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**WORKING DOCUMENT**

**THE MAASTRICHT TREATY**

**GENERAL CONSIDERATIONS WITH SPECIAL REFERENCE TO TRANSPORT POLICY**

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WORKING DOCUMENT

THE MAASTRICHT TREATY  
GENERAL CONSIDERATIONS WITH SPECIAL REFERENCE TO TRANSPORT POLICY

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March 1992

## The Maastricht Treaty

### General considerations - special reference to the transport policy

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## The Maastricht Treaty

### General considerations - special reference to the transport policy

#### 1. Introduction

The signing of the Treaty on European Union by the representatives of the Member States in Maastricht on 7 February 1992 is, without doubt, one of the most significant political events in the history of Europe this century. The ratification and subsequent entry into force of the Treaty will have a major impact on political, economic and social life in the existing EEC Member States which will also form the Union.

It would be extremely hazardous to attempt a detailed analysis of all the changes and all the possible developments - at present only implicit - which will arise from the modifications agreed. The amendments introduced into the EC Treaties alone could justify extensive sector-by-sector comment. Such an analysis will be furnished by forthcoming publications of this Directorate-General. The present text will simply endeavour to offer a general overview of the Treaty and its various components, followed by more detailed consideration of its implications for Community transport policy.

#### 2. The establishment of the European Union

The establishment of the 'European Union' is a key aspect of Maastricht. This decision should be considered within the existing European political context. The Member States have expressed their awareness of the historic importance of the ending of the political division of the European continent and the need to create firm bases for the construction of the future Europe, thus declaring themselves willing to initiate a new phase in the process of European integration. It is also significant that the Union is based on a renewed affirmation of its extension, in general terms, to the 'peoples of Europe'. Such expressions, which in another period might be seen as merely utopian forms of speech, are aimed at responding to the stated wishes of other nations to take part in the construction of Europe, a possibility opened up by the European Union. It remains to be seen, however, how far it will be possible to give concrete form to this aspiration, especially as regards the peoples of Central

and Eastern Europe who have ceased to be imprisoned by the political division of the continent. In particular, this prospect of widening could be relegated to second place in favour of the more clearly defined and structured priority of deepening on the basis of the highly demanding economic criteria laid down by the Maastricht Treaty - especially the requirement of economic and financial convergence as a condition for monetary union.

The European Union thus created has various dimensions. Firstly, it includes the existing European Communities, covering the economic areas defined by the Treaties of Rome - subject to major changes (as will be outlined below), especially regarding the common economic and monetary policy. In addition, the European Union is characterized by new policies and forms of cooperation. A European citizenship, in parallel with national citizenship, is introduced; further innovations include a common foreign and security policy and a cooperation policy in the fields of justice and home affairs.

This construction includes 'typical' Community characteristics as well as aspects of pure political cooperation. It will, however, be based on a single institutional framework, which will enable it to ensure the coherence and continuity of its actions. The main institutions (the Council, the Commission and Parliament) will form the stage for the definition and implementation of the various Union policies - Community policies, the common foreign and security policy, the cooperation policy in the fields of justice and home affairs - although the extent of powers and the decision-making processes vary considerably. We are dealing with a construct which, albeit of a somewhat complex nature in legal terms, corresponds to the practical possibilities of the present political moment. The Treaty itself, besides, provides of a revision conference to be held in 1996 with a view to further progress towards the goal of ever-closer union.

## 2.1. The European Union

### 2.1.1. Union citizenship

The European Union will involve the introduction of Union citizenship. Every person holding the nationality of a Member State will be a citizen of the Union, and will enjoy the following rights:

- . the right to move and reside freely within the territory of the Member States;
- . the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides on the same terms as nationals of that Member State;
- . the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides;
- . the entitlement to protection by the diplomatic or consular representatives of any Member State, in the territory of a third country in which his own Member State is not represented;
- . the right to petition the European Parliament on a matter which affects him directly and the right to petition the Ombudsman appointed by Parliament concerning instances of maladministration in the activities of the Community institutions or bodies.

The Council will decide, acting unanimously, the detailed arrangements for adoption of the above principles, as well as any derogations.

2.1.2. Foreign and security policy and policy in the fields of justice and home affairs - two policies of the European Union

These policies are set out in Titles IV and V respectively of the Treaty on European Union. They will here be dealt with together since, from the viewpoint of the decision-making process, institutional structure and implementation, they are characterized by common aspects. While both are policies of the Union, they include aspects of both Community policy and intergovernmental cooperation, the latter being predominant. The first facet is present in the definition and gradual implementation of joint actions, to be respected and applied by the Member States, possibly acting in conjunction with other administrative bodies of a specific nature (e.g. Europol or the WEU). The common actions will be determined by the Council acting unanimously to lay down their scope and objectives; the Council may also decide that the relevant implementing measures will be determined by a qualified majority.

With regard to the intergovernmental cooperation facet, the principle is that such cooperation will be systematic and put into effect in Council with a view to reaching common positions of the Union and ensuring their full implementation



by the Member States at the level of national policy, and within the international organizations to which the Member States belong.

