

The Treaty was
previously published as
European Communities
No. 138 (1975)
Cmnd. 6252

EUROPEAN
COMMUNITIES



Treaty Series No. 103 (1977)

Treaty
amending certain Financial Provisions
of the Treaties establishing the European
Communities and of the Treaty
establishing a Single Council and a
Single Commission of the European
Communities

Brussels, 22 July 1975

[The United Kingdom instrument of ratification was deposited on
29 March 1976 and the Treaty entered into force on 1 June 1977]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1977*

LONDON

HER MAJESTY'S STATIONERY OFFICE

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Cmnd. 7007

TREATY
AMENDING CERTAIN FINANCIAL PROVISIONS OF THE
TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES
AND OF THE TREATY ESTABLISHING A SINGLE
COUNCIL AND A SINGLE COMMISSION OF THE
EUROPEAN COMMUNITIES

His Majesty The King of the Belgians, Her Majesty The Queen of Denmark, the President of the Federal Republic of Germany, the President of the French Republic, the President of Ireland, the President of the Italian Republic, His Royal Highness The Grand Duke of Luxembourg, Her Majesty The Queen of the Netherlands, Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland.

Having regard to Article 96 of the Treaty establishing the European Coal and Steel Community⁽¹⁾;

Having regard to Article 236 of the Treaty establishing the European Economic Community⁽²⁾;

Having regard to Article 204 of the Treaty establishing the European Atomic Energy Community⁽²⁾;

Whereas as of 1 January 1975 the budget of the Communities is financed entirely from the Communities' own resources;

Whereas the complete replacement of financial contributions of Member States by the Communities' own resources requires a strengthening of the budgetary powers of the Assembly;

Whereas, for the same reasons, the implementation of the budget should be more closely supervised,

Have decided to amend certain financial provisions of the Treaties establishing the European Communities and of the Treaty establishing a Single Council and a Single Commission of the European Communities⁽²⁾ and to this end have designated as their Plenipotentiaries:

His Majesty The King of the Belgians:

R. van Elslande,

Minister for Foreign Affairs and for Co-operation with the Developing Countries;

⁽¹⁾ Treaty Series No. 2 (1973), Cmnd. 5189.

⁽²⁾ Treaty Series No. 1 (1973)—Part II, Cmnd. 5179—II, as amended by Treaty Series No. 1 (1973)—Part I, Cmnd. 5179—I; Treaty Series No. 43 (1973), Cmnd. 5277, and Treaty Series No. 63 (1975), Cmnd. 6013. A consolidated text of the Treaty in force on 1 January 1973 is also published by Her Majesty's Stationery Office (SBN 11 590122 1).

Her Majesty The Queen of Denmark :

Niels Ersbøll,

Ambassador Extraordinary and Plenipotentiary;

Permanent Representative to the European Communities;

The President of the Federal Republic of Germany :

Hans-Dietrich Genscher,

Federal Minister for Foreign Affairs;

The President of the French Republic :

Jean-Marie Soutou,

Ambassador of France,

Permanent Representative to the European Communities;

The President of Ireland :

Garret Fitzgerald,

Minister for Foreign Affairs;

The President of the Italian Republic :

Mariano Rumor,

Minister for Foreign Affairs,

President in office of the Council of the European Communities;

His Royal Highness The Grand Duke of Luxembourg :

Jean Dondelinger,

Ambassador Extraordinary and Plenipotentiary,

Permanent Representative to the European Communities;

Her Majesty The Queen of the Netherlands :

L. J. Brinkhorst,

State Secretary for Foreign Affairs;

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland :

Sir Michael Palliser, K.C.M.G.,

Ambassador Extraordinary and Plenipotentiary,

Permanent Representative to the European Communities;

Who, having exchanged their Full Powers, found in good and due form,
Have agreed as follows:

CHAPTER I

Provisions amending the Treaty establishing the European Coal and Steel Community

ARTICLE 1

After Article 7 of the Treaty establishing the European Coal and Steel Community the following subparagraph is added:

“The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.”

ARTICLE 2

Article 78 of the Treaty establishing the European Coal and Steel Community is replaced by the following:

“ARTICLE 78

1. The financial year shall run from 1 January to 31 December.

The administrative expenditure of the Community shall comprise the expenditure of the High Authority, including that relating to the functioning of the Consultative Committee, and that of the Assembly, the Council, and of the Court of Justice.

