2. THE INSTITUTIONS OF THE COMMUNITY

44. The institutions. There are five Community 'institutions' properly so-called: the European Parliament (the Assembly), the Council, the Commission, the Court of Justice and the Court of Auditors. The EC Treaty also establishes a number of other 'organs' (the Economic and Social Committee, the European Investment Bank and the Committee of the Regions) and provides for the establishment of further organs to regulate the proposed economic and monetary union. Other bodies have been created by Community legislation to develop and supervise aspects of the work of the Community.

45. The institutions generally. All Community institutions are required to act within the limits of the powers conferred upon them by the Treaty. Each has adopted Rules of Procedure, and failure to comply with them may render their conduct unlawful. The institutions have a duty of loyalty to cooperate fully, where appropriate, with national authorities in order to assist in the implementation of Community rules. The seats of the institutions, to be determined by agreement amongst the member states, were finally fixed at a meeting of the European Council (the Edinburgh Summit) in 1992.

46. The European Council. The European Council is not formally recognised in the EC Treaty and is not a Community institution. It was first recognised by the Single European Act, which assigned to it no specific powers or functions. The Treaty on European Union now provides:

'The European Council shall bring together the Heads of State or of Government of the Member States and the President of the Commission. They shall be assisted by the Ministers of Foreign Affairs of the Member States and by a Member of the Commission. The European Council shall meet at least twice a year, under the chairmanship of the Head of State or of Government of the Member State which holds the Presidency of the Council.'

The European Council, meetings of which are sometimes called 'Summits', is to provide the Union with the necessary impetus for its development and shall define the general political guidelines thereof. It is further charged with responsibility for defining the principles of and general guidelines for

1 EC Treaty, art 4.
2 Ibid, art 3b, para 1.
3 See eg Case C-137/92P Commission v BASF (PVC) [1994] ECR I-2555.
5 EC Treaty, art 216.
6 Decision of the Representatives of the Governments of the Member States on the Location of the Seats of the Institutions, OJ C341, 23.12.92, p 1.
7 TEU, art D. As to presidency of the Council, see para 59 below.
8 Ibid, art D.
the common foreign and security policy pursued under Title V of the TEU and has a supervisory role in Community progress towards economic and monetary union. It is not otherwise mentioned in the treaty texts. It is not competent as such to adopt legally binding acts and it plays no part in the formal legislative machinery of the Community. The heads of State and government could however, if constituted as the Council of Ministers, undertake the legislative functions assigned by the treaties to the Council.

47. Plan of this part. It is proposed first to describe the composition, membership and general responsibilities of the three ‘political institutions’ (the Parliament, the Council and the Commission) and then the legislative process in which they are, to a greater or lesser degree, involved. This is followed by a description of the two ‘supervisory institutions’, the Court of Justice and the Court of Auditors, and thereafter of the other organs.

(1) THE POLITICAL INSTITUTIONS

(a) The European Parliament

48. Membership of the Parliament. Each of the founding treaties provides that the Parliament

‘shall consist of representatives of the peoples of the States brought together in the Community, [and] shall exercise the powers conferred upon it by this Treaty’.

The members of the Parliament (‘MEPs’) are elected by direct universal suffrage for a fixed five-year term. The treaties require the adoption of a uniform voting procedure, but this has not yet been achieved, and the voting system still varies from member state to member state. There are at present 626 MEPs. Their numbers are broadly proportionate to the population size

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1 See para 294 below.
2 See para 263 below.
4 See paras 56 and 75-78 below.
5 EC Treaty, art 137; ECSC Treaty, art 20 (which makes reference to ‘supervisory powers’); Euratom Treaty, art 107 (‘advisory and supervisory powers’).
6 Act concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage, OJ L278, 8.10.76, p 10. MEPs from Austria, Finland and Sweden are appointed from amongst national parliaments until such time as direct elections are held in each of those member states, which must be before the end of 1996; Corfu Accession Treaty, art 31.
7 EC Treaty, art 138(3).
8 Act concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage, OJ L278, 8.10.76, p 10 as amended.
of the member states with a weighting in favour of the smaller states, rang­
ing from six for Luxembourg to eighty-seven each for France, Italy and the
United Kingdom and to ninety-nine for Germany1.

49. Parliamentary procedures. The Parliament adopts its own rules of pro­
cedure2. Except where otherwise provided in the treaty the Parliament acts
by an absolute majority of votes cast3. However, many important matters
involving the participation of the Parliament require a positive vote by a
majority of its members (ie, at present at least 314 votes). Frequently the
Parliament finds itself unable to act simply because it fails to muster the nec­
essary number of votes. Preliminary work is done by the standing parlia­
mentary committees, of which there are currently twenty. They are
becoming increasingly influential in the process of legislation and now work
very closely with the services of the Council and of the Commission. The
committees report to the plenary session of the Parliament, which is required
to meet annually4, but in practice sits for one week in every four from
October to July.

50. Political groups. MEPs sit not as national deputies but in transnational
‘political groups’. The incentive to form political groups (which must
include a minimum number of MEPs5) is that appointment to parliamentary
committees, speaking time and disbursement of funding is on a political
group basis. At present there are nine political groups6 plus some two dozen
‘non-attached’ MEPs. By far the largest is the European Socialists Group
with 221 seats, which includes sixty-two Labour and one Social Democratic
and Labour MEPs from the United Kingdom7.

51. Organisation. The President and officers of the Parliament are elected
from amongst its members8, and in practice hold office for two-and-a-half
years. Much of the work of organisation is undertaken by the ‘Bureau’, con­

1 Ibid. Under the European Parliamentary Elections Act 1978, c 10 as amended, the eighty­
seven United Kingdom MEPs are further subdivided into seventy-one from England, eight
from Scotland, five from Wales (all representing single constituencies) and three from
Northern Ireland (a single multi-member constituency).
2 EC Treaty, art 142. The present Rules of Procedure were adopted on 15 September 1993; they
are not published in the Official Journal but are available from the Parliament.
3 Ibid, art 141.
4 Ibid, art 139.
5 A political group must have at least twenty-nine MEPs if all from one member state, twenty­
three if from two, eighteen if from three and fourteen if from four or more; Rules of Procedure, rule 29(2), as amended.
6 I.e, European Socialists, European People’s Party (Christian Democrats), European Liberal
Democratic and Reformist, European United Left, Forza Europa, European Democratic
Alliance, Greens, European Radical Alliance, Europe of Nations (Co-ordination Group).
7 The other UK MEPs sit in the following groups: eighteen Conservative and one Ulster
Unionist in the European Peoples’ Party; two Liberal Democrats in the Liberal Democratic
and Reformist Group; two Scottish Nationalists in the European Radical Alliance; and one
Democratic Unionist in the Non-Attached Group.
8 EC Treaty, art 140.
sisting of the President and the fourteen Vice-Presidents, assisted by the five Quaestors (the 'officers' of the Parliament) and by the 'Conference of Presidents', consisting of the President and the chairmen (sic) of the political groups. The seat of the Parliament is in Strasbourg, but its General Secretariat is in Luxembourg and its committees meet in Brussels.

52. Powers of the Parliament. The principal powers of the Parliament fall into three broad categories. First, it enjoys a degree of political control over the Commission. Second, it plays an (increasingly) important role in the adoption of Community legislation. And third, it has significant powers in relation to the Community budget.

53. Powers with respect to the budget. The budgetary procedure under the treaties involves an intricate process of power sharing amongst the Parliament, the Council and the Commission. Ultimately it is the President of the Parliament who declares the budget to be finally 'adopted'. The Parliament may reject the budget outright by a two-thirds vote cast by a majority of its members. It has now done so on three occasions, leading to temporary financial paralysis. It may not, however, increase the total amount of the budget beyond the 'maximum rate of increase' set by the Commission in areas of non-compulsory spending unless the alteration is agreed between the Council and the Parliament. Within the constraints of the Treaty, the budgetary procedure is governed by an agreement amongst the three institutions.

54. General supervisory powers. Since the entry into force of the Treaty on European Union the Parliament has power to establish temporary Committees of Inquiry to investigate alleged contraventions of or maladministration in the implementation of Community law. It is to appoint an Ombudsman with powers to investigate allegations of maladministration in the activities of the Community institutions other than the judicial activities.

2 See para 69 below.
3 See paras 79-81 below.
4 EC Treaty, art 203.
6 EC Treaty, art 203(8).
7 Ibid, art 203(9). 'Compulsory expenditure' describes those areas of the Community budget in which there is a legal obligation to dispense Community funds; the vast majority is in the agricultural sector. 'Non-compulsory expenditure' encompasses areas in which there is discretion.
8 See the Interinstitutional Agreement of 29 October 1993 on budgetary discipline and improvement of the budgetary procedure, OJ C331, 7.12.93, p 1, which is a revision of a 1988 agreement. See also Council Decision 94/729, OJ L293, 12.11.94, p 14 on budgetary discipline.
9 EC Treaty, art 188c.
of the Court of Justice\(^1\). Any citizen of the Union or any natural or legal person within its jurisdiction may address a petition to the Parliament on any matter of Community activity which affects him directly\(^2\).

(b) The Council

55. Name and function of the Council. The EC Treaty and the Treaty on European Union refer to ‘the Council’. Following the entry into force of the Treaty on European Union it renamed itself ‘the Council of the European Union’\(^3\). But it is more commonly known as the Council of Ministers. It is the ultimate legislative organ of the Community, except (a) under the ECSC Treaty where the Commission can take legislative decisions, the assent of the Council being required only for certain purposes\(^4\), and (b) where the EC Treaty requires recourse to the co-decision procedure with the Parliament\(^5\). It also has significant powers in relation to the two non-Community pillars of the Union\(^6\).

56. Composition of the Council. In terms of the EC Treaty, the Council shall consist of a representative of each Member State at ministerial level, authorized to commit the government of that Member State\(^7\).