The Commission will be fully involved in the implementation of these policies, exercising the right of initiative (in all fields other than police and customs cooperation) jointly with the Member States. Parliament will be consulted only on the main aspects of these policies; it may address questions or recommendations to the Council.

#### 2.1.3. Cooperation in the fields of justice and home affairs

The need for cooperation between the Member States in these two fields arises out of, inter alia, the principle of free movement for Union citizens. Member States will thus in future consider a whole range of matters as being of common interest: asylum policy, controls at the Union's external frontiers, immigration policy, action against drug trafficking and international crime (going so far as to set up a European Police Office - Europol), cooperation in civil and criminal matters, etc.

#### 2.1.4. The common foreign and security policy of the Union and relations with the WEU (Western European Union) and NATO

The common foreign and security policy expressly includes all matters concerning the security of the European Union and, in the long term, the definition of a common defence policy which could eventually result in a common defence system. The Union could even call on the WEU, in its role as a crucial factor for its own development, to prepare and implement its joint decisions and actions having security implications. However, any such cooperation between the Union and the WEU would give rise to practical problems, as the membership of the two bodies is only partly identical. Thus, at the Maastricht Summit the WEU member countries adopted two declarations on the role of the WEU and its relations with the European Union and with NATO. The main points of the first declaration were:

- the need to create a genuine European defence and security identity; and

- the role of the WEU as an integral element in the development of the European Union and in strengthening the solidarity of the Atlantic Alliance.

In order to achieve these goals, the WEU must reinforce its specific operational role (planning, military cooperation, armaments, etc.) and institute close working links with the European Union (harmonization of working methods, cooperation between the two secretariats, cooperation between the WEU's Parliamentary Assembly and the European Parliament etc.). In addition, the WEU members countries have invited the remaining member states of the European Union to join the organization or to become observers.

Another problem referred to in the two declarations concerns relations between NATO and both the European Union and the WEU. The objective is to develop the WEU so as to strengthen the European pillar of the Atlantic Alliance. To this end, the WEU member countries will reinforce their coordination within the Atlantic Alliance, in order to introduce common positions in the consultation process of the Alliance, which will remain the main forum for consultations between the allies. The principle is reaffirmed that the WEU will act in conformity with the positions adopted by the Atlantic Alliance. The other NATO members are invited to become associate members of the WEU so as to participate fully in its activities.

## 2.2. The European Communities

We have thus drawn nearer to the central theme of this text - i.e. Community transport policy. It will, however, first be useful briefly to examine the changes introduced into the EC Treaties.

One may note both a deepening of existing policies and the creation of new policies. The main objective is, in all cases, the promotion of economic and social progress through the creation of a cohesive economic and social space throughout the Community. A new article is included enshrining the so-called principle of subsidiarity in relation to the Community's powers. This means that, beyond the powers expressly conferred on it by the Treaties, the Community is to intervene only where the objectives to be attained cannot adequately be reached by an action of the Member States. Among the new policies or reinforced

policies, particularly important are: economic and monetary policy; social policy (at least as regards 11 of the Member States); environmental policy; industrial policy as regards competitiveness; promotion of research and technical development; establishment and development of the major trans-European networks; educational and cultural policy; consumer protection; measures in the fields of energy, civil protection and tourism; and public health policy.

#### 2.2.1. Economic and Monetary Union

Among the changes to the EC Treaties, those concerning economic and monetary union are of particular importance. The economic policies of the Member States are considered as matters of common interest and, as such, to be governed by Council policy guidelines, on the basis of close coordination and subject to a multilateral monitoring system aimed at ensuring that national economic policies conform to the guidelines. The basic objective is to achieve convergence in the economic performance of the Member States. Strict economic goals are laid down regarding such matters as public deficits and budgets.

In parallel with these economic objectives, provision is introduced for a number of developments at the level of monetary policy, leading by 1999 at the latest to the establishment of a single currency, to be controlled by a European System of Central Banks comprising a European Central Bank and the national central banks.

#### 2.2.2. Economic and social cohesion

Reference may here also be made to the Community policy concerning economic and social cohesion in the Community, since this was one of the matters most discussed at Maastricht and was crucial for the success of the summit.

In the first place, economic and social cohesion is one of the objectives of the European Union (see Article B of the Treaty). Cohesion is thus established alongside the Union's objectives of economic progress, the creation of a frontier-free area an economic union: this is not a mere declaration of principle, but is, rather, reflected in the new text of Title XIV of the EEC Treaty, which is dedicated to the subject.

All the existing financial instruments are retained; the Structural Funds (i.e. the ERDF, the EAGGF (Guarantee section) and the Social Fund) remain, subject to possible reorganizations. A number of other important political declarations in this context may be found in the relevant protocol to the Treaty. They concern the agreement by the Member States to graduate the levels of Community participation in projects and programmes under the Structural Funds so as to avoid an excessive budgetary burden on the less wealthy Member States. The Member States also express their willingness to take greater account of the capacity to contribute of the different Member States and to introduce regressive elements into the existing own-resources system.

The Treaty also provides for two other types of possible intervention aimed at guaranteeing the objective of cohesion:

- . where specific actions are necessary outside the scope of the Funds, the Council may decide acting unanimously, subject to the opinion of Parliament;
- . the Council, again acting unanimously, is to create, by the end of 1993, a Cohesion Fund which will contribute to the financing of projects in the areas of the environment and trans-European networks (transport infrastructures).

