



THE CELEX DATABASE

A guide to European Union Law

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Third Edition

Revised by Lorna Ailes

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Contents

Preface	<i>Page 2</i>
Chapter 1. Introduction	3
Chapter 2. General Description of CELEX	13
Chapter 3. CELEX Sector 3/4.....	17
Chapter 4. Sector 5	22
Chapter 5. Sector 7	25
Chapter 6. Sector 6	28
Chapter 7. Sector 1/2	31
Chapter 8. Sector 9	34
Chapter 9. Some hints on searching CELEX	35
Chapter 10. Types of Legal Database	40
Chapter 11. Publications of the European Union.....	43
Chapter 12. Other Databases of the European Commission	45
Appendix A1. Common Fields used in CELEX	49
Appendix A2. Letter codes used to denote different types of documents	50
Appendix A3. List of Field names and the Sectors that use them.....	53
Appendix A4. CELEX Subject Matters	58
About the Authors	60

Preface

This short book has grown out of my experience over five years or so, of teaching people to use and understand the CELEX database. Since the European Community produces about 100 new pieces of legislation each week, and has been doing so for forty years, the location any particular document is a formidable task. CELEX, whether online or on CD-ROM, provides the best way of navigating this gargantuan labyrinth of legal documentation. It does more than that, since the structure of CELEX reflects the structure of the legal entity which is the European Community, then understanding CELEX is a considerable help in understanding the way in which the European Community conducts its affairs. Most of my students have been qualified in the British legal profession as solicitors, barristers, law librarians or legal executives, i.e. in common law methodology. European Community law is a codified system which presents an unfamiliar (perhaps unwelcome) face to the common law practitioner. However the differences are not that difficult to follow and with application can be understood.

This book has been written for the benefit of common law practitioners and its objective is to help that process of understanding.

I have had considerable help from many people, too many to acknowledge completely, but I must mention Dianna Bardy, Mary Preston and Albrecht Berger of the Eurobases Group of the European Commission, and Serge Brack and Jean Mortier of the Office of Official Publications of the European Communities. My colleagues at Context, Robin Williamson and Michelle Green, have given me much encouragement, and especially Masoud Gerami who has designed and generated the extensive programs required to process CELEX and in so doing made a complex database easier to understand. Finally, Blossom Geary for her patience and sense of humour in coping with my disorganized drafting methods and dreadful handwriting.

Preface to the Second Edition

I must first thank all readers of the first edition for their favorable comments and suggestions, many of which I have included in this new edition. Maastricht has been taken into account not only in the addition of new material but also in the nonsensical change of name from European Community (EC) to European Union (EU). The chapter on searching hints has been extended with more examples and the addition of some very basic ideas on searching databases. Finally a very brief chapter on the printed publications of the European 'Union' has been added.

Preface to the Third Edition

There have been many exciting changes to the European Union, one of which was the accession of ten new member states in May 2004. We have produced this Third Edition to bring up to date changes that have occurred in both the European Union and the CELEX database since the last edition. We are producing this book electronically for the first time and hope it will be of interest to both current and potential Justis CELEX subscribers alike.

Lorna Ailes, June 2004

Chapter One

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Introduction

Europe has a new map that has no frontiers. A boundary-free map with features that contain invisible means of communicating and travelling now defines it. Its highways, roads, lanes and footpaths are telecommunications networks that span the continent. Its cities, towns and villages are databases that are connected to the networks. This is a dynamic, constantly changing system that is inundated in modernity, as networks are extended, new databases are added, and older ones deleted.

The Commission of the European Communities is one of the main aspects within this network. It has the responsibility of disseminating information generated by the legal activities of the European Union (EU). This information includes documents that cover binding legislation, such as directives, regulations and decisions, as well as other documents that cover programmes, debates, discussions and other topics. Since this information determines the framework in which the citizens of the Member States of the EU live and work, it is necessary that they have access to it (in the twenty official languages). This task can only be efficiently and adequately carried out by electronic means, so the EU has created its own system of databases that cover its activities. In turn, all of the Member States have developed their own systems that contain their reaction to the legislation of the EU, which is particularly important for the implementation of EU directives into the legislation of the Member States.