The original intention was that the Council should be a ‘college of delegates’, acting as a single autonomous Community institution in which each member state would be represented by a minister specially appointed for the purpose. In practice the Council has become more like a traditional forum for intergovernmental negotiation, and its composition depends upon the subject matter under discussion. So, for a matter relating to economic and monetary policy, the Council consists of the national Ministers of Finance (‘Ecofin’); for a matter relating to agriculture, of the Ministers of Agriculture; and so on. As a (small) step towards greater regional influence in Community decision making, and owing to pressure from the German Länder and the Belgian autonomous communities, the Treaty was amended by the Treaty on European Union so as to allow a member state to be represented by ministers from regional government, so long as they are empowered to bind the member state\(^7\). The ‘senior’ body is the General Affairs

\(^1\) EC Treaty, art 138c; Rules of Procedure, rule 159.
\(^2\) Ibid, art 138d.
\(^3\) Council Decision 93/591, OJ L281, 16.11.93, p 18. The Treaty provides no authority for the Council to do so.
\(^4\) ECSC Treaty, arts 14 and 28.
\(^5\) See para 81 below.
\(^6\) See para 291 below.
\(^7\) EC Treaty, art 146.
Council or Council of Foreign Ministers, which takes decisions on matters of foreign and security policy under Title V of the Treaty on European Union and on Community matters of general importance, such as institutional affairs, preparation of European Council summits and ‘Group of Seven’ meetings, and residual matters not fitting clearly into other government portfolios. For certain decisions in the area of economic and monetary union the Council is required to meet as heads of State and government\(^1\). Whatever its composition, all decisions are taken in name of the Council as such.

57. The member states meeting in the Council. Some provisions of the Treaty provide for decisions to be taken by the ‘common accord of the governments of the Member States’. Where this applies, or where the member states wish to co-operate from time to time on a matter outwith Community and European Union competences, representatives of the fifteen governments meet using the facilities of the Council but adopt such measures as decisions of the representatives of the member states, sometimes adding the words ‘meeting in the Council’ \((au\ \sein\ du\ Conseil)^2\).

58. Organisation. The Council has its own Secretariat-General under the direction of a Secretary-General, consisting of six Directorates-General and a Legal Service. It has its seat in Brussels, and adopts its own rules of procedure\(^3\).

59. Presidency of the Council. The Presidency of the Council is held for six months at a time by each member state in strict rotation\(^4\). Continuity is now sought under a system by which the officials of the last two, the current and the next two Presidencies work together\(^5\). The powers of the Presidency are significant, since the President controls the agenda of Council meetings. Member states have been criticised for arranging the legislative programme of the Council in a manner which best suits their (or their governments’) interests.

60. COREPER. The EC Treaty recognises the existence of a committee consisting of the permanent representatives (ambassadors) of the member states (commonly called COREPER)\(^6\), permanently based in Brussels. COREPER is

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\(^1\) EC Treaty, art 109(j); see paras 264, 266 below.


\(^3\) EC Treaty, art 151(3); for the present Rules of Procedure see Decision 93/662, OJ L304, 10.12.93, p 1.

\(^4\) EC Treaty, art 146(2). The order of rotation (from 1 January 1995) is fixed by a (not yet published) Council Decision of 1 January 1995, thus: France, Spain, Italy, Ireland, Netherlands, Luxembourg, United Kingdom, Austria, Germany, Finland, Portugal, France, Sweden, Belgium, Spain, Denmark, Greece.

\(^5\) Since the officials from the last and next Presidency - and a fortiori the last and next but one - are generally of lower grade than those who took part or will take part in substantive business, continuity may be more effectively assured through the day-to-day working relationship of the Council Secretariat-General, COREPER and the Commission.

\(^6\) EC Treaty, art 151; the title COREPER comes from Comité des RÉprésentants PERmanents.
'responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council'. Much of the preparatory work of the Council is done by committees or working groups of national civil servants. A number of decisions of the Council are, for practical purposes, taken by COREPER and formally adopted by the Council.

(c) The Commission

(A) THE COMMISSION PROPERLY SO-CALLED

61. The Commission and its services. The Commission is not, as frequently suggested, the civil service or bureaucracy of the Community. It is an autonomous political institution consisting of twenty members 'chosen on the grounds of their general competence and whose independence is beyond doubt'. The Commissioners must be 'completely independent in the performance of their duties' and 'neither seek nor take instructions from any government or from any other body'. Each Member State undertakes ... not to seek to influence the members of the Commission in the performance of their tasks. Much of the work of the Commission is carried out, and some administrative decisions are taken in the name of the Commission, by the Commission's 'services' — that is, by the officials employed by the Commission.

62. Membership of the Commission. The EC Treaty provides that

'the Commission must include at least one national of each of the Member States, but may not include more than two members having the nationality of the same State'.

In practice, each of the larger member states (Germany, Spain, France, Italy and the United Kingdom) nominate two Commissioners and the remainder one each. In the United Kingdom, the convention is that its nominees include one politician, or person with political experience, from the ruling majority party and the other from the opposition. Similar conventions apply in some of the other large member states. From January 1995 appointment to the

1 EC Treaty, art 151.
2 The Council agenda is divided into 'A points', upon which agreement has been reached in COREPER and only the formality of a Council decision is required, and 'B points', which require debate in the Council. Some B points are dealt with by written procedure without a meeting, whilst others are 'false B points' (where in reality there is no dispute but one or more delegations require, for domestic political reasons, to go through the motions of recording their points of view in the minutes).
3 EC Treaty, art 157(1).
4 Ibid, art 157(2).
5 See paras 70-72 below.
6 EC Treaty, art 157(1).
Commission is for a five-year term (previously it was four) and its members are subject as a body to the approval of the Parliament\(^1\).

63. Presidency of and appointment to the Commission. Prior to 1995 the President of the Commission was selected by a process of horse trading amongst the member states, and he had little influence in its eventual composition. A new procedure introduced by the Treaty on European Union applied for the first time to the appointment of the Commission which took office in January 1995. By it, the President is first nominated by ‘common accord’ of the governments of the member states and in consultation with the Parliament\(^2\). Thereafter the governments select the other members in consultation with the President-nominate. The proposed Commission is then subject as a body to a vote of approval by the Parliament\(^3\).

64. Collegiality. In taking decisions the Commission acts by simple majority\(^4\) and as a ‘college’, there being no scope for overt opposition or dissent on the part of individual Commissioners. No legislative power may be delegated by the Commission, but the power to adopt legally binding administrative acts in the name of the Commission may be delegated to an individual Commissioner\(^5\) and, in certain cases, administrative competences may be delegated to other bodies, but only within a framework of very tightly defined checks and balances\(^6\). The Commission adopts its own rules of procedure\(^7\).

65. Powers and functions as regards subordinate legislation. The EC Treaty provides that ‘the Commission shall . . . exercise the powers conferred on it by the Council for the implementation of the rules laid down by the latter’\(^8\). Whilst the Commission alone enjoys very little autonomous legislative authority under the Treaty\(^9\), it is often empowered by Council regulations to enact delegated legislation in the implementation and administration of a broad legislative programme. This is particularly so in the fields of agriculture\(^10\) and competition\(^11\). By virtue of the Single European Act, the Council is

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\(^1\) See para 63 below.
\(^2\) EC Treaty, art 158(2). The practical operation of ‘common accord’ was illustrated by the appointment of the present Commission, when the United Kingdom government vetoed the nomination as President of Mr Jean-Luc Dehaene, so resulting in the eventual and unanimous nomination of M Jacques Santer.
\(^3\) EC Treaty, art 158(2).
\(^4\) Ibid, art 163.
\(^7\) EC Treaty, art 162(2); for the present Rules of Procedure see Decision 93/492, OJ L230, 11.9.93, p 15. The Rules of Procedure are binding and contrary practice does not cause them to fall into desuetude; see Case C-137/92P Commission v BASF (PVC) [1994] ECR I-2555.
\(^8\) EC Treaty, art 155.
\(^9\) See eg arts 48(3) and 90(3).
\(^10\) See para 198 below.
\(^11\) See paras 238-252 below.
empowered to confer upon the Commission wide-ranging powers for the implementation of acts of the Council\(^1\). The Council has adopted legislation setting out the framework of procedure for exercising these implementing powers through the establishment of committees\(^2\) - 'comitology'.

66. **Enforcement powers and functions.** Under the EC Treaty it is the duty of the Commission to 'ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied\(^3\). To this end the Commission is empowered to raise actions before the Court of Justice against member states for failing in an obligation imposed by Community law\(^4\).

67. **The Commission and the EEA.** The Commission is charged by the Treaty creating the European Economic Area (EEA) with its enforcement within the territory of the Community. Commission powers under the EEA Treaty are discussed below\(^5\).

68. **Responsibilities of the Commissioners.** Each Commissioner is assigned one or more 'portfolios' - that is, responsibility for one or more areas of Community activity. The responsible Commissioner may, and frequently does, issue statements or make speeches on aspects of Commission policy falling within his portfolio, and such statements and speeches are a valuable guide, particularly in the field of competition policy, to the way in which the Commission is likely to apply Community law.

69. **Accountability to the Parliament.** The Commission is politically accountable to the Parliament in three ways. First, the membership of the Commission is subject to Parliamentary approval\(^6\). Second, the Parliament has the power, by a two-thirds majority of votes cast and an absolute majority of its members, to pass a motion of censure upon the Commission, in which event the Commission must resign as a body\(^7\). Although use of this power has been attempted on a number of occasions, most recently in 1992, it has, as yet, never been exercised. (Individual Commissioners may be compulsorily retired by the Court of Justice on grounds of 'serious misconduct'\(^8\).) Third, the Commission is required to reply orally or in writing to questions

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\(^1\) EC Treaty, art 145.
\(^2\) Decision 87/373, OJ L197, 18.7.87, p 33. There are three main types of committee: the regulatory committee, whose positive approval is required before a proposal can be implemented; the management committee, whose positive approval is not required but whose adverse opinion has suspensive effect until the matter has been considered by the Council; and the advisory committee, which must be consulted but whose opinion is not binding.
\(^3\) EC Treaty, art 155.
\(^4\) Ibid, art 169; see paras 97–99 below.
\(^5\) See Appendix I.
\(^6\) See para 63 above.
\(^7\) EC Treaty, art 144.
\(^8\) Ibid, art 160.
put to it by the Parliament or by its members. The Commission’s replies to such questions are another valuable guide in ascertaining the legislative policy of the Commission and to its thinking on points of existing Community law. The members of the Commission and the Council are entitled to be given the opportunity to be heard by the Parliament, and the speeches made on these occasions may again be a guide to the policy aspects of law-making. Parliamentary answers and speeches may also be helpful in assessing the prospects of Community legislation being enacted and, if so, on what time scale.