The Treaty will include anew Title XIII on trans-European networks, empowering the Community to contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures. This aspect will be given further consideration below, as it is of particular importance for transport.

A protocol concerning economic and social cohesion annexed to the Treaty states that the Cohesion Fund will allocate Community financial contributions to projects in Member States whose GDP per inhabitant is less than 90% of the Community average and which have implemented a programme with a view to satisfying the proposed economic convergence criteria.

### 2.2.3. Social policy

The subject of Community social policy and its applicability to all the Member States is of considerable importance, and stands in need of clarification, especially following some of the comments in the press after the Maastricht Summit.

The Treaties already included a title specifically concerned with social policy. The relevant provisions will continue to apply, with some minor changes, in all the Member States, the UK included. In other words, it will continue to be an objective of the Community to promote improved working conditions, and to improve the health and safety of workers, on the basis of progressive harmonization of conditions in this area. The Council, in cooperation with Parliament, is responsible for adopting the directives laying down the minimum requirements for gradual implementation.

This title on social policy is expanded by the addition of a number of new Community powers in the areas of education, professional training and youth policy. These powers, however, are confined to supporting and complementing the national policies of the Member States, whose powers will remain as far as the content and organization of those policies is concerned; there is thus no provision for any harmonization of the national legislative provisions and regulations.

An 'agreement of the Eleven', excluding the UK, was reached on social policy. Eleven Member States agreed to confer power on the Community to legislate, on the basis of certain basic principles, in a number of areas crucial for the improvement of working conditions, following on directly from the Social Charter adopted in 1989 (then too without the twelfth Member State). The areas concerned comprise the social protection of workers, dialogue between management and labour, the development of human resources, etc. The Member States are to act in these fields with due respect for the principle of subsidiarity, national diversity and the need to maintain the competitiveness of the Community economy. Before embarking on legislation, the Community is to consult the social partners at European level; the latter may also pursue the proposed goals by means of contractual relations, which may be incorporated into the Community legal framework by Council decisions.

The refusal of the UK to subscribe to this agreement in the social field is simply a reflection of the political opposition of the British government to a number of principles expressed in the agreement, and of a certain political suspicion of what are seen as centralizing intentions on the Community's part. This political position had already been manifested in 1989, at the time of the adoption of the Social Charter, and should give no cause for surprise. The empowerment of the Community to act in this area, in general terms, so as to promote improved working conditions in Member States is based on Article 118a of the Treaty, introduced in 1986 by the Single Act signed in Luxembourg; it is thus part of the 'acquis communautaire' which the Twelve are called on to respect.

#### 2.2.4. The Institutions and the decision-making process

While it is not yet possible to go into detail, it may be stated that the decision-making procedures in the various areas of Community competence exhibit a considerable degree of variation - opinion, assent, co-decision, cooperating, etc. - and involve varying requirements as regards majorities in the institutions (the Council and Parliament) concerned with the legislative process. In general terms there is a substantial strengthening of the legislative role of Parliament, with the introduction of the co-decision procedure and the extension of the cooperation procedure introduced by the Luxembourg Single Act.

From the institutional viewpoint, although there are no substantial reforms, one may note the consolidation of the role of the European Council, consisting of the Heads of State and Government, as the organ responsible for defining an spearheading the general policies of the Union; the strengthening of the Court of Auditors as a full Community institution; the creation of a Committee of the Regions, which will have a consultative role and will be made up of representatives of regional and local authorities; and the future creation of monetary institutions - the European Monetary Institute and, at a later date, the European System of Central Banks and the European Central Bank.

### 3. Community transport policy in the new Treaty

#### 3.1. The amendments called for by Parliament

The elements called for by Parliament regarding the revision of the Treaties are set out in the Martin report adopted in plenary on 22 November 1990. The main points are:

- the objectives of transport policy - the single market and economic union; respect for the environmental and social objectives;
- land, air and sea transport as governed by Article 84;
- mandatory harmonization with a view to eliminating all distortions of competition;
- competence to introduce positive measures in the areas of:
  - safety;
  - structural policy, with a view to improving the competitiveness of undertakings, especially in the rail and combined transport sectors;
  - transport infrastructure
- transparency in respect of aid;
- implementation of the competition rules, with due respect for the specific problems of the transport sector;
- long-term objectives:
  - a Community register;
  - a European civil aviation authority;
- a general competition clause aimed at the development of a European transport system;
- application of the co-decision process (to all fields) under Article 188b;
- external relations (Article 228).

Two of the Committee on Transport's amendments were not accepted by Parliament; these proposed:

- an annual report on implementation of the competition rules in the transport sector;
- the introduction of an article on Community tourism policy.

### 3.2. The amendments actually introduced into the Treaty

It may here be pointed out, first of all, that the representatives of the Member States displayed excessive caution vis-à-vis the adoption of amendments. Of the specific provisions of Title IV (concerning transport), only Article 75 was amended. This is all the more surprising given the lack of concrete content of existing articles under this title, e.g. Article 82.

The innovations introduced into Article 75 will now be examined.