Since 1987 Context Limited (www.context.co.uk) has produced the **Justis CELEX** database (www.justis.com), taking original full text data from the European Commission, adding unique features and greatly enhancing its usability. Justis CELEX has dramatically simplified research into European Community law and is available in both English and French language versions. In addition to the core CELEX database, Justis CELEX includes access to the full text of the following data sources:

- Justis Official Journal C Series (OJ C)
- Proceedings of the European Court of Justice (ECJ)
- Links to UK implementation measures and related Statutory Instruments
- RAPID (the official European Union press release database)

There follows a brief description of the EU, its functions, and how those functions relate to the databases that are available from the EU itself and the corresponding ones in the Member States. The procedures of the EU will be linked specifically to the CELEX database, which is the core database for the legislation and case law of the EU.

The European Union

The European Union has been in existence for almost 50 years and on 1st May 2004 underwent its biggest enlargement so far when the number of **Member States** increased from 15 to 25 countries.

Following the six founding member states (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) which formed the European Economic Community in 1957, there have been five successive enlargements:

- 1973 - Denmark, Ireland and the United Kingdom
- 1981 - Greece
- 1986 - Portugal and Spain
- 1995 - Austria, Finland and Sweden
- 2004 - Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia

Thirteen countries applied to become new members of the EU, but only ten of these countries joined on 1st May 2004. The accession of Bulgaria and Romania is anticipated for 2007 and Turkey is not currently negotiating its membership.

In order to join the EU, applicants have to fulfill the obligations of membership by satisfying a number of economic and political conditions. These include

- having a stable democracy, respecting human rights, the rule of law and the protection of minorities.
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
- the ability to take on the obligations of membership, adopting the common rules, standards and policies that make up the body of EU law.

The EU is a political organisation which expresses itself as a legal entity and in some ways is similar to a local authority, as its powers are defined by a series of Treaties. These Treaties are binding on the Member States and constrain and limit the powers of the Union.

However, under the terms of these Treaties, the EU has the power to draft legislation that is binding on all Member States. Hence, the EU has created a substantial body of supra-national law which is effective throughout Europe. The final arbiter in the interpretation of the Treaties and the legislation derived from them is the European Court of Justice, which has, over the years, built up a considerable body of jurisprudence.

The process of generating this legislation is lengthy and complex since the chosen method is to proceed by persuasion and agreement so that the regulations and directives are accepted throughout Europe. Over the years, several procedures have been developed in order to create legislation. The two principal methods are the **consultation procedure** and the **co-operation procedure**, which are both still in use. Although the co-operation procedure has been modified several times, one particular modification is the **co-decision procedure**. There is also the **assent procedure**, by which the European Parliament endorses international agreements between the EU and other organisations. The progress of legislation under all these procedures may be followed in the CELEX database, and the legislative audit trail embedded in the database is one of its most valuable features.

The Consultation Procedure

Prior to 1987, the consultation procedure was the only method of enacting Community legislation and is still the only method for a number of important areas of legislation (for example, taxation and the free movement of people). It is shown schematically in **Figure 1**. Under this procedure, any piece of new legislation had to go through the following sequence of events:

1. The European Commission drafts a proposal for a particular piece of legislation.
2. The proposal is submitted to the Council of Ministers.
3. The proposal (if appropriate) is sent to the European Parliament, the Economic and Social Committee and the Committee of the Regions for consultation and an opinion.
4. The Commission may then amend the proposal before submitting it to the Council of Ministers for a second time.
5. The Council then considers the proposal for adoption and if it is adopted unanimously, it becomes legislation.
6. The Commission then implements the legislation and acts to ensure compliance with it.
7. The Court of Justice then has to ensure legal compliance and interpret the legislation.
8. The Court of Auditors has to monitor the financial implications of any piece of legislation.