(B) THE SERVICES OF THE COMMISSION

70. Internal organisation of the Commission. In general, the Commission’s services are organised under Directorates-General (under Directors-General), which are divided into Directorates (under Directors) and further subdivided into Units (under Heads of Unit). There are at present twenty-three Directorates-General, each of which is responsible for a general area of policy - for example, external relations (DG I), competition (DG IV) and agriculture (DG VI). The responsibilities of the Directorates-General do not necessarily correspond to the portfolios of the Commissioners, two or more of whom may be responsible for aspects of the work of a single Directorate-General. Conversely, one Commissioner may have responsibility for more than one Directorate-General. Subject to that, the Directorates-General of the Commission may be compared with United Kingdom ministries, the Commissioner being analogous to the Minister and the Directorate-General to the Permanent Secretary. There are a number of services, offices and task forces outwith the structure of the Directorates-General.

71. The Secretariat-General. The duties of the Secretariat-General correspond roughly to those of the Cabinet Office in the United Kingdom. It is responsible for the preparation of the agenda and administration of the Commission and has overall responsibility for relations between the Commission on the one hand and the other Community institutions and the member states on the other.

72. The Legal Service. The function of the Legal Service is to give independent legal advice to the Commission and its services. The Commission relies heavily upon its advice, especially in matters of enforcement of Treaty obligations, and the opinion of the Legal Service must be sought upon, and is attached to, all Commission proposals. It is organised, under a Director-General, in ‘teams’ (équipes), each of which is responsible for giving advice.

1 EC Treaty, art 140, 3rd para.
2 Ibid, art 140, 4th para.
3 Directorates-General are designated by Roman numerals, Directorates by capital letters and Units by Arabic numerals. So, for example, regional aids fall within the responsibility of DG IV E 3, being Unit 3 (regional aids) of Directorate E (state aids) of DG IV (competition).
on a particular area or areas of the law. The Commission is normally represented before the European Court of Justice by a member of the relevant team acting as agent for the Commission. Both the Secretariat-General and the Legal Service are represented as of right at all Commission meetings.

(2) THE LEGISLATIVE PROCESS

73. Forms of Community legislation. The Community institutions are competent to adopt legislation in a number of forms which produce different legal effects. The legislative process does not vary depending upon the form of legislation.

74. Initiation of legislation. Under the EC Treaty it is normally the exclusive prerogative of the Commission to make proposals for legislation, in the sense that the machinery of legislation can normally be set in motion only by the submission of a proposal by the Commission to the Council. A proposal is developed by the responsible Directorate-General under the authority of its Commissioner and in consultation with other services of the Commission as necessary. The Directorate-General will also, whenever desirable, obtain help and advice from experts from the member states (whether from the national administration or from the private sector), from professional or trade union organisations (for example the Union des Industries de la Communauté Européenne (UNICE) and the European Trade Union Confederation (ETUC)), and from a variety of other sources. When the file is ready, the draft proposal is submitted by the responsible Commissioner or Commissioners to the Commission itself and there approved, with or without amendment. In practice, amendments at Commission level can be very extensive, reflecting the many political cross-currents which run through it. Once a proposal has been submitted to the Council, the Commission may, and frequently does, amend it, inter alia in the light of an advisory opinion of the Parliament. The Commission may alter a proposal at any time until the Council has acted, and the Council may amend the proposal only by unanimity. The Commission therefore remains ‘master of the text’ virtually throughout. Since the entry into force of the Treaty on European Union the Parliament may request that the Commission introduce legislation, but the Commission need not comply with the request.

1 See paras 142ff below.
2 The Commission is more open than most United Kingdom ministries to discussion of proposed or possible legislation with interested persons and bodies. Indeed, the Commission must often rely upon the expertise of interested groups in technical matters, thus creating an unusual degree of cooperation between the public authority and those who are affected by its acts and decisions. Direct contact with the responsible officials is often welcomed rather than shunned.
3 EC Treaty, art 189a(2).
4 Ibid, art 189a(1).
5 Ibid, art 138b, 2nd para.
75. Powers of the Council. As noted above, the powers conferred upon the Commission by the ECSC Treaty are considerably greater than those of the Commission under the EC or Euratom Treaties. Consequently, the powers and functions of the Council under the ECSC Treaty are more limited than under the EC and Euratom Treaties. In what follows here, only the powers and functions of the Council in relation to legislation under the EC Treaty are considered.

76. Legislative procedure in the Council. The Council is the principal, and in most cases the ultimate, legislative organ of the Community. Hence the saying 'the Commission proposes, the Council disposes', which expresses the nature of the relationship between the two institutions in the promulgation of law: the Commission proposes but cannot enact; the Council cannot enact without a Commission proposal. The Treaty normally specifies, depending upon the article(s) of the Treaty under which the institutions act, the form of legislation and the procedure to be followed. The procedure varies with the role afforded the Parliament, usually being one of consultation (advisory opinions), co-operation, co-decision, or assent. The Treaty may also require consultation with the Economic and Social Committee and/or the Committee of the Regions. Failure of the Council to carry out the procedure specified in the treaty is a ground for annulment of a legislative act.

77. Voting in the Council. Except where the treaty specifies otherwise, decisions of the Council are taken by simple majority. In a few very important areas, the treaty requires unanimity; in such cases, abstentions are not counted. Unanimity is also required to amend a Commission proposal. But many Treaty articles require decision by 'qualified majority', the votes of the member states being weighted by reference to their population sizes.

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1 See para 13 above.
2 The Council is empowered by the TEU to act in the areas of foreign and security policy and justice and home affairs, i.e., the two non-Community pillars of the European Union. But when it does so it follows special rules and procedures; see para 291 below.
3 There are exceptions to this: first, where an institution adopts legislation by virtue of express Treaty authority which bypasses normal procedures, and second, legislation adopted by the European Central Bank within its spheres of competence; see para 122 below.
4 See paras 79-81 below.
5 See paras 117, 118 below.
6 As to the annulment of legislative acts, see paras 100ff below.
7 EC Treaty, art 148(1).
8 Ibid, art 148(3).
9 Ibid, art 189a(1).
10 Ibid, art 148(2), under which the United Kingdom has a weight of ten out of the Council total of eighty-seven. Sixty-two votes are required for the Council to act by qualified majority, or sixty-two votes cast by at least ten members where the Council is acting other than upon a proposal from the Commission; conversely, twenty-six votes are required to block the adoption of legislation.
78. The ‘veto’. As noted above, the operation of the treaty rules on voting were distorted by the Luxembourg Compromise, which was said to allow any member state to ‘veto’ a proposal which it considered to affect its ‘very important interests’ even in areas in which the Treaty allowed for majority voting. From a strictly legal point of view no right of veto has ever existed except, of course, where the treaty requires unanimity in the Council. Since the signing of the Single European Act, majority voting has again become the rule. Recourse to the Luxembourg Compromise has fallen into disuse and there seems to be little enthusiasm to resuscitate it. However, the final negotiation of the Corfu Accession Treaty produced an agreement within the European Council known as the ‘Ioannina Compromise’. A Council Decision giving effect to it provides that, although the Treaty requires sixty-two Council votes to adopt an act by qualified majority (or, conversely, twenty-six votes to block it), in a case where a proposed measure is opposed by member states representing twenty-three to twenty-five Council votes, the Council will ‘do all in its power’ to reach a satisfactory solution which can be adopted by at least sixty-five votes. It remains to be seen how the Ioannina Compromise will operate in practice. The question will be addressed again at the 1996 intergovernmental conference.

79. Powers of the Parliament. A number of articles of the founding treaties provide that, before acting, the Council must consult the Parliament. The opinion thus obtained is not binding upon the Council; it is advisory only. But the Court of Justice held that the requirement to consult the Parliament, far from being a mere formality,

‘reflects at Community level the fundamental democratic principle that the peoples should take part in the exercise of power through the intermediary of a representative assembly’.

The Court has also held that the Council is required to re-consult the Parliament if the Commission has amended a draft proposal, or the Council itself intends to amend it, and the resulting text departs substantially from the text upon which the Parliament has already been consulted (except where the amendments correspond essentially to the wishes of the Parliament itself). Even where the Treaty does not require consultation the Commission will urge the Council to consult the Parliament in important matters. Nevertheless, the right of the Parliament to be consulted gave it

1 See para 15 above.
2 Decision of 29 March 1994, OJ C105, 13.4.94, p 1 as amended by Decision of 1 January 1995, OJ C1, 1.1.95, p 1.
3 See the Joint Declaration (No 8) attached to the Corfu Accession Treaty on institutional procedures.
only a minor role in the legislative process and led to criticism of a ‘democratic deficit’ in the Community system. This led eventually to an increase in the Parliament’s legislative functions. There are now four distinct procedures by which the Parliament is involved in Community legislation:

- consultation (advisory opinions), as described above;
- co-operation procedure, instituted by the Single European Act;  
- co-decision procedure, instituted by the Treaty on European Union; and
- assent, whereby, in a small number of areas, the positive approval of the Parliament is required before action can be taken.

80. Co-operation procedure. Under the co-operation procedure, following submission of a proposal for legislation from the Commission to the Council, the Council must adopt a ‘common position’ by qualified majority, which it submits to the Parliament. If the Parliament approves the common position or does nothing within three months, the Council may adopt the proposal into law. If the Parliament, by an absolute majority of MEPs, proposes amendments to or rejects the common position, then the Council may override the Parliament only by unanimity. Failing unanimity in the Council, the Commission must re-submit the proposal ‘taking account’ of the Parliament’s proposed amendments. The proposal may then be adopted by the Council by qualified majority vote.