#### 3.2.1. The decision-making process

The cooperation procedure set out in Article 189c will henceforth be used for the adoption of Community legal acts in the field of transport.

The application of the cooperation procedure to air and sea transport is based on Article 84(2), in the wording introduced by the Single Act and unchanged in the new text, stipulating use of the procedural provisions of Article 75.

The cooperation procedure set out in Article 189c is as follows:

- (i) Commission proposal;
- (ii) opinion of Parliament;
- (iii) common position of the Council, acting by a qualified majority;
- (iv) three-month period for Parliament to take a decision by an absolute majority of its component members;
- (v) one-month period for the Commission to consider Parliament's amendments and submit a re-examined proposal;
- (vi) Council decision acting by a qualified majority vote on the re-examined proposal - or acting unanimously should the Council decide to give a second reading to a common position rejected by Parliament, adopt an amendment tabled by Parliament and not accepted by the Commission, or amend the Commission's re-examined proposal.

The extraordinary decision-making procedure previously allowed for under Article 75(3) for measures concerning the principles of the regulatory system for transport and liable to have a serious effect on the standard of living or employment in certain areas - enabling such measures to be adopted by the



Council acting unanimously - is altered; it is now similar to the consultation procedure, involving a Commission proposal and the opinions of Parliament and the ESC.

In addition, the introduction of the cooperation procedure for the adoption of legislative measures in the field of transport, while undeniably increasing the powers of Parliament, continues to treat the sector on a basis different from that applying to the other areas which are essential for the completion of the internal market. The new text of Article 100a specifies that the fundamental areas for completion of the internal market are to be dealt with by the co-decision procedure (see Article 189b).

### 3.2.2. New powers

#### 3.2.2.1. Transport safety

Article 75(1) now includes a new subparagraph (c) empowering the Council to lay down measures to improve transport safety. This was one of the changes advocated by Parliament.

This effectively removes the objection advanced by some Member States to the effect that the Community had no powers to act in the area of transport safety.

As there are still two separate articles - one for land transport (Article 75) and one for sea and air transport (Article 84) - it may be asked to what extent safety in air and sea transport falls within the Community's area of competence. In our view, the text of Article 84(2) should be interpreted as recognizing the particular nature of these two forms of transport as grounds for justifying the adoption of specific rules, which none the less conform to the general principles and objectives laid down in the Treaties and, consequently, to the requirement of creating an internal market in transport within which high safety standards will be guaranteed.

#### 3.2.2.2. The major trans-European networks

The Treaty will now include a new Title XIII on trans-European networks, empowering the Community to contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures. The Community is to promote the interconnection and interoperability of national networks as well as access to such networks, with particular reference to the need to link up the island, landlocked and peripheral regions with the central regions of the Community.

This Community competence is to be exercised in the following ways:

- establishment of a series of guidelines covering the objectives, priorities and broad lines of measures and identifying projects of common interest. Guidelines and projects of common interest which relate to the

territory of the Member States will require the approval of the Member State concerned;

- implementation of any measures that may prove necessary to ensure the inter-operability of the networks, in particular in the field of technical standardization;
- the possibility of supporting the financial efforts made by the Member States for projects of common interest, as identified in the first indent above, particularly through feasibility studies, loan guarantees or interest rate subsidies; and the further possibility of contributing through the Cohesion Fund to be set up no later than 31 December 1993, to the financing of specific projects.

#### The decision-making process to be applied

The set of policies concerning objective, priorities and projects of common interest will be adopted under a new procedure - 'co-decision' - laid down in Article 189b. This procedure will be explained below. The remaining measures, including Community financial support, will be adopted under the cooperation procedure set out in Article 189c; this procedure is already familiar and has been summarized above. In all cases it will be mandatory to consult the (future) Committee of the Regions.

The new co-decision procedure under Article 189b is as follows:

- (i) Commission proposal submitted to Parliament and Council;
- (ii) opinion of Parliament;
- (iii) the Council adopts a common position, acting by a qualified majority;
- (iv) Parliament has a three-month period within which to adopt one of the following positions:
  - it amends the Council's common position by an absolute majority of its component members;
  - it approves the common position or takes no decision, following which the Council may finally adopt the act;
  - it indicates, by an absolute majority of its component members, its intention to reject the common position, following which the Council may call a meeting of the Conciliation Committee.

- (v) the Council has a three-month period within which to adopt all the amendments tabled by Parliament. As in the established cooperation procedure under Article 189c, the Council decides acting by a qualified majority on the amendments of Parliament supported by the Commission, and acting unanimously on those amendments on which the Commission has delivered a negative opinion. Where the Council adopts all of Parliament's amendments, it amends its position accordingly and adopts the act in question.
- (vi) Should this not be the case, the President-in-Office of the Council, acting in agreement with the President of Parliament, immediately convenes the Conciliation Committee. The committee has a six-week period within which to reach agreement on a joint text, to be submitted to both institutions. Both will have six weeks within which to approve the joint text. Parliament decides by an absolute majority; the Council decides acting by a qualified majority. Should both institutions approve the joint text, the act is adopted.
- (vii) Should the Conciliation Committee fail to submit a joint text, the proposed act is deemed not to have been adopted, unless the Council, acting by a qualified majority and within six weeks of the expiry of the conciliation period, confirms its previous common position, possibly incorporating some of Parliament's amendments. In this case, the act is considered adopted unless Parliament rejects it by an absolute majority of its component members, within six weeks of confirmation by the Council of its common position.