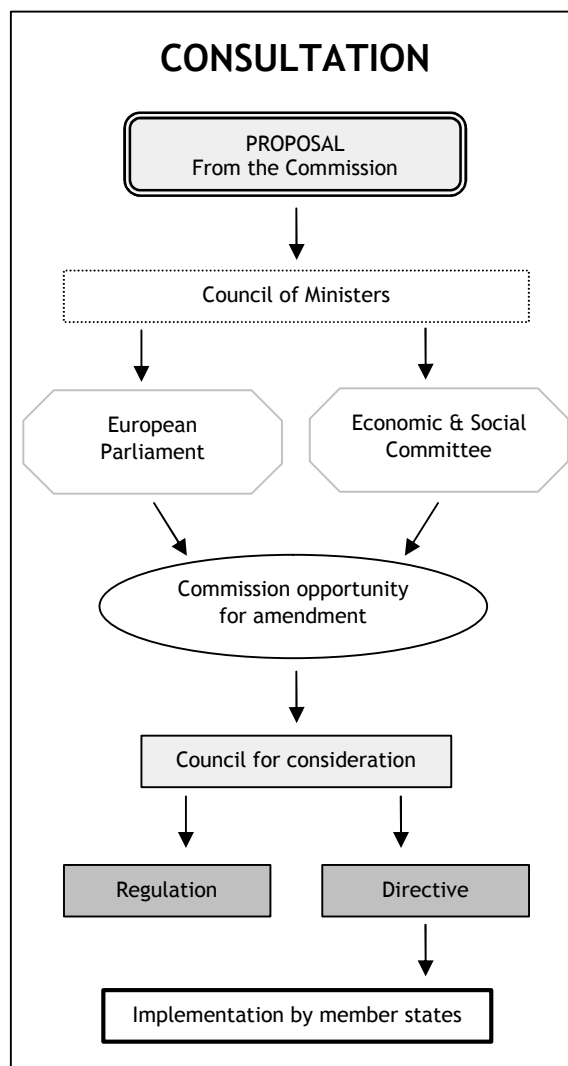


Figure 1. The Consultation Procedure

Note that the **Council of Ministers** is a generic term for a body whose membership will depend on the function under consideration. There will be a Council of Foreign Ministers, a Council of Ministers of Finance, a Council of Ministers of Justice and the ultimate, The Council of Heads of State, commonly known as the **Summit**.

The first point to make about the consultation procedure is that there is no set timetable for the passage of legislation. This has meant that some proposals have stayed in the system for years because of objections from some Member States. Thus, useful legislation which might be approved by most Member States could be vetoed by just one.

In order to achieve an agreement on a proposal, informal interaction was necessary amongst Community institutions, governments of Member States, and experts in particular fields. One body that plays an important part in this interaction is the **Committee of Permanent Representatives**, known as COREPER, which is a permanently sitting Council of Ministers. The members of this committee are the Ambassadors of the member states accredited to the Community. Their function is to prepare the work of the Council and to carry out negotiations that will result in an acceptable proposal.

The European Parliament also has the opportunity to consider any proposal. In order to do so, it has organised approximately 18 specialist committees which consider proposals from the Commission. The delegated committee responsible for any particular proposal appoints a *rappporteur* who is responsible for preparing a

report on the proposal for detailed study by the committee. After the committee has discussed the report, the resulting opinion is submitted to a plenary session of the Parliament. The Parliament then votes on the text of the draft opinion and if it is passed, it becomes a Resolution of the Parliament.

A similar procedure is followed by the **Economic and Social Committee** and, where appropriate, by the **Committee of the Regions**. All three opinions are sent to the Council, which has to take all of these opinions into account before agreeing to any new piece of legislation.

It should be noted that these proposals for legislation are also considered in each member state. In the UK, the European Communities Committees of the House of Lords and House of Commons, which both possess the status of Select Committees, execute this. The House of Lords Committee, known as the **Scrutiny Committee**, is well known and respected for its detailed reports, which are submitted to Parliament and then sent to the EU.