81. Co-decision procedure. Under the co-decision procedure, the same path is followed until a point at which the Parliament amends or rejects the Council’s common position. If the Parliament rejects the common position or the Council refuses to accept its amendments, a Conciliation Committee must be convened, composed of representatives of the Council and fifteen MEPs. The Committee seeks to reconcile the opposing views of the two institutions. If it approves a joint text, it may be adopted by a qualified majority vote in the Council and by simple majority vote in the Parliament; if either of the institutions fails to approve the joint text, the proposal cannot be adopted. If the Committee fails to adopt a joint text, the Council may re-confirm its common position by majority vote, in which case the proposal is adopted unless the Parliament rejects it by an absolute majority of MEPs. So, in areas where the co-decision procedure applies the Parliament now enjoys a power of veto. Because it allows for a degree of parity between the Council and the Parliament, measures adopted by the co-decision procedure are, uniquely, acts not of the Council but of ‘the European Parliament and the Council’.

82. The legal base. The Treaty article which empowers the institutions to legislate (the ‘legal base’ for the legislation) specifies the procedure to be

1 EC Treaty, art 138b(1).
2 Now provided in EC Treaty, art 189c. The term ‘co-operation’ was used in the EEC Treaty but was abandoned with the entry into force of the TEU.
3 EC Treaty, art 189b; nor does the term ‘co-decision’ appear in the Treaty, having been abandoned in the later drafts of the TEU.
followed. Since this affects the Parliament’s power to influence the outcome, the Parliament has become active in challenging legislation before the Court of Justice on the ground that it was adopted upon an incorrect legal base.

(3) THE COURT OF JUSTICE

(a) The Court

83. Function and jurisdiction of the Court of Justice. Under the founding treaties the function of the Court of Justice is to

‘ensure that in the interpretation and application of this Treaty the law is observed’.

The Court is not, however, a court of general jurisdiction. The nature and extent of its jurisdiction, and the conditions for its exercise, are laid down in the treaties. Further detailed provisions are found in the Statutes of the Court (contained in Protocols to the treaties, one for each), in the Rules of Procedure, which the Court adopts subject to approval of the Council, and in a number of supplementary statutes, protocols and regulations. The most relevant of these are gathered together in Selected Instruments relating to the Organisation, Jurisdiction and Procedure of the Court, published by the Court. It has its seat in Luxembourg.

84. The Court of Justice and the Court of First Instance. In order to ease the workload of the Court of Justice the Single European Act amended the founding treaties so as to empower the Council, upon a request from the Court of Justice, to ‘attach’ to it a court with first instance jurisdiction in certain forms of action. This Court, styled the ‘Court of First Instance’, was established in 1989. The term ‘Court of Justice’ may therefore refer either to the Court of Justice as a Community institution, in which case it includes the Court of First Instance, or to the Court of Justice as a judicial body separate, and with distinct jurisdiction, from the Court of First Instance. Since the

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1 See para 144 below. For this reason the Parliament always examines draft legislation upon which it is consulted for ‘validity and appropriateness’ of the legal base; Rules of Procedure, rule 53.
2 EC Treaty, art 164. The English and the essentially identical Irish and Finnish versions are less illustrative of the function of the Court than other language versions: the Court ‘ensures the respect of law’ (French, Dutch, Italian, Greek, Spanish, Portuguese), ‘ensures the protection of law’ (German), or ‘safeguards law and justice’ (Danish and Swedish) in the interpretation and application of the Treaty. The Euratom Treaty, art 136 is in identical terms, and the ECSC Treaty, art 31 is similar.
3 EC Treaty, art 168, 3rd para; for the present Rules of Procedure see OJ L176, 4.7.91, p 7.
4 EC Treaty, art 168a.
5 Decision 88/591, OJ L319, 25.11.88, p 1; the text was subsequently amended substantially and was reproduced, as amended, at OJ C215, 21.8.89, p 1.
Court of First Instance was created, cases brought before the Court of Justice are numbered ‘C-...’ (for Cour de Justice) and those brought before the Court of First Instance ‘T-...’ (Tribunal de premier instance) to distinguish between them.

85. Membership of the Court of Justice. The Court of Justice consists of fifteen judges¹ assisted by nine Advocates-General². The Treaties provide that

The judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognized competence; they shall be appointed by common accord of the Governments of the Member States for a term of six years³.

In practice, each member state nominates one judge⁴. Five of the Advocates-General are nominated by the larger member states, and three by the smaller member states in rotation⁵. Half of the judges and half of the Advocates-General come up for renewal every three years⁶. Except for the Advocates-General from the smaller member states, appointment is renewable.

86. The President of the Court. The President of the Court of Justice is elected by the judges themselves from amongst their number⁷. The term of office is three years, which is renewable⁷. The President presides over deliberations in which he takes part, is responsible for the business and administration of the Court and represents the Court before other institutions, the member states and the outside world. He is also competent, sitting alone, to determine applications to the Court for interim or interlocutory measures and certain appeals from the Court of First Instance⁸.

87. Collegiality; Chambers. Except where the President can act alone, the Court always acts as a college, sitting either in plenary session (the whole Court), for which the quorum is nine judges⁹, or in Chambers. The Treaty provides that the Court may form Chambers of three, five or seven judges¹⁰. At present the judges, excluding the President, are divided into two

1 EC Treaty, art 165, 1st para.
2 Ibid, art 166, 1st para, which provides that there will be nine Advocates-General until October 2000, thereafter eight; see note 5 below.
3 Ibid, art 167, 1st para.
4 In the past, when there has been an uneven number of member states, an additional judge, nominated by one of the five larger member states (Germany, France, Spain, Italy and the UK), has been appointed to ensure an uneven number of judges.
5 The ninth Advocate-General (Mr Antonio La Pergola) – see note 2 above – was the additional judge from October 1994 (see previous note) until the accession of three new member states in January 1995 made an additional judge unnecessary.
6 EC Treaty, art 167, 1st and 2nd paras.
7 Ibid, art 167, 5th para.
8 See paras 96, 112, 113 below.
9 Statute of the Court of Justice, art 15 as amended.
10 EC Treaty, art 165(2).
Chambers of seven judges (of whom five sit in any given case), each subdivided into two Chambers of three or four judges (of whom three will sit). A ‘small plenary’ (petit plenum) consists of eleven judges. Each case is assigned by the President to a Judge Rapporteur who presents a preliminary report (rapport préalable) to the Court. The Court then decides whether the case should be assigned to a Chamber or kept before the Court in full or ‘small’ plenary. Where a member state or a Community institution so requests, a case must be heard by the whole Court. All judgments are published as judgments of the Court, and no dissenting opinions are expressed or published.

88. The Advocates-General. The function of the Advocates-General, of whom one is assigned to each case, is ‘acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it...’. One of the Advocates-General is designated each year by his colleagues to act as First Advocate-General. The Advocates-General are not advocates; they are, in the fullest sense, members of the court and rank with the judges in order of appointment. Although the analogy is not exact, the opinion delivered by the Advocate-General can be likened to the judgment of a single judge at first instance, to be followed by a compulsory and definitive appeal – the judgment of the Court. In comparison with the relative terseness of a judgment of the Court, the opinions of the Advocates-General are similar in style to the opinions or judgments of United Kingdom judges and, although not binding upon the Court, they are a source of Community law and may be the best guide to the reasoning of the Court. Opinions are published with the judgment of the Court.

89. Composition of the Court of First Instance. The Court of First Instance consists of fifteen judges ‘whose independence is beyond doubt and who possess the ability required for appointment to judicial office’. The method and term of appointment and the election and powers of the President are the same as those of the Court of Justice. There is no separate office of Advocate-

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1 The small plenary is now used for cases which might have been devolved to a Chamber but might also raise issues of principle with which a Chamber would feel unable to deal, so making it necessary to reopen the case before the plenary; this happened, for example, in Cases C-46/90 & 93/91 Procureur du Roi v Lagauche [1993] ECR I-5267 and Cases C-267-8/91 Criminal Proceedings against Keck and Mithouard [1993] ECR I-6097. For the criteria for the allocation of cases to Chambers see Decision of the Court of 25 January 1995, not yet published.

2 The Judge Rapporteur is also responsible for producing a second, more substantial report, the ‘Report for the Hearing’, which outlines the facts of the case and the arguments of the parties. Until 1994 the Report for the Hearing was published with the judgment of the Court. It is now generally available only in the language of proceedings (para 91 below) and directly from the Court; see Appendix II.

3 EC Treaty, art 165, 3rd para.

4 Ibid, art 166, 2nd para.

5 Decision 88/591 (para 84 above), art 2(1).

6 EC Treaty, art 168a(3).

7 Ibid; Decision 88/591, art 2(2).
General, but one of the judges may be called upon to perform the task of Advocate-General in a given case. The Court normally sits in Chambers of three, or exceptionally five, judges, but may sit in plenary session.

90. Jurisdiction of the Court of First Instance. According to the EC Treaty, the Court of First Instance can be assigned "jurisdiction to hear and determine at first instance . . . certain classes of action or proceeding [other than those] referred for a preliminary ruling under article 177. All classes of action not expressly assigned to the Court of First Instance remain within the jurisdiction of the Court of Justice. The jurisdiction originally conferred on the Court of First Instance covered only staff cases, certain matters involving coal and steel production governed by the ECSC Treaty, and actions for annulment of Community acts raised by a natural or legal person in the field of competition - areas in which a substantial amount of fact finding and/or complex economic analysis may be required. In 1993 and in 1994 this jurisdiction was extended to include any action brought by natural or legal persons against an act of a Community institution. The Court of First Instance has its own Rules of Procedure. The two Courts share common services (such as translation and interpretation), but each has its own Registrar and Registry. The Statute of the Court of Justice provides for the situation where an action is raised before the wrong court or the same issue is raised before both courts. Judgments of the Court of First Instance are open to appeal to the Court of Justice on points of law only.