From this account of the co-decision procedure under Article 189b, it may be concluded that this procedure differs from the established cooperation procedure under Article 189c in the following respects:

- (a) Legal acts adopted under Article 189b will be adopted on the basis of genuine co-decision between Parliament and the Council. These are, moreover, legal acts (regulations, directives or decisions) promulgated by the Presidents of the two institutions (see Article 191(1));
- (b) The nature of this co-decision is demonstrated by the fact that the acts will only be deemed adopted where: (1) the Council accepts all of Parliament's amendments to the common position; (2) both institutions accept the joint text produced by the Consultation Committee;

(3) Parliament decides not to reject the Council's confirmation of its common position following failure by the Conciliation Committee to reach a compromise.

This amounts, then, to a genuine legislative co-decision procedure as between the Council and Parliament.

### 3.2.3. External relations (Articles 113 and 228)

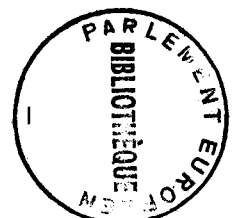
The procedure to be followed in the case of the Community's external relations with third countries in the field of transport has, as is well known, led to disagreements between the Commission on the one hand and Parliament and the Council on the other. The problem arose from a Commission proposal concerning external relations in the area of civil aviation.

Article 113(3), considered by the Commission to constitute a suitable legal basis for the negotiations in question, was amended at Maastricht: a new sentence was introduced specifying that when agreements are negotiated with third countries 'the relevant provisions of Article 228 shall apply'.

Parliament had called for precisely this Article 228, together with the articles specifically relating to transport (Articles 75 and 84), to be adopted as the legal basis for the external relations in question. This article provides for consultation of Parliament.

Article 228, however, has itself been amended. The new text is likely to raise problems of interpretation:

'3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113(3), including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules. The European Parliament shall deliver its Opinion within a time limit, which the Council may lay down according to the urgency of the matter. In the absence of an Opinion within that time limit, the Council may act.'



The amended article clearly establishes the rule that Parliament must in future be consulted concerning the conclusion of agreements between the Community and one or more third countries or international organizations. The only case for which the opinion of Parliament will not be mandatory is that of agreements under Article 113, i.e. trade agreements with third countries. However, the text quoted above stresses that the opinion of Parliament is mandatory in all cases where the matters regulated by the agreement require the co-decision or the cooperation procedure for adoption in the internal legal context. It follows that exemption from the mandatory opinion of Parliament applies only to the 'typical' trade agreements provided for under Article 113, in the sense that the matters concerned do not, within the Community's internal framework, require the decision-making procedures of Articles 189b and 189c.

The phrase 'including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required' is only comprehensible as an exception to the absence of any requirement to consult Parliament on trade agreements under Article 113. Otherwise, the reference would be redundant since the general principle concerned is established at the beginning of paragraph 3 (i.e. that Parliament must be consulted on external agreements).

One may here invoke a further argument based on the procedure required for the conclusion of agreements with third countries. This procedure, as defined in Article 228, is as follows:

- . the Commission submits a recommendation to the Council, which authorizes it to open negotiations;
- . the Commission conducts the negotiations in consultation with a special committee appointed by the Council;
- . the Council concludes the agreements following a proposal by the Commission, acting by a qualified majority or acting unanimously where this is required for the adoption of internal rules.

This procedure for the conclusion of agreements is, in general, in all respects similar to the procedure for the conclusion of trade agreements under Article 113. One may therefore ask on what grounds a reference has been inserted into Article 113 to application of the relevant provisions of Article 228. Our view

is that this reference only makes sense in the context of the two innovations introduced by Article 228 with respect to Article 113;

- the requirement to consult Parliament even for the conclusion of certain types of trade agreement - i.e. where the matters concerned fall, in internal terms, within the scope of the co-decision or the cooperation procedure (see Article 228(3));
- the possibility of the Council empowering the Commission to approve modifications on behalf of the Community where the agreement provides for such modifications to be adopted by a simplified procedure or by a body set up by the agreement itself (see Article 228(4)).

One may also adduce a third argument, of a structural nature; this concerns the logic of Article 228 in its new wording.

Previously, Article 228 provided for consultation of Parliament only in the cases stipulated in the Treaty. Following Maastricht, the rule is now that Parliament must be consulted before the conclusion of agreements; this applies even to trade agreements where they concern matters internally subject to the co-decision or cooperation procedures, in which Parliament is closely involved in the decision-making process.

Even where the agreement involves the revision of internal rules adopted by co-decision, the assent of Parliament - not merely its opinion - is required (see Article 228(3), second sub-paragraph). There is thus a logical correspond between the legislative powers of Parliament in certain internal legal areas and the evident need to consult Parliament on the conclusion of external agreements affecting the same fields. It would not be acceptable to leave Parliament on the sidelines when trade agreements are concluded, since this would amount to questioning the legislative powers conferred on Parliament by the Treaty in the internal legal domain.