The Co-operation Procedure (now known as the Co-decision Procedure)

This modification of the consultation procedure was put into effect by the Single European Act, signed at Luxembourg in 1986. It introduced time limits for the passage of certain types of legislation as well as the use of qualified majority voting in the Council. The procedure also allowed the European Parliament to improve proposed legislation by amendment through two readings in Parliament. It is shown schematically in **Figure 2**.

The procedure is as follows:

1. The Commission drafts a proposal and sends it to the Council.
2. The Council seeks the opinion of the European Parliament, The Economic and Social Committee and, where required, the Committee of the Regions.
3. The relevant Committee of the European Parliament adopts a Report on the proposal compiled by a rapporteur. Similarly, the Economic and Social Committee and the Committee of the Regions prepare their opinions.
4. The Report is given a First Reading in the Parliament. If accepted or accepted with amendments, the opinion of the Parliament is given as a Resolution of the Parliament.
5. The Commission then considers the amendments suggested by the Parliament, together with the Opinions of the Economic and Social Committee and the Committee of the Regions. It must, **within one month**, accept or reject them, or withdraw the proposal and resubmit it, including some or all of the amendments, to the Council.
6. **With no time limit**, the Council adopts a **Common Position** and can accept or reject the amendments of the European Parliament. The Common Position is then sent to the Parliament.
7. The Common Position is given a Second Reading in the Parliament by reference to the original relevant Committee, which recommends to the Parliament rejection, acceptance, or acceptance with amendments of the Common Position.
8. **Within three months** of receiving the Common Position, the Parliament must adopt, in plenary session, one of these recommendations of its Committee.

9. The Commission may, **within one month**, re-examine the Common Position and include some or all of the Parliament's amendments and then forward the re-examined proposal to the Council.
10. **Within three months**, the Council must adopt the re-examined proposal by a qualified majority. If it wishes to amend the re-examined proposal, then a unanimous vote is required.
11. The proposal is then adopted and implemented by the Commission.

A further modification of this procedure was introduced by the Treaty of European Union signed at Maastricht in 1992. This is the **co-decision procedure** (shown as a checklist in **Figure 3**); this term is now used instead of the older term "co-operation procedure". The procedure is now applied to a wide range of issues, such as the free movement of workers, consumer protection, education, culture, health, trans-European networks and any internal market legislation.

In the co-decision procedure, the decision making power is shared equally between the Parliament and the Council. If the Council cannot agree to the re-examined proposal (step 10, above), then the text of the proposal is submitted to a **Conciliation Committee**, which is composed of an equal number of members from the Parliament and the Council. This Committee will try to reach a compromise on the text so that both Council and Parliament can endorse it. If there is no agreement, the proposal is rejected.

This new procedure starts (from step 8, above) when the Common Position sent from the Council is being considered in the European Parliament. The Parliament then has **three months** in which it can:

- Approve the Common Position or take no decision; the Council then adopts.

or

- Vote to reject the Common Position by an absolute majority and inform the Council, who can call a meeting of the Conciliation Committee.

The Parliament may then...