91. Languages. Written and oral pleadings may be in any of the eleven official languages of the Community or in Irish. Unless the Court authorises

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1. Decision 88/591, art 2(3). This occurs rarely; at the time of writing a judge of the Court of First Instance has acted as Advocate-General in only four cases.
2. Decision 88/591, art 2(4). Hitherto the Court of First Instance has sat in Chambers of five judges for competition, state aids, anti-dumping and ECSC cases, but this has recently changed in the light of increased workload; for the criteria for the allocation of cases amongst Chambers see Decision of the Court, OJ C304, 29.10.94, p 14. It is only very rarely that the Court sits in plenary session.
3. EC Treaty, art 168a(1); on art 177 see paras 106-110 below.
4. See para 104 below.
5. Decision 88/591, art 3(1). On annulment of Community acts see paras 100ff below.
7. For the present Rules of Procedure see OJ L136, 30.5.91, p 1 as amended.
9. Statute of the Court of Justice, art 47. This arises where, for example, a Community act is challenged by both a member state (and so, at present, within the jurisdiction of the Court of Justice) and an affected natural or legal person (within that of the Court of First Instance); see eg Case C-274/94 United Kingdom v Commission (pending) and Case T-371/94 British Airways, Scandinavian Air Services and Koninklijke Luchtvaart Maatschappij v Commission (pending), both cases challenging Decision 94/653, OJ L254, 30.9.94, p 73 by which the Commission authorised substantial French aid to Air France.
10. EC Treaty, art 168a(1) and Statute of the Court of Justice, arts 49-54; see para 111 below.
11. See para 126 below.
otherwise, pleadings must be conducted in the 'language of the case', which
is either (a) chosen by the applicant, (b) the language or one of the languages
of a defendant member state, or (c) the language of the referring national
court, depending upon the form of action. An intervening member state\(^1\)
may use its own language irrespective of the language of the case\(^2\). Judgments are formally delivered in the language of the case, and that text
constitutes the only authentic version of the judgment. However, in present
practice the working language of the courts is French, and most judgments
are drafted and agreed in French. The French text of a judgment ought therefore to be consulted if, as sometimes happens, the meaning of the English
text is not clear. Opinions of the Advocate-General are written and delivered
in his native language.

92. Reporting. Judgments of the Court of Justice and of the Court of First
Instance are reported officially in the European Court Reports, which exist in
all eleven official languages. They are also reported in a number of private
series of reports. A guide to reports of the Court may be found in Appendix II.

93. The Court of Justice and the Treaty on European Union. The scope of the
jurisdiction of the Court of Justice extends to all three Community treaties and
some provisions of the Treaty on European Union. Other provisions of the
TEU, however, are expressly excluded from the Court's jurisdiction\(^3\).

(b) Forms of Process

94. Forms of action before the court. According to the Court of Justice,

'\(\text{the Treaty established a complete system of legal remedies and procedures}
\text{designed to permit the Court of Justice to review the legality of measures}
\text{adopted by the institutions}'\(^4\).

The available forms of process also make it possible to test the lawfulness of
the conduct of the member states. However, each of the forms of process
before the Court of Justice (and before the Court of First Instance where that
Court has jurisdiction) is distinct, and is subject to rules which are set out in
some detail in the Treaty, the Statute of the Court and the Rules of
Procedure. As the Court is not a court of general jurisdiction, it cannot create
new forms of process.

12 Rules of Procedure of the Court of Justice, art 29; Rules of Procedure of the Court of First
Instance, art 35.
1 See para 96 below.
2 Rules of Procedure of the Court of Justice, art 29; Rules of Procedure of the Court of First
Instance, art 35. The Community institutions enjoy no such privilege as they are irrebuttably
presumed to be able, and so required, to plead in all twelve languages.
3 TEU, art L; see para 292 below.
CMLR 343 at 371.
95. Forms of process. The available forms of process are, principally, direct actions, references for preliminary rulings, appeals from the Court of First Instance, and opinions. The Court cannot decline jurisdiction when properly seized of a case. However, where the action has been raised before the wrong court or where it is clear that the Court has no jurisdiction or the action is manifestly inadmissible, the Court may dispose of it by reasoned order without proceeding to judgment.

96. Parties and interveners. Strictly speaking there are ‘parties’ only in direct actions before either court and in appeals taken to the Court of Justice: the person(s) bringing the action (or the appeal) and those against whom it is brought. In such actions member states and Community institutions have the right to be heard, and other persons who can show a sufficient interest may in certain cases apply to be heard, as interveners. In references for preliminary rulings, the parties to the main action before the national court, member states and Community institutions are entitled to be heard. Persons other than a member state or a Community institution must be represented by a lawyer entitled to practise before a court of a member state, except that, in references, those entitled to appear before the referring national court may appear before the Court of Justice.

97. Direct actions: the action for failure to fulfil an obligation (articles 169 and 170). The action for failure to fulfil an obligation is an action brought against a member state by the Commission under article 169 or by another member state under article 170 of the Treaty. The purpose of the action is to have it declared that the defendant member state has failed to fulfil an obligation incumbent upon it under Community law. The action may be raised for virtually any failure to comply with a Treaty obligation, be it one of omission – for example failure to implement a directive within the prescribed time limit or failure to implement it properly – or of commission – for

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1 See para 90 above.
2 Rules of Procedure of the Court of Justice, art 92; Rules of Procedure of the Court of First Instance, art 111.
3 Statute of the Court of Justice, art 37. Interveners are limited to supporting the submissions of one or another of the parties. A person whose application to intervene before the Court of First Instance is refused may appeal that decision to the Court of Justice by way of summary procedure; Statute of the Court of Justice, art 50, 1st and 3rd paras.
4 Statute of the Court of Justice, art 17.
5 So, if (as in the UK) national rules of procedure permit it, party litigants may appear before the Court in person; for examples of this see Case C-168/91 Konstantinidis v Stadt Altensteig [1993] ECR I-1191, [1993] 3 CMLR 401; Case C-19/92 Kraus v Land Baden-Württemberg [1993] ECR I-1663.
6 Enforcement by another member state under art 170 has not proved a popular form of action, and has been carried to the stage of judgment only once: Case 141/78 France v United Kingdom [1979] ECR 2923, [1980] 1 CMLR 6. However, member states intervene (see para 96 above) from time to time in support of (or against) the Commission in an action raised under art 169 against another member state.
7 Except where the Treaty provides other means of enforcement in specific areas; see para 99 below.
example the enactment or enforcement of national legislation or the implementation of national policy in a manner incompatible with Community law.

Although many proceedings under article 169 follow a complaint to the Commission, a complainant cannot force the Commission to launch or, once launched, to continue enforcement proceedings. Settlement can be, and often is, reached between the Commission and the defendant member state. Having seised the Court, the Commission may, but need not, withdraw the action. Unless the action is formally withdrawn, the Court will proceed to judgment.

The full procedure under article 169 falls into the following stages:
- the administrative phase:
  - investigation by the Commission;
  - the formal letter of complaint (lettre de mise en demeure) identifying an alleged breach and inviting the member state to submit observations;
  - the 'reasoned opinion' (avis motive), a reasoned statement identifying the alleged breach and allowing the member state a reasonable time in which to remedy it;
- the judicial phase:
  - written procedure;
  - oral procedure, including the opinion of the Advocate-General;
  - judgment of the Court declaring the defendant member state to be in breach of its obligations or finding that there has been no breach.

There may then follow a procedure for imposition of sanctions.

The purpose of the administrative phase is to identify the alleged breach and to enable the defendant member state to explain why there is no breach or, if the breach is admitted, to remedy it. The Commission cannot therefore raise during the judicial phase any point upon which the defendant member state has not had the opportunity to comment during the administrative phase. The function of the Court during the judicial phase is to ensure that the Commission has complied with procedural propriety throughout the administrative phase and to decide whether, in the circumstances disclosed during the administrative phase, it has established the existence of the breach.

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2 The Commission may legitimately elect to proceed in order to obtain a clarification of the law from the Court of Justice or to establish authoritatively the basis of any civil liability which the member state may incur; see eg Case 240/86 Commission v Greece [1988] ECR 1835; Case 154/85 Commission v Italy [1987] ECR 2717.
4 See para 98 below.
5 The Court may raise this question of its own motion; see eg Case C-362/90 Commission v Italy (Public Supply Contracts) [1992] ECR I-2353, [1994] 3 CMLR 1.
98. Force of the declaration; sanctions (article 171). The Treaty provides that

If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice.

A declaration under article 169 that a member state has failed to fulfil an obligation under the Treaty has the force of res judicata and is a prohibition having the full force of law on the competent national authorities against applying a national rule recognized as incompatible with the Treaty and an obligation on them to take all appropriate measures to enable Community law to be fully applied. Even if the legislative or administrative authorities of the member state fail to take appropriate action, its courts are bound if possible to enforce the Court's judgment, and not the offending national rule. The Treaty provides no other sanction for a member state's failure to comply with Treaty obligations, and, until the Treaty on European Union, it provided no sanction for failure to comply with a declaratory judgment of the Court. No member state has, as yet, openly defied such a judgment, although there has been considerable delay in compliance in some cases. The EC Treaty as now amended empowers the Commission to raise a further action against a defaulting member state specifying the financial penalty which it considers appropriate. If the Court finds that the member state has not complied with its judgment, it may impose a lump sum or penalty payment upon it. This power of sanction has not, as yet, been invoked.

99. Analogous enforcement provisions. The Treaty has other provisions whereby the Commission may raise enforcement proceedings against a member state in a manner similar to, but bypassing the administrative phase of, article 169. This applies where a member state fails to comply with a Commission decision in the area of state aids, derogates from internal market legislation or adopts national measures in the event of internal disturbance or war. In the event of a member state failing in its duty to avoid excessive government deficits, the Treaty provides other, specific enforcement procedures and recourse to article 169 is in part expressly ousted.

100. Direct actions: the action of annulment (article 173). The action of annulment is an action to annul (quash or, in Scotland, reduce) a legislative...
or administrative act of one of the Community institutions. Its purpose is to deprive the act in question of legal effect. The act in question may be any measure adopted by any Community institution which has legal effects. There is a two-month time bar, which is rigorously enforced. The grounds of action are:

- lack of competence;
- infringement of an essential procedural requirement;
- infringement of the Treaty or of any rule of law relating to its application; and
- misuse of powers.

