and Fundamental Freedoms, November 1950.

*The European Coal and Steel Community (the "ECSC")*—The ECSC was created by the Treaty of Paris of April 18, 1951, effective July 25, 1952 (also called the "ECSC Treaty").

*The European Community Treaty (the "ECT")*—The Treaty on European Union (the "TEU"), signed by the Member States at Maastricht, the Netherlands on February 7, 1992, made significant changes, among other things, in the Treaty Establishing The European Economic Community (the "EEC Treaty"). The EEC Treaty as amended by TEU is now called the European Community Treaty (the "ECT").

*The European Defense Community Treaty (the "EDC")*—The EDC was signed by the six signatories of the ECSC Treaty on May 27, 1952. The EDC collapsed in the early 1950's.

*The European Economic Area (the "EEA")*—The EFTA and EEC countries, in 1992, agreed to create the EEA.

*European Economic Community (the "EEC")*—The EEC, also known as the Treaty of Rome, signed in Rome, Italy on March 25, 1957 and effective January 1, 1958.

*European Free Trade Association or the Stockholm Convention (the "EFTA")*—On January 4, 1960, a free trade area linked Austria, Denmark, Norway, Portugal, Sweden, Switzerland and the UK (the "outer seven" in contrast to the EEC's "inner six"). EFTA and the EEC enjoy good trade relations and in 1992, agreed to create a European Economic Area ("EEA").

*European Monetary Institute (the "EMI")*—The EMI was created in 1994 to coordinate the activities of various central banks and to make recommendations on general monetary policy.

*European Monetary Agreement (the "EMA")*—In 1958, the European Payments Union was replaced by the EMA under which European currencies were convertible with the dollar.

*European Payment Union (the "EPU")*—The EPU was an agency established by the OEEC in 1950 which facilitated the interchangeability of the currencies of the members of the OEEC. It was replaced by the EMA in 1958.

*European Political Community Treaty (the "EPC")*—The EPC was created by the ministers of the ECSC countries in late 1952. The EPC collapsed in the early 1950's.

*European Political Cooperation (the "EPolC")*—During the 1970's, the European Council began this program of cooperation among the Member States in foreign policy.

*Euratom Treaty ("EAEC")*—Treaty Establishing the European Atomic Energy Community signed in Rome, Italy on March 25, 1957 and effective January 1, 1958.

*The European Council*—Defines the political guidelines and the necessary impetus for the development of the Union (TEU art. D). The European Council, in the early 1970's, resulted from an agreement among Member States that intergovernmental meetings on major policy issues of common concern to the Community should be held on a regular basis. During the 1970's, the European Council began a program of cooperation among the Member States in foreign policy that was known as European Political Cooperation ("EPolC"). Both the European Council and the EPolC were formally recognized or institutionalized in the Single European Act, effective on July 1, 1987.

*GATT*—General Agreement on Tariffs and Trade (1947).

*Merger Treaty*—A Treaty adopted in April of 1965, effective July 1, 1967, which simplified the structure of the three Communities: (1) the ECSC's High Authority; (2) the EEC's Commission; and (3) Euratom into a single Commission of the European Communities. It also married the Councils of the three communities into a single Council. This structure complimented the single Court of Justice and Assembly that already existed as of 1957.

*The North Atlantic Treaty Organization formed by the North Atlantic Treaty (1949) ("NATO")*—NATO was the treaty among western European nations, Canada and the United States created as a defensive military alliance.

*Single European Act Treaty (the "SEA")*—The SEA, dated July 1, 1987, amends the EEC Treaty for the purpose of completing a single internal market by 1992.

*Stockholm Convention*—See European Free Trade Association.

*Treaty on European Union (the "TEU")*—The TEU was signed by the Member States at Maastricht, the Netherlands on February 7, 1992.

*Treaty of Paris*—See European Coal and Steel Community Treaty.

*Treaty of Rome*—See European Economic Community Treaty and Euratom Treaty.

*Western European Union Treaty (the "WEU")*—The WEU was signed in October of 1954, by seven western European countries in order to promote collective self defense and political collaboration for unity. While NATO was more prominent than the WEU during the Cold War era, NATO's *raison d'etre* is being reexamined and the WEU is now receiving attention as the leaders of Europe proceed to design a common defense and security strategy.

APPENDIX FOUR: TIMELINE