It appears, then, that the conflict between Parliament and the Commission has been resolved to Parliament's benefit. In particular, consultation of Parliament will be mandatory for agreements between the Community and third countries in the field of air transport. We consider, none the less - in this case agreeing with the positions of Parliament and the Council - that the

correct legal basis for the conclusions of such agreements is constituted by Article 75 and 84 in conjunction with Article 228. The matter involves the institution of rules regulating the extra-Community air transport market - rules which will have a major effect on the Community market itself. One may here refer to the fifth freedom or cabotage rights granted to third countries. These rules are linked to the specific organization of the internal air transport market (still to be fully defined) and thus concern a wider area than trade alone. At all events - even if the Commission takes the view that the agreements concerned are 'typical' trade agreements within the terms of Article 113(3) - the matters to be regulated require, in internal terms, the decision-making procedure of Article 189c, and Parliament must therefore be consulted.

One may also note an extension of the scope of application of the procedure for the assent of Parliament (see Article 228(3)). The assent of Parliament will in future be required not only for agreements with third countries, groups of countries or international organizations aimed at creating an association characterized by reciprocal rights and obligations, joint actions and special procedures, but also for other agreements establishing a specific institutional framework by organizing cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the co-decision procedure of Article 189b.

#### 3.2.4. Tourism

With regard to tourism, the revised text of the Treaty merely states that the Community's action may include 'measures in the sphere of tourism' (Article 3(t)). In other words, there is no provision for a specific Community policy for tourism, but simply for such isolated measures as may prove necessary. In this area, there is every reason to believe that the Community will employ, as the legal basis for such actions, Article 130 (of Title XIII, devoted to industry), which calls on the Community and the Member States to ensure the necessary conditions for the competitiveness of Community industry.

The use of this legal basis will mean that any measures proposed by the Commission will be taken by the Council acting unanimously and that only consultation of Parliament will be required.



#### 4. Conclusions

1. The new Treaty on European Union introduces major changes. It creates a Union with its own citizenship, parallel to that of the Member States, and two specific policies - the common foreign and security policy and cooperation in the field of justice and home affairs.
2. These new policies of the European Union will be pursued primarily through intergovernmental cooperation. However, the institutional framework common to both the Union and the European Communities will ensure continuity and consistency between the actions of both.
3. With regard to the European Communities, there is both a deepening of existing policies and the creation of new policies. The basic objectives in all cases is the construction of a cohesive Community-wide economic and social area. The new policies or 'deepened' policies include: economic and monetary policy; social policy (at least for 11 of the Member States); environmental policy; industrial policy; promotion of research and technological development; establishment of the major trans-European networks; education and culture; consumer protection; energy; civil protection and tourism; and public health.
4. Certain developments may be noted regarding Community transport policy. Parliament's wishes have not been entirely fulfilled, but the changes made are certainly in the right direction.
5. With respect to the decision-making process, the rule will henceforth be that the cooperation procedure will be used; this represents an increase in the power of Parliament. Unfortunately, however, transport will be dealt with on a different basis from the other key sectors for the internal market, in which the rule will be to use the co-decision procedure.
6. This increase in the powers of Parliament as regards the legislative process is paralleled by a corresponding reinforcement of its role in the Community's external relations. Parliament was hitherto consulted on agreements with third countries only where consultation was laid down in

the Treaty; consultation will in future be the rule. In addition, the scope of the assent procedure is widened (it may be noted that Parliament's powers of concrete intervention are greater under this procedure).

7. Also to be noted is the express recognition of new Community powers, especially concerning transport safety and the creation of the major trans-European transport infrastructure networks.
8. The Community will henceforth contribute to the establishment and development of the trans-European networks in the sectors of transport, telecommunications and energy infrastructure. Community action will be aimed at promoting the interconnection and inter-operability of the national networks, and will take account of the need to link the peripheral regions to the centre of the Community.
9. In this connection, one may note the possibility of Community support for the financial efforts of Member States in respect of projects of joint interest, as well as the creation of a Cohesion Fund for the less-favoured regions of the Community, which will be empowered to contribute to the funding of specific project within the overall plans for the major trans-European networks.
10. Although Article 3(t) foresees that the Community will take measures in the field of tourism no specific provisions for such measures are made in the Treaty. The question of introducing into the Treaty a new title for tourism was left for the next revision which will take place during 1996 at the latest. The Community can therefore use for its action either the legal basis used until now (Article 235) or the new title regarding the competitiveness of the Community's industry.

E U R O P E A N   P A R L I A M E N T

23 March 1992

A3-0000/92/ANNEX

O P I N I O N

of the Committee on Transport and  
Tourism

for the Committee on Institutional  
Affairs

on the results of the Maastricht Treaty  
in the context of the common transport  
policy

Draftsman: Mr Derek PRAG

O P I N I O N  
(Rule 120 of the Rules of Procedure)

of the Committee on Transport and Tourism  
for the Committee on Institutional Affairs  
Draftsman: Mr Derek PRAG

At its meeting of 26 February 1992, the Committee on Transport and Tourism appointed Mr Derek PRAG draftsman.