The first two grounds relate to matters ‘prior to the act’ in the sense that the relevant question is whether the necessary enabling powers had been conferred upon the institution before it acted or whether the institution, in proceeding to act, complied with all relevant procedural rules. The third ground relates to matters ‘inherent in the act’ in the sense that the relevant question is whether, in form and content as enacted, the act is lawful. The fourth ground (détournement de pouvoir in French administrative law) applies where, although the act appears to be the lawful act of a competent authority, that authority’s power has in truth been exercised for a purpose other than that for which it was conferred.

101. Title and interest. The action of annulment may be raised

- as of right, without need to demonstrate interest, by the Commission, the Council or a member state (the ‘privileged applicants’);
- by the Parliament or the European Central Bank where the act in question infringes their prerogatives (‘semi-privileged applicants’); and


3 EC Treaty, art 173, 2nd para.

4 See eg Case T-106/92 Frederiksen v European Parliament, judgment of 2 February 1995, not yet reported.

5 EC Treaty, art 173, 2nd para. ‘Member state’ here means central government; regional or local governments are not recognised to be privileged applicants.

Para 101 The Institutions of the Community

• subject to rigorous proof of title and interest (locus standi), by an affected natural or legal person ('non-privileged applicants').

A non-privileged applicant is entitled to raise an action for annulment of any act of which he is personally the addressee. Otherwise he must show that the act has legal effects and that it affects him both directly and individually. An applicant is ‘directly’ affected where there is no room for discretion, or no real likelihood of its exercise, in applying the act to him. He is ‘individually’ affected where the act ‘individualises’ him in the same way as its actual addressee, either because of characteristics specific to him or because of factual circumstances which distinguish his situation from that of everyone else. Generally these are very difficult tests to meet; however, the position of natural and legal persons is protected by the availability of other processes. All actions of annulment raised by non-privileged applications fall now within the jurisdiction of the Court of First Instance.

102. Annulment. A Community act found to be unlawful is annulled by declaration of the Court (ie, declared ‘void’). The effect is, in principle, to deprive the act of all legal effect, past, present and future. The institution which enacted it is required to take all necessary measures to comply with the judgment of the Court. Prior to such declaration the act is presumed to be valid and must be given full force and effect, unless the Court has suspended its operation by interim order or the act is tainted with such serious and manifest defects as to render it ‘non-existent’. The Court may however limit the temporal effect of annulment. Having annulled an act, it may ‘if it considers this necessary’ (eg, in the interests of legal certainty or legitimate expectation) declare all or some of its provisions to be operative.

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1 EC Treaty, art 173, 4th para. The rules as to title and interest are less strict under the ECSC Treaty, art 33.
2 EC Treaty, art 173, 4th para.
5 In recent years the Court has been more generous in accepting locus standi in the areas of state aids, anti-dumping and competition legislation; see paras 256, 270 and 238 below.
6 See para 110 below.
7 EC Treaty, art 174, 1st para.
8 Ibid, art 176, 1st para.
10 See para 113 below.
11 Case C-137/92P Commission v BASF (PVC) [1994] ECR 1-2555.
13 EC Treaty, art 174, 2nd para.
Annulment of an offending act does not deprive persons who have suffered consequential injury of the right to raise an action seeking damages.

103. Direct actions: the action for failure to act (article 175). In British terms the action under article 175 of the Treaty for failure to act is comparable to a writ of mandamus or, in Scotland, a petition for an order requiring the specific performance of a statutory duty. The purpose of the action is to compel a Community institution (here including the European Central Bank) to do something which, under Community law, it is legally bound to do. The action is admissible only if the institution has first been called upon to act. The rules as to title and interest are essentially the same as those applying to the action of annulment, except that the privileged applicants are the Community institutions, so including the Parliament and technically the Court of Auditors. A natural or legal person must show that the institution had a duty to 'address an act to him' — ie, take a decision which, if unfavourable, he could have attacked under article 173. It is a most difficult action successfully to pursue, and this has occurred only rarely. An institution found by the Court to have failed in a duty under the Treaty is required to take the necessary measures to comply with the judgment.

104. Direct actions: staff cases (article 179). Relations between a Community institution and its servants are governed by the Staff Regulations, and any dispute arising therefrom falls within the jurisdiction of the Court of First Instance which acts, in effect, as an employment appeal tribunal. Staff disputes must be raised by means of this process, and not under article 173 if the case relates to a matter covered by the Staff Regulations. Judgments in staff cases are now reported separately from the main reports of the Court.

105. Direct actions: the action of damages or indemnity (articles 178 and 215(2)). As it has developed so far, the action for damages or indemnity

1 EC Treaty, art 176, 2nd para; see para 105 below.
2 Court of Session Act 1988, c 36, s 45(b).
3 EC Treaty, art 175, 2nd para.
6 EC Treaty, art 176, 1st para.
7 Ibid, art 179; Decision 88/591 (para 84 above), art 3(1).
8 Hence including challenges by would-be recruits to the Community institutions; see Case T-72/89 Viciano v Commission [1990] ECR II-57.
9 See Appendix II.
10 The scope of this action is only beginning to be explored. For a full discussion of the numerous unresolved problems see Schermers et al (eds) Non-Contractual Liability of the European Communities (Nijhoff 1988). As to damages against national authorities see para 141 below.
under articles 178 and 215(2) of the Treaty is essentially an action in tort or action of reparation, the ground of action being that the Community or its servants have in the performance of their duties unlawfully caused loss or damage. Fault (culpa), injury and causation must be proved. Where the allegedly injurious act is a negligent act or omission of an administrative nature, liability is relatively easy to prove. Where the act is legislative, the injured party must show a clear breach on the part of the Community institution(s) of a superior rule of law for the protection of the individual – in effect, a breach of one of the general principles of Community law. The action of damages or indemnity is an independent form of action and unrelated to the action of annulment, although in practice the two are often raised together or the latter precedes the former. The action of damages must be raised within five years of the occurrence of the injury or of the time when the injured party ought reasonably to have known of it. Serious difficulties arise in attributing wrongful conduct where national authorities are responsible for administering an allegedly unlawful Community act.

106. References for a preliminary ruling (article 177). The jurisdiction which now accounts for the largest number of cases before the Court of Justice consists in requests for preliminary rulings under article 177 of the Treaty. Modelled upon German and Italian constitutional procedures, this form of process is known in French as the renvoi préjudiciel – reference before judgment, which more accurately describes what it involves. The purpose is to enable a national court, faced with a problem of Community law in a case pending before it, to obtain an authoritative ruling from the Court of Justice on the law to be applied. A national court or tribunal which, in the course of proceedings before it, encounters a question involving the interpretation of

1 Damages for injury caused by the Community or its servants not in the performance of their duties are a matter for the law (and the courts) of the place where the injury occurred.
4 See paras 152ff below.
8 As to what constitutes a court or tribunal (both English terms being required to encompass jurisdiction, Gericht, rechterlijke instantie) for these purposes see Case 61/65 Vaassen-Goebbels v Bestuur van het Beamtenfonds voor het Mijnbedrijf [1966] ECR 261; Case 246/80 Broekmeulen v Huisartsen Registratie Commissie [1981] ECR 2311, [1982] 1 CMLR 91; Case 14/86 Pretore di Salò v Persons Unknown [1987] ECR 2545.
Community law or the validity of an act of a Community institution, can stay (sistem) those proceedings and refer that question to the Court of Justice. The ruling of the Court of Justice is transmitted back to, and is binding upon, the national court, which must apply it in disposing of the case.

107. The decision to refer. Any national court or tribunal may request a preliminary ruling when it considers that a decision on a question of Community law 'is necessary to enable it to give judgment'. The discretion to do so rests with the national court alone; it may do so of its own motion, and is under no obligation to do so at the request of one or even all of the parties. The Court of Justice may not question the decision to refer and must deal with the reference save in the most exceptional circumstances. In England the Court of Appeal has set aside an order of the Divisional Court making a reference because, there being no reasonable doubt as to the correct application of Community law (which could be determined 'with complete confidence'), it was unnecessary to seek a ruling from the Court of Justice. In Scotland, the decision of a sheriff to refer is subject to appeal only if his exercise of discretion was plainly wrong. The discretion to refer is otherwise subject to two exceptions only. First, where a question of interpretation or validity is at issue before a national court or tribunal from which there is no

1 The Treaty refers to the validity and interpretation of acts of 'the institutions of the Community and of the ECB' (art 177, 1st para). Technically there are five Community institutions (see para 44 above). However, if the criteria for annulment of a Community act under art 173 were applied, an act of any Community authority capable of producing legal effects would be susceptible to examination and invalidation under art 177.

2 EC Treaty, art 177, 1st para.

3 Case 52/76 Benedetti v Munari [1977] ECR 163.

4 EC Treaty, art 177, 2nd para.


6 In a very few cases the Court of Justice has declined jurisdiction on the grounds that the questions referred were too vague or the reference amounted to an abuse of process (see Case 104/79 Foglia v Novello (No 1) [1980] ECR 745, [1981] 1 CMLR 45; Case 244/80 Foglia v Novello (No 2) [1981] ECR 3045, [1982] 1 CMLR 585; Case C-83/91 Melicke v ORGA Meyer [1992] ECR I-4871; Case C-428/93 Monin Automobiles (No 2) [1994] ECR I-1707) or where the referring court had failed to provide sufficient information as to the factual and legal background to the case to enable the Court adequately to identify the issues (see Case C-320/90 Telemaresicabruzzo v Circonstel [1993] ECR I-393; Case C-157/92 Pretore di Genova v Banchero [1993] ECR I-1085; Case C-386/92 Monin Automobiles (No 1) [1993] ECR I-2049; Case C-378/93 La Pyramide [1994] ECR I-3999).