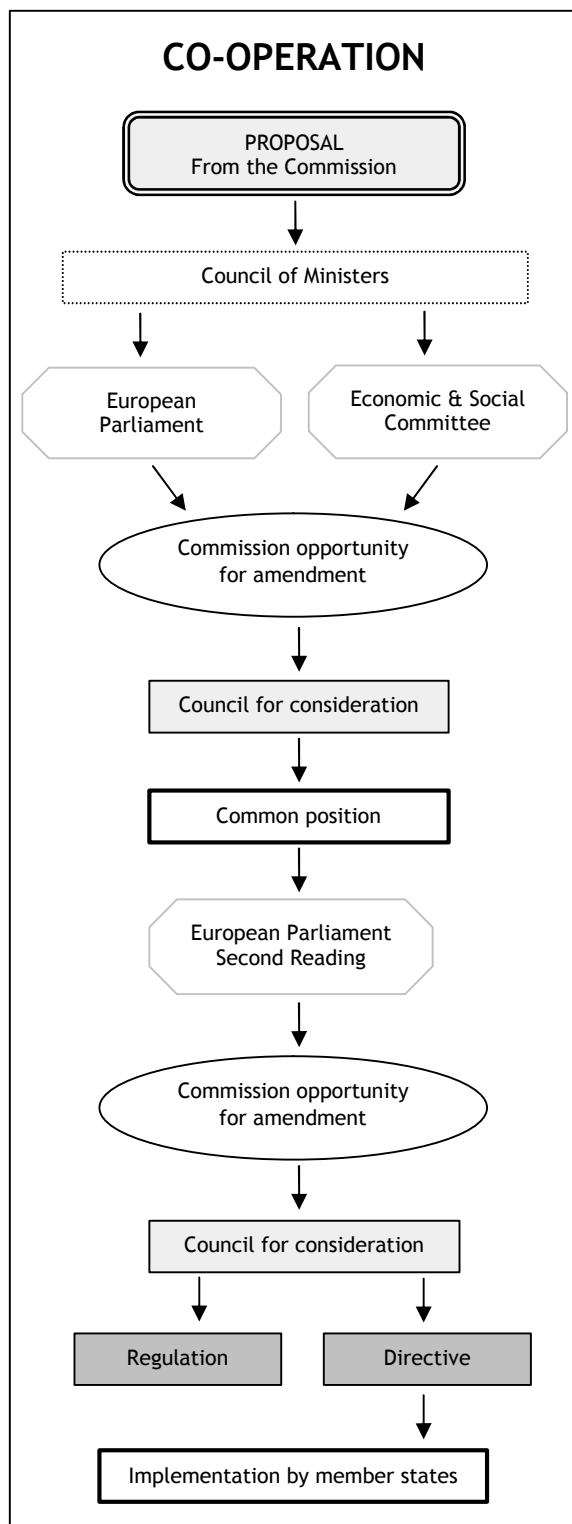


Figure 2. The Co-operation Procedure

- Reject again by absolute majority, so the proposal is not adopted.

or

- Propose amendments by an absolute majority.

If the Parliament proposes amendments at this stage, the Council has a further **three months** where it may:

- Approve the amended text by qualified majority, except for amendments opposed by the Commission, which will require unanimity in the Council.
- Disapprove, in which case the Conciliation Committee is convened again. Then:

- The Conciliation Committee has **six weeks** to work on the text. If it approves a joint text, then this is adopted as long as the Parliament votes in favour by a majority of the votes cast and the Council approves by Qualified Majority. Failure by either institution means that the proposal is not adopted.
- If the Conciliation Committee fails to agree to a text, the Council has a **further six weeks** to confirm its original position, perhaps with some of Parliament's amendments. Parliament then has a **further six weeks** following confirmation to reject the text by an absolute majority of members.

A third procedure, the **assent procedure**, is a Parliamentary procedure in which the assent of the Parliament is required for important international agreements with third countries, the organisation and objectives of the Structural and Cohesion Funds, and the tasks and powers of the European Central Bank.

The progress of legislation in preparation or the history of enacted

CO-DECISION

1. The Commission sends the proposal to the Council of Ministers.
2. The Council seeks the opinions of the Economic and Social Committee, the Committee of the Regions and the European Parliament.
3. A committee of the Parliament adopts a report compiled by a rapporteur.
4. Parliament considers the report on a First Reading in plenary session. If accepted, or accepted with amendments, the Parliament's opinion is given as a Resolution of the Parliament.
5. The Commission considers any amendments suggested by Parliament and may, within one month, accept or reject them, or withdraw the proposal and resubmit it, including some or all of the amendments.
6. With no time limit, the Council adopts the Common Position and can accept or reject the amendments of the Parliament. The Common Position is sent to Parliament.
7. At a Second Reading, the Common Position is referred to the Committee of the Parliament that produced the first report. The Committee recommends rejection, acceptance or acceptance with amendments of the Common Position.
8. Within three months of receiving the Common Position, the Parliament must adopt, in plenary session, one of the recommendations of the Committee.
9. If the vote is to approve or take no action, the Council then adopts the legislation. If the vote is to reject, then the Council is informed and it calls a meeting of the Conciliation Committee, comprising equal representation from the Council and the Parliament.
10. Parliament may then reject the proposal by an absolute majority, so it is not adopted or propose amendments by an absolute majority.
11. The Council has three months to approve the amendments by qualified majority, or refuse to approve and reconvene the Conciliation Committee.
12. The Conciliation Committee has six weeks to work on the text. If a joint text is agreed, then, if both Parliament and the Council approve by vote, the legislation is adopted. Failure to approve by either institution means that the proposal is not adopted.
13. If the Conciliation Committee fails to agree to a text, the Council has a further six weeks to confirm its original position. Parliament then has a further six weeks to reject the text by an absolute majority of its members.