At its meetings of 26 February 1992 and 16 March 1992, it considered the draft opinion.

At the latter meeting it adopted the conclusions as a whole by 15 votes to 0, with 1 abstention.

The following were present for the vote: van Dijk, Chairman; Topmann, Vice-Chairman; Prag, Draftsman; Blak (for Denys), Coimbra Martins (for Sapena Granel), Cornelissen (for Bourlanges), De Piccoli, Jarzembowski (for Müller), Lalor (for de la Malene), Lüttge, Porrazzini, Tauran, Sarlis, Simpson B., Stamoulis (for Schlechter), Visser and Wijsenbeek

1. The Committee on Transport and Tourism in 1990 adopted an opinion setting out its wishes on the revision of the transport-related part of the EEC Treaty. They were included in the Martin report adopted by the Parliament on 22 November 1990.

Those wishes covered the following points:

- a clear exposition of the aims of transport policy in the internal market and under economic union, with due respect for social and environmental objectives,
- the regulation of land, air and sea transport by the same Treaty provisions (Article 84),
- obligatory harmonisation in order to eliminate distortion of competition,
- responsibility for positive measures concerning
  - \* safety
  - \* structural policy to develop the competitiveness of business undertakings, particularly railways and combined-transport operators,
  - \* transport infrastructure,
- transparency in the granting of aids,
- application of the rules on competition with due regard to the specific characteristics of the different modes of transport
- long-term objectives
  - \* a Community register
  - \* a European civil aviation authority
- a 'general competence' clause with a view to developing a European transport system,
- application of co-decision in all fields of transport legislation
- external relations and agreement with third countries (Article 228).

2. The provisions of the Maastricht Treaty in the field of transport present a major advance, while by no means meeting the Parliament's legitimate expectations.

The main achievements are:

- a) the application of the co-operation procedure (Article 189c) to all transport legislation; this is a major step forward; and
- b) the introduction of two new specific Community competences - for transport infrastructure, and for transport safety.

However, the new Treaty provides no precise details on the aims of transport policy, and makes no specific reference to respect for social and environmental objectives, although it is quite possible that such objectives could be met in the field of transport through application of the specific chapters on these Community policies.

The opportunity to eliminate some articles that have become obsolete, such as that on the division of Germany (Article 82), was not taken. The separate treatment of inland transport on the one hand, and air and sea transport on the other, was retained.

### Decision-making procedures

3. Articles 75 and 84, taken together, now mean that legal acts relating to transport must be adopted under the co-operation procedure (Article 189c). An exception is the guidelines on trans-European networks (see below, paragraph 6) which are to be adopted under the co-decision procedure (Article 189b). This clearly represents a significant and welcome increase in Parliament's powers in the field of transport. Nevertheless, the new provisions are part of a multiplicity of legislative processes in which the transport sector will continue to be treated differently from other sectors fundamental to the establishment of the internal market. While transport legislation becomes subject to the co-operation procedure (Article 189c) other measures aimed at establishing the single market will be subject to the new co-decision procedure (Article 189b).

The Transport Committee cannot but disapprove of this difference in treatment for transport within the context of the internal market.

4. Parliament's involvement in the legislative procedure is also enhanced by the new Article 75(3) concerning measures that could have a serious effect on the standard of living and on employment in certain areas. Previously such measures could be adopted by Council acting unanimously without involving Parliament; they must now be submitted to the consultation procedure. This is a minor improvement, but it is difficult to see a valid justification for preserving the consultation procedure and thus maintaining a "reserved area" of transport policy for the Council.

### New Community competences

5. Transport safety

Although Parliament and the Commission already considered that the Community was competent to adopt measures aimed at increasing safety in transport, some Member States had disputed these powers and blocked various proposals for legislation in the field of road transport. The position on legislation for transport safety is now clearly defined in such a way as to meet Parliament's wishes.

## 6. Trans-European networks

The Treaty includes a new title XII on trans-European networks. This gives the Community clear competence to contribute to the establishment and development of trans-European networks in the fields of transport infrastructure, telecommunications and energy. Community action must help to ensure that national networks are interconnected and operationally compatible, must facilitate access to such networks, and must also pay particular attention to the need to link island, landlocked and peripheral regions to the central regions of the Community.

To pursue these objectives the Community will:

- establish guidelines on objectives, priorities and major courses of action and identify projects of common interest, which will also require the agreement of the Member State to which they relate;
- implement all necessary measures to ensure the operational compatibility of the networks, particularly as regards technical standards;
- support the financial efforts of the Member States in respect of previously identified projects of common interest, particularly in the form of feasibility studies, loan guarantees or interest-rate subsidies. The Community may also contribute to specific projects through the Cohesion Fund to be set up by the end of 1993.

The Cohesion Fund will provide Community financial contribution to projects located in Member States with a per capita GNP of less than 90% of the Community average. Today only four countries qualify in principle for the Cohesion Fund (Greece, Ireland, Portugal and Spain).

The guidelines on objectives, priorities and projects of common interest will be adopted in accordance with the co-decision procedure of Article 189b. Other measures to be adopted, including financial support from the Community, will be adopted in accordance with the cooperation procedure (189c).