8 Procurator Fiscal, Elgin v Cowie and Wood 1991 SLT 401, [1990] 3 CMLR 445 (I). By comparison, the Irish Supreme Court held that the discretion to refer is so unfettered that a decision to refer cannot be reviewed in any circumstances; see Campus Oil Ltd v Minister for Industry and Energy [1984] 1 CMLR 479.
appeal, that court or tribunal must refer the question to the Court of Justice\(^1\), unless the matter in question has already been decided by the Court of Justice or the correct application of Community law is so obvious as to leave no scope for any reasonable doubt \((\text{acte clair})^2\). Second, where the ‘question’ concerns the validity of a Community act\(^3\), the Court of Justice alone has jurisdiction definitively to declare that act invalid\(^4\). Consequently, the national court must refer such a question unless it is satisfied that the Community act is valid, as it is in any event presumed to be\(^5\). Having referred a question on validity of a Community act, the national court may \textit{ad interim} suspend application of national implementing measures based upon it, provided that certain conditions are met\(^6\). Having declared an act to be invalid, the Court may declare all or some of its provisions to be operative\(^7\). Procedure and forms for use of article 177 have been adopted into British rules of court\(^8\).

108. Temporal limitation of preliminary rulings. The Court of Justice may, in the judgment making the ruling, limit its retrospective effect\(^9\). Such

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1. EC Treaty, art 177, 3rd para. There is debate as to the courts or tribunals to which this obligation applies, i.e., whether it applies only to courts against whose decision there is never a right of recourse, or also to courts against whose decision there is no (or is unlikely to be) right of recourse in the instant case. Lord Denning MR (and British courts generally) clearly favours the former approach \((\text{Bulmer v Bollinger} [1974] Ch 401 at 420, [1974] 2 All ER 1226 at 1233 (CA)), the Court of Justice implicitly the latter \((\text{Case 6/64 Costa v ENEL} [1964] ECR 585, [1964] CMLR 425). The dangers inherent in the former approach are well illustrated by the English case of \textit{Magnavision v General Optical Council} [1987] 2 CMLR 262 (QBD).

2. \textit{Case 283/81 CILFIT v Ministero della Sanità} [1982] ECR 3415, [1983] 1 CMLR 472. On the House of Lords’ view of when a question is so clear from doubt as to absolve it from the duty to refer see \textit{Henn and Darby v DPP} [1981] AC 850, [1980] 2 All ER 166; \textit{Garland v British Rail Engineering Ltd} [1983] 2 AC 751, [1982] 2 All ER 402. However, in \textit{R v London Borough Transport Committee, ex parte Freight Transport Association} [1992] 1 CMLR 5, the House of Lords was strongly urged to refer but refused to do so. Owing to the urgency of the proceedings a court of last instance is not required to have recourse to the Court of Justice in interlocutory proceedings for an interim order; \textit{Case 107/76 Hoffmann-La Roche v Centrafarm} [1977] ECR 957, [1977] 2 CMLR 334.

3. Questions addressing the validity of a Community act, as opposed to interpretation of a Community act or the Treaty, comprise the subject matter of roughly one in six preliminary rulings.


5. See para 102 above.


temporal limitation will be applied only in exceptional circumstances\(^1\) and cannot be applied retrospectively after the judgment making the ruling\(^2\).

109. Preliminary rulings and international conventions. The Court of Justice may have jurisdiction similar to article 177 conferred upon it by international conventions to which the member states are parties. So, for example, Protocols to both the Brussels Judgments Convention\(^3\) and the Rome Contracts Convention\(^4\) provide that national courts may refer questions of interpretation of those conventions to the Court of Justice. In contradistinction to the EC Treaty, the power to refer is reserved in both cases to the higher appellate courts. Under both Conventions a member state or a Procurator General of a court of a member state may request from the Court of Justice a ruling on a point of law where a judgment of a national court of last instance is inconsistent with a judgment of a court of last instance in another member state or with a judgment of the Court itself. The ruling does not affect the judgment in question\(^5\).

110. Indirect challenge of Community acts and the plea of illegality (article 184). It is very difficult for a natural or legal person (other than the addressee of an administrative act) to establish the title and interest necessary to raise an action of annulment of an act of a Community institution\(^6\). In particular, non-privileged applicants cannot challenge directly the lawfulness of legislative, or ‘general’ acts of the Community institutions. They can, however, challenge the application of such acts to them, where this involves an administrative act on the part of a Community authority or of a national authority. The administrative act is challenged, not on the ground that it is unlawful per se, but that it is based upon an unlawful parent act. Where the parent act has been applied by a subsequent national measure, the challenge must be mounted in the appropriate national court which can then ask the Court of Justice, under article 177, to rule upon the validity of the parent (Community) act. The Court of Justice has ruled that a declaration of invalidity in a preliminary ruling under article 177 has effect erga omnes\(^7\). The practical difference between annulment (article 173) and invalidity (article 177) therefore lies in the means by which the issue is raised rather than in the

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\(^1\) Case C-163/90 Legros [1992] ECR 1-4625 at 4670.


\(^3\) Protocol to the Brussels Convention (see para 124 below) of 3 June 1971, consolidated text in OJ C97, 11.4.83, p 12.

\(^4\) First Protocol to the Rome Convention (see para 124 below) of 19 December 1988, L48, 20.2.89, p 1. At the time of writing this protocol has yet to enter into force. A protocol to the Convention on Mutual Recognition of Companies (see para 219 below) makes similar provision, but the Convention itself has yet to enter into force.

\(^5\) Protocol to the Brussels Convention, art 4; Protocol to the Rome Convention, art 3.

\(^6\) See para 101 above.

\(^7\) Case 66/80 International Chemical Corporation v Amministrazione delle Finanze dello Stato [1981] ECR 1191, [1983] 2 CMLR 593. Great care should be taken with this judgment, as the English text (in both ECR and CMLR) is misleading on this point.
legal outcome. Where the parent act has been applied by a Community authority, the act applying it must be challenged by a direct action before the Court of First Instance, normally under article 173. In the context of such proceedings the lawfulness of the parent act can be challenged, without time limit, by the so-called ‘plea of illegality’ (exception d’illégalité) under article 184. If the plea is successful, the administrative act, deprived of its legal foundation, is annulled, rendering the general, parent act ‘inapplicable’ to the person concerned. Article 184 does not constitute an independent form of action; the plea of illegality may be raised only within the context of other proceedings properly before the Court.

111. Appeal from the Court of First Instance. An appeal against a judgment of the Court of First Instance lies to the Court of Justice on points of law only. The appeal must be lodged within two months of the notification of the Court of First Instance judgment to the parties. Where a judgment of the Court of First Instance has annulled a regulation the judgment takes effect only when an appeal becomes time-barred or is dismissed. An appeal may be raised by one of the parties to proceedings before the Court of First Instance; by a member state or a Community institution, even where they were not parties to, and did not intervene in, proceedings at first instance; and by third parties if (apparently) they had intervened at first instance and if the judgment directly affects their interests. An appeal against an interlocutory order of the Court of First Instance, for example a refusal to permit a third party to intervene or to grant interim measures, may be taken directly to the Court of Justice by way of summary procedure. If an appeal is successful, the Court of Justice sets aside the judgment of the Court of First Instance, and may either remit it back for rehearing or, where the state of proceedings so permits, decide the case itself. Where a case is remitted back, the Court of First Instance is bound by the judgment of the Court of Justice on points of law.

112. Opinions. The Court of Justice may be called upon by a member state or by a Community institution to give an opinion on the compatibility with the

2 EC Treaty, art 168a(1) and Statute of the Court of Justice, arts 49-54.
3 Statute of the Court of Justice, art 49. A case taken on appeal to the Court of Justice is given a new ‘C’ number and is distinguished by an additional letter ‘P’, for pourvoi (appeal).
4 Ibid, art 53. In other cases a judgment of the Court of First Instance can be suspended only by interlocutory order of the Court of Justice; see para 113 below.
5 Ibid, art 49.
6 Ibid, art 50. On intervention and interim measures see para 96 above and 113 below.
7 Ibid, art 54. See eg Case C-137/92P Commission v BASF (PVC) [1994] ECR I-2555; Case C-360/92P Publishers Association v Commission, judgment of 17 January 1995, not yet reported. However, where the successful appeal has been raised by other than a party to proceedings before the Court of First Instance, the Court of Justice may, if it considers it necessary, declare some or all of the legal effects of the original judgment to be definitive for the parties; Statute of the Court of Justice, art 54, 3rd para.
8 Statute of the Court of Justice, art 54, 2nd para.
EC Treaty of a proposed agreement between the Community and a third state, group of states or international organisation. If the Court finds the agreement to be inconsistent with the Treaty, the Community may proceed only if the agreement is altered in accordance with the Court’s opinion or the Treaty is amended. This jurisdiction may be invoked to determine whether the Community has exclusive or shared competence to enter into such an agreement. The Court may also be asked to give an opinion as to whether certain proposed amendments to the ECSC Treaty are compatible with that Treaty.

113. Interim measures. An action raised before the Court of Justice has no suspensory effect. However, the Court may, upon an application from a party to a case before it, order that the application of a contested Community act be suspended if it considers that the circumstances so require or in any action order any ‘necessary’ interim or interlocutory measures. An application for interim order is by way of summary procedure. The order may be, and usually is, made by the President sitting alone. The Court is competent to suspend the application of any Community act (including a judgment of the Court of First Instance) or of any national measure which is in issue in the main action, and it will do so where there is a prima facie case, urgency and a likelihood of serious and irreparable injury by the continuing application of that measure. An order of the Court of First Instance granting or refusing interim measures may be appealed directly to the Court of Justice by way of summary procedure.