Figure 3. The Co-decision Procedure

legislation can be followed in the CELEX database. The step-by-step procedures used are recorded in Sector 5, which covers the preparatory work on legislation, and the final enacted version of the legislation is stored in Sector 3. The case law, which tests any particular piece of legislation, is stored in Sector 6.

The progress of legislation is also recorded in printed form and in other databases. The procedures are documented as follows:

1. The Commission proposal is published as a **COM DOC**, which contains:

- An explanatory memorandum
- The text of the proposal

The COM DOC is examined by the Scrutiny Committees of both Houses of Parliament in the UK and by equivalent bodies in other Member States. This document can generally be obtained from **The Office for Official Publications of the European Communities** in Luxembourg. The text of the proposal, with a preamble, is then published in the **Official Journal C**. The reasons for the proposal are set out in the preamble to the text, which is a shortened version of the explanatory memorandum. Press releases from the Commission's Press Office often give summaries of new proposals for legislation and these then appear in the **RAPID** database, which is available at <http://www.justis.com> (2001 onwards).

2. The discussions, which take place in the Council of Ministers, are private and not officially reported. However, leaked accounts do appear in the press.
3. The Report of the relevant Committee of the Parliament will appear in either the **European Parliament Session Documents 'A'** or the **Committee Reports of the European Parliament**. The text of the debate will appear in the Annex to the Official Journal C. The agreed Resolution will appear in the Official Journal C. The European Parliament has its own database, **EPOQUE**, in which its proceedings are recorded.
4. The opinions and reports of the Economic and Social Committee and the Committee of the Regions appear in the Official Journal C.
5. If the proposal is amended, then the amended proposal will appear as a new COM DOC in the Official Journal C.
6. Since 1989, the notice of Common Position as reached by the Council has been published in the Official Journal C.
7. The recommendation of the Committee of the Parliament concerned with the Second Reading is published in the **European Parliament Reports**.
8. If the Parliament accepts the recommendation of its Committee, it becomes a Decision of the Parliament and is published in the Official Journal C.
9. If the Commission issues a new, re-examined proposal, it will be published in the Official Journal C.
10. If the Council adopts the measure, it becomes a legislative act, which is published in the **Official Journal L**.

Each Member State is responsible for reviewing proposals for new legislation and for considering how any new proposal may affect its own national legislation. In the United Kingdom, this is carried out by the Select Committees on the European Communities, one in the House of Commons and one in the House of Lords. Detailed scrutiny is done in the House of Lords and the more political aspects are covered in the House of Commons. The two Committees work closely together and both meet every week when Parliament is sitting. The Select Committee of the House of Lords is commonly known as the **Scrutiny Committee** and has a formal procedure for considering the proposals for new European legislation. The first step is the so-called "Chairman's sift", in which the 800 or so new proposals are scanned and those thought to be worth further examination are selected. The selected proposals are then referred to one of five specialist sub-committees:

- Finance Trade and External Relations
- Energy Industry and Transport
- Environment and Social Affairs
- Agriculture and Food
- Law and Institutions

Each sub-committee then calls for evidence and holds both public and private hearings in order to produce a comprehensive report on the proposed new legislation and its potential effects. These reports are published by the House of Lords and provide a valuable guide to any proposal from the European Union.