7. Article 129d on the procedure for adopting the guidelines and projects referred to in paragraph 6 above contains a curious provision. On the one hand, as we have seen, this is the only transport matter subject to co-decision. Nevertheless, Article 129d also specifies that such guidelines and projects shall require the approval of each Member State to which they relate. It would clearly not be sensible to try to implement a transport infrastructure project in a Member State against its will. But nor is it possible to accept the principle of a right of veto by a Member State of a Community Act adopted by the co-decision procedure.

Accordingly, it seems clear that the approval of the Member State or States concerned must be obtained before the opening of the legislative procedure. This is already done at the stage of the Commission's proposal through the work carried out within the so-called 'infrastructure committee'. In addition, Parliament, when exercising its new powers under the co-decision procedure, should also maintain close consultation with the Member State(s) concerned.

#### Agreement with third countries

8. Transport plays a major part in agreements with third countries, particularly in Europe. There has been a certain extension of Parliament's powers in this field. Previously, Parliament had to be consulted before the conclusion of agreements with third countries only in the cases where it was required by the Treaty; after Maastricht Parliament must be consulted as a general rule.

However, doubts arise on the extent of the exceptions to this general rule. The wording of Article 228(3) is opaque, and gives rise to two different interpretations:

- \* The Committee on External Economic Relations concluded that commercial agreements under Article 113(3) still do not require Parliament to be consulted, except in the specific cases to which the assent procedure applies (e.g. agreements having important budgetary implications).
- \* A working document of Parliament, which seems to have the support of its Legal Service, expresses the view that, when the commercial agreements cover a field requiring the co-decision or cooperation procedure for the adoption of internal rules, then Parliament must be consulted.

9. The situation is certainly not clear. If the first interpretation were correct it would represent a setback in the Parliament's aspirations to play a more important role in the field of external relations. It would also be in contradiction to the real increase of Parliament's powers in internal matters and with the very important extension of the situations requiring not only consultation of Parliament, but also its assent.
10. The Committee therefore strongly recommends urgent clarification of the interpretation to be given to these Treaty articles. Parliament should exploit to the maximum the possibilities given by the new Treaty.

In addition, a new 'Code of Conduct' should be adopted by the Commission, in cooperation with Parliament, concerning the choice of the legal basis for legislative proposals in the external relations field, so as not to undermine the Parliament's full participation in the conclusion of agreements with third countries. It should involve not only formal consultation and



assent before the conclusion of agreements, but also provision of appropriate information and, wherever possible, discussion with Parliament in the phases prior to negotiations, during negotiations, and between the initialling and signature of the agreements.

### Tourism

11. In Article 3(t), the new Treaty says the activities of the Community shall include measures in the sphere of tourism. It makes no specific provisions for such measures, however. Nevertheless, in a Declaration appended to the Treaty, the Twelve state that the question of introducing into the Treaty a specific title for tourism will be examined on the basis of a report which the Commission will submit to the Council by 1996 at the latest. Until that date, action on tourism is to be pursued by the Community on the basis of the present provisions of the Treaties. The Commission has affirmed its intention to propose action on this basis.
12. For this purpose the Commission could use the well-worn Article 235 or the new Title XIII provisions concerning industry, under which the Community can decide on specific actions to support the Member States in order to ensure the competitiveness of the Community's industry. Whichever of these legal bases is used, unanimity is required in the Council, and the European Parliament is merely consulted.

### Conclusions

The Committee on Transport and Tourism, on the basis of the Treaty on the European Union signed in Maastricht

- a) welcomes the increase of Parliament's role in the formulation of a common transport policy, through the application of the cooperation procedure;
- b) particularly regrets, however, the multiplicity of legislative procedures applicable to the transport sector, and is particularly concerned that this sector, which is of the utmost importance for completion of the internal market, has not been placed under the co-decision procedure foreseen in Article 100-A for other internal market matters;
- c) welcomes the introduction of a Community competence in the field of the trans-European networks and, particularly:
  - \* the use of the co-decision procedure for the definition of objectives, priorities and projects of European interest,
  - \* the possibility for the Community to contribute financially to the accomplishment of projects identified,

- \* the possibility of using the Cohesion Fund for the financing of trans-European networks in the less developed countries of the Community;
- d) expresses its satisfaction at the clear confirmation of a Community competence in the improvement of transport safety;
- e) regrets that the IGC did not decide on a more thoroughgoing revision of the Title on transport specifying the Community's goals of respect of the environment, harmonisation of competition conditions, and promotion of combined transport;
- f) believes that, in the field of external agreements, Parliament must persistently sustain the view that it must always be consulted - even on commercial agreements under Article 113(3) - when the matters in question require European legislation to enable them to be adopted in the internal order; and expects the Commission to make its proposals for external agreements concerning transport in such a way as to ensure that Parliament is always consulted, and also that these agreements are subject to the assent procedure; moreover, does not in any case consider Article 113(3) to be suitable for external agreements on transport.
- g) regrets the absence of specific provisions for the implementation of a common policy on tourism; acknowledges however the readiness of the Commission to use the existing Articles of the Treaty to act in this field, and to present by 1996 proposals for specific provisions on tourism, as envisaged by the IGC;
- h) urges the Council to adopt the Community action programme to assist tourism.