114. The Court of Justice and EMU. The Treaty on European Union created a number of ‘financial organs’ with responsibility to administer economic and monetary union (EMU). There are special procedures by which these

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1 EC Treaty, art 228(6).
2 Ibid. For an example of an opinion which held up Community ratification of an international agreement see Opinion 1/91 re the EEA Agreement [1991] ECR I-6079, [1992] 1 CMLR 245.
3 See eg Opinion 1/94 re the World Trade Organisation, opinion of 15 November 1994, not yet reported.
5 EC Treaty, art 185.
6 Ibid, art 186. Interim measures cannot be sought without raising a ‘main action’ to which the application for interim measures is ancillary; Rules of Procedure of the Court of Justice, art 83(1), Rules of Procedure of the Court of First Instance, art 104(1). An application for interim measures is given the same number as the main action but may be distinguished by an additional letter ‘R’, for référence.
7 Statute of the Court of Justice, art 36.
9 See para 111 above.
institutions may raise matters within their province before the Court. They are indicated below.\(^1\)

115. The Court of Justice and the EEA Treaty. The Treaty establishing the European Economic Area (EEA) provides that the contracting parties may agree to confer upon the Court of Justice limited jurisdiction to provide 'advisory rulings' upon the interpretation of the EEA Treaty. They have not done so.\(^2\)

(4) THE COURT OF AUDITORS

116. The Court of Auditors. An independent Court of Auditors was first created in 1975 by the Treaty amending Certain Financial Provisions.\(^3\) By virtue of the Treaty on European Union it was elevated to the status of a full Community institution.\(^4\) It consists of fifteen – in practice one from each member state – 'especially qualified' members with experience of external audit bodies appointed by the Council, after consulting the Parliament, for a six-year term.\(^5\) Its task is to carry out the audit.\(^6\) To this end it is to 'examine the accounts of all revenue and expenditure of the Community' and, in particular, 'examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound'.\(^7\) The audit is carried out in liaison with national audit bodies or government departments.\(^8\) The Court of Auditors is required to publish an annual report.\(^9\) Its prominence has increased with allegations of financial mismanagement of Community expenditure, and it has delivered a number of stinging rebukes to the responsible authorities. The Court of Auditors is based in Luxembourg.

(5) OTHER ORGANS

117. The Economic and Social Committee. The EC Treaty provides for the appointment of an Economic and Social Committee with advisory

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1 See paras 121-122 below.
2 See further Appendix I below.
3 See EEC Treaty, art 206(1), now repealed. The French name is Cour des Comptes; the nearest United Kingdom equivalent is the National Audit Office.
4 EC Treaty, art 4.
5 Ibid, art 188b(1-3).
6 Ibid, art 188a.
7 Ibid, art 188c(1).
8 Ibid, art 188c(2).
9 Ibid, art 188c(3).
10 Ibid, art 188c(4).
status. In terms of the Treaty it is to consist of 'representatives of the various categories of economic and social activity, in particular, representatives of producers, farmers, carriers, workers, dealers, craftsmen, professional occupations and representatives of the general public'. The Committee must be consulted by the Council before certain legislative acts are adopted. It has adopted its own Rules of Procedure and has its own secretariat, chamber and offices in Brussels. The Treaty provides that 'the composition of the Committee shall take account of the need to ensure adequate representation of the various categories of economic and social activity'. It consists now of 222 members drawn from the member states by fixed allocation. In practice, they are appointed and work in three groups: Group I representing employers, Group II employees and Group III others (e.g., consumers, representatives of the liberal professions, farmers).

118. The Committee of the Regions. The entry into force of the Treaty on European Union created a Committee of the Regions with advisory status, which came into being in January 1994. It consists of 222 members drawn by fixed allocation from 'representatives of regional or local bodies'. It is required to be consulted by the Council before certain legislative acts are adopted, principally those which have an impact upon regional constitutional competences in various of the federal or devolved member states or upon local government. It must also be informed each time an opinion is sought from the Economic and Social Committee and may issue an opinion if it considers that the proposal has regional implications. It has adopted its own Rules of Procedure and its seat is in Brussels, sharing the same infrastructure as the Economic and Social Committee. The creation of the Committee was a (modest) step towards bringing regional influence to bear upon the Community legislative machinery.

119. The European Investment Bank (EIB). The EC Treaty established a European Investment Bank (EIB) with legal personality. Its task is to

1 EC Treaty, arts 4(2) and 193, 1st para. See generally arts 193-198. The Committee also acts under the Euratom Treaty (see arts 165-170) but not under the ECSC Treaty, for which there is an analogous body called the Consultative Committee (ECSC Treaty, arts 7, 18).
2 EC Treaty, art 193, 2nd para.
3 See OJ L257, 5.10.94, p 32.
4 EC Treaty, art 195(1), 2nd para.
5 EC Treaty, art 194.
6 EC Treaty, arts 4(2) and 198a, 1st para. The Committee acts only under the EC Treaty.
7 Decision 94/65, OJ L31, 4.2.94, p 29.
8 EC Treaty, art 198a.
9 For example, proposals in the fields of education (art 126(4)), culture (art 128(5)), public health (art 129), trans-European networks (art 129d) and economic and social cohesion (arts 130b, 130d, 130e). On all of these see paras 281-283 below.
10 EC Treaty, art 198c(3).
11 See OJ L132, 27.5.94, p 49.
12 See Protocol on the Economic and Social Committee and the Committee of the Regions.
13 EC Treaty, arts 4b and 198d.
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contribute by having recourse to the capital market and utilizing its own resources, to the balanced and steady development of the common market in the interest of the Community. For this purpose the Bank ‘shall, operating on a non-profit making basis, grant loans and give guarantees which facilitate the financing of . . . : (a) projects for developing less-developed regions; (b) projects for modernizing or converting undertakings or for developing fresh activities; (c) projects of common interest to several Member States’. Projects in the latter two categories must be ‘of such size or nature that they cannot be entirely financed by the various means available in the individual Member States’. The Statute of the Bank establishes the system of direction and management and lays down more detailed rules as to the ways in which loan and guarantee operations may be carried out. The Board of Directors of the Bank is competent to raise enforcement proceedings before the Court of Justice, analogous to article 169 proceedings, where member states fail in their obligations under the EIB Statute. The seat of the EIB is Luxembourg.

120. The European Investment Fund. In 1994 a European Investment Fund was created by the Board of Governors of the EIB. The Fund has legal personality and financial autonomy. The founder members of the Fund are the European Community (represented by the Commission), the EIB and a number of financial institutions. Its task is to support financially the development of trans-European networks and small and medium-sized enterprises. The seat of the Fund is Luxembourg.

121. The European Monetary Institute (EMI). In January 1994 – the beginning of the second stage of economic and monetary union – the European Monetary Institute (EMI) was created. Its membership comprises the central banks of each member state, and it is directed and managed by a Council composed of a President appointed by the common accord of the member states and the governors of each of the central banks. The EMI has legal personality, is competent to adopt opinions and recommendations and guidelines and decisions addressed to the national central banks, the latter two subject to judicial review by the Court of Justice. Its primary task is to assist in progress towards the third stage of economic and monetary union, which is discussed more fully below. During the second stage it enjoys the power to raise actions before the Court of Justice which is to be conferred upon the European Central Bank when it comes into existence. The EMI will then be liquidated.

1 EC Treaty, art 198e.
3 EC Treaty, art 180.
5 See para 264 below.
7 See paras 262-267 below.
122. The European System of Central Banks (ESCB) and the European Central Bank (ECB). The EC Treaty provides for the creation of a European System of Central Banks (ESCB) and the European Central Bank (ECB) at the beginning of the third stage of EMU\(^1\). Both are to have legal personality and are to be completely independent in the performance of their tasks\(^2\). The ESCB is to be composed of the ECB and the national central banks and governed by the decision-making bodies of the ECB\(^3\). The ECB is to be governed by an Executive Board, comprising six members appointed by the common accord of the governments of the member states participating in EMU\(^4\) for an eight year non-renewable term\(^5\), and a Governing Council, comprising the Executive Board and the governors of each of the participating national central banks\(^6\). The ECB may adopt legislative measures except directives and impose fines and periodic penalty payments upon undertakings\(^7\) subject to the judicial control of the Court of First Instance\(^8\), and the Governing Council may raise enforcement proceedings before the Court of Justice where a member state or a national bank has failed in its obligations under the Treaty or under the Statute\(^9\). It is to be assisted by an Economic and Financial Committee\(^10\), which is to replace the Monetary Committee established at the entry into force of the TEU\(^11\), and a General Council\(^12\). The primary function of the ESCB and the ECB is to oversee economic and monetary union, which is discussed below\(^13\). The seat of the ECB is to be Frankfurt.

123. Other bodies. Between 1990 and 1993 a number of Community acts proposed the creation of other bodies for the administration of Community affairs. With agreement reached in 1993 on their seats\(^14\), the following bodies were established: the European Environment Agency (based in Copenhagen); the European Training Foundation (Turin); Office for Veterinary and Plant Health Inspection (Dublin); European Monitoring Centre for Drugs and Drug Addiction (Lisbon); European Agency for Evaluation of Medicinal Products (London); European Centre for the Development of Vocational Training (moved from Berlin to Thessaloniki);

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2 EC Treaty, arts 106(2) and 107, ESCB/ECB Statute, arts 7 and 9.
3 EC Treaty, arts 106(1) and 106(3).
4 See paras 266-267 below.
5 EC Treaty, art 109a and ESCB/ECB Statute, art 11. The term of appointment is intended to promote the independence from political interference of the members of the Board.
6 EC Treaty, art 109a and ESCB/ECB Statute, art 10.
7 EC Treaty, arts 108a(1) and 108a(3) and ESCB/ECB Statute, art 34.
8 EC Treaty, art 173 and ESCB/ECB Statute, art 35.1.
9 EC Treaty, art 180 and ESCB/ECB Statute, arts 35.5 and 35.6.
10 EC Treaty, art 109c(2).
11 Ibid, art 109c(1).
12 ESCB/ECB Statute, arts 45-47.
13 See paras 262-267 below.
14 Decision of the Representatives of the Governments of the Member States on the Location of the Seats of Certain Bodies and Departments, OJ C323, 30.11.93, p 1.
Agency for Health and Safety at Work (Bilbao); Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Alicante); and the Europol Drugs Unit (the Hague). The Euratom Treaty also attached to the Commission a consultative Scientific and Technical Committee¹ and established an Agency with right of option on, and important administrative powers in, the supply of ores, source materials and special fissile materials².

¹ Euratom Treaty, art 134.
² Ibid, arts 52ff.