The powers of the European Parliament were enhanced by the **Maastricht Treaty** in several ways other than the co-decision procedure:

- The Commission and its President will be subject to the approval of the Parliament at the start of their mandate, which is now five years, coinciding with the Parliamentary term.
- The Parliament can request the Commission to submit any proposal where it decides, by an overall majority, that new EU legislation is needed.
- If a quarter of its members request it, the Parliament can set up a temporary Committee of Enquiry to investigate any contravention or maladministration in the implementation of Community law.
- Individual citizens now have the right to petition Parliament.
- A Parliamentary ombudsman has been appointed to investigate complaints.

The Treaty of Amsterdam 1997

This Treaty came into force on 1st May 1999 following its ratification by all 15 Member States. It was ratified in the United Kingdom on 15th June 1998.

The Treaty establishes the idea of the **Community Method**, in which the EU acts and the Member States then follow the lead given by the Community Institutions. The Treaty has been divided into two parts: 1) an extension of the Treaty of Union (i.e., Maastricht); and 2) a consolidation of the Treaty establishing the European Community (i.e., the **Treaty of Rome**).

The main areas of change are:

1. The areas of freedom, security, and justice

- a) Fundamental rights of the individual (i.e. civil rights).

- b) Free movement of persons - common action on asylum, visas, immigration and border controls, i.e. the incorporation of "Schengen" into the framework of the EU (the UK and Ireland have a derogation for 5 years on this).
- c) Common action to combat crime - co-operation between police forces (**Europol**).
- d) Non-discrimination - the Council has to act unanimously on this.

2. The relationship between the EU and the citizen

- a) Social policy - the UK has now signed the Social Chapter.
- b) Unemployment - the Council has to co-ordinate actions on unemployment by qualified majority voting.
- c) Combating social exclusion.
- d) Environment - the harmonisation of environmental protection.
- e) Public health.
- f) Consumer protection.
- g) Promoting cultural diversity.
- h) Anti-fraud measures.
- i) Freedom of information - access to EU legislation.
- j) Subsidiary and proportionality - the protocol defines the criteria for consistent application of these principles.

3. An effective and coherent foreign policy

- a) The objective is to promote peace, stability and prosperity.
- b) To move towards a common foreign policy - the **Common Foreign and Security Policy**, to be known as **CFSP**. This will allow "constructive abstention", the use of the "emergency brake" and qualified majority voting.
- c) The EU to have the capacity to negotiate agreements to implement the CFSP.
- d) To develop a common defence policy - to co-operate with the WEU and possibly absorb it into the EU.

4. The Institutions of the EU

- a) to extend the area where the co-decision procedure applies, i.e. where the European Parliament is equal to the European Council.
- b) to reduce the legislative proposals to three, namely, co-decision, consultation, assent.
- c) to limit the European Parliament to a maximum of 700 members.
- d) to extend the areas of use of qualified majority voting.
- e) to make the Commission more effective by: increasing the powers of the President to choose Commissioners, exercising leadership on policy, and by improving the internal organisation of the Commission.
- f) to extend the jurisdiction of the European Court of Justice to cover the fundamental rights of citizens.
- g) to significantly enlarge the powers of the Court of Auditors.
- h) to give the Committee of the Regions greater autonomy.
- i) to extend the consultations with the Committee of the Regions and the Economic and Social Committee.
- j) to increase co-operation between national Parliaments and the European Parliament (COSAC).
- k) to deal with the enlargement of the EU - those Member States with two Commissioners to give up one, but keep their weighted voting rights.

5. Closer co-operation (“Flexibility”)

This is to allow a group of Member States within the EU to co-operate among themselves on any particular matter without involving the whole of the Community, for example, full economic and monetary union or policing.

6. Simplification and Consolidation of the Treaties

There will be an unofficial consolidation of the Treaties for illustrative purposes. This will not be a legally binding version but a useful, practical consolidation. The text of the consolidated version of the Treaty of Rome which incorporates all the changes made by the Maastricht Treaty and the Amsterdam Treaty is now stored in **Sector 1** of CELEX under the document number **DOCNUM[11997D*]**.