2. Each institution of the Community shall, before 1 July, draw up estimates of its administrative expenditure. The High Authority shall consolidate these estimates in a preliminary draft administrative budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The High Authority shall place the preliminary draft administrative budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the High Authority and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council shall, acting by a qualified majority, establish the draft administrative budget and forward it to the Assembly.

4. The draft administrative budget shall be placed before the Assembly not later than 5 October of the year preceding that in which the budget is to be implemented.

The Assembly shall have the right to amend the draft administrative budget, acting by a majority of its members and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within forty-five days of the draft administrative budget being placed before it, the Assembly has given its approval, the administrative budget shall stand as finally adopted. If within this period the Assembly has not amended the draft administrative budget nor proposed any modifications thereto, the administrative budget shall be deemed to be finally adopted.

If within this period the Assembly has adopted amendments or proposed modifications, the draft administrative budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft administrative budget with the High Authority and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

(a) The Council may, acting by a qualified majority, modify any of the amendments adopted by the Assembly;

(b) With regard to the proposed modifications:

—where a modification proposed by the Assembly does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;

—where a modification proposed by the Assembly has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;

—where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft administrative budget or fix another amount.

The draft administrative budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within fifteen days of the draft administrative budget being placed before it, the Council has not modified any of the amendments adopted by the Assembly and if the modifications proposed by the latter have been accepted, the administrative budget shall be deemed to be finally adopted. The Council shall inform the Assembly that it has not modified any of the amendments and that the proposed modifications have been accepted.

If, within this period the Council has modified one or more of the amendments adopted by the Assembly or if the modifications proposed by

the latter have been rejected or modified, the modified draft administrative budget shall again be forwarded to the Assembly. The Council shall inform the Assembly of the results of its deliberations.

6. Within fifteen days of the draft administrative budget being placed before it, the Assembly, which shall have been notified of the action taken on its proposed modification, may, acting by a majority of its members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the administrative budget accordingly. If within this period the Assembly has not acted, the administrative budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the Assembly shall declare that the administrative budget has been finally adopted.

8. However, the Assembly, acting by a majority of its members and two thirds of the votes cast, may, if there are important reasons, reject the draft administrative budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The High Authority shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States; and
- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft administrative budget established by the Council is over half the maximum rate, the Assembly may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the Assembly, the Council or the High Authority considers that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the Assembly, acting by a majority of its members and three-fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of this Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

11. Final adoption of the administrative budget shall have the effect of authorising and requiring the High Authority to collect the corresponding revenue in accordance with the provisions of Article 49."

ARTICLE 3

In Article 78a of the Treaty establishing the European Coal and Steel Community, "78f" is replaced by "78h".

ARTICLE 4

Article 78b of the Treaty establishing the European Coal and Steel Community is replaced by the following:

"ARTICLE 78b

1. If, at the beginning of a financial year, the administrative budget has not yet been voted, a sum equivalent to not more than one-twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the administrative budget in accordance with the provisions of the regulations made pursuant to Article 78h; this arrangement shall not, however, have the effect of placing at the disposal of the High Authority appropriations in excess of one-twelfth of those provided for in the draft administrative budget in course of preparation.

The High Authority is authorised and required to impose the levies up to the amount of the appropriations for the preceding financial year, but shall not thereby exceed the amount which would have resulted from the adoption of the draft administrative budget.

2. The Council may, acting by a qualified majority, provided that the other conditions laid down in paragraph 1 are observed, authorise expenditure in excess of one-twelfth. The authorisation and requirement to impose the levies may be adjusted accordingly.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the Assembly; within thirty days the Assembly, acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in paragraph 1. This part of the decision of the Council shall be suspended until the Assembly has taken its decision. If within the said period the Assembly has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted."

ARTICLE 5

In Article 78c of the Treaty establishing the European Coal and Steel Community, "78f" is replaced by "78h".

ARTICLE 6

Article 78d of the Treaty establishing the European Coal and Steel Community is replaced by the following:

“ARTICLE 78d

The High Authority shall submit annually to the Council and to the Assembly the accounts of the preceding financial year relating to the implementation of the administrative budget. The High Authority shall also forward to them a financial statement of the assets and liabilities of the Community in the field covered by that budget.”

ARTICLE 7

Article 78e of the Treaty establishing the European Coal and Steel Community is replaced by the following:

“ARTICLE 78e

1. A Court of Auditors is hereby established.
2. The Court of Auditors shall consist of nine members.
3. The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

4. The members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the Assembly.

However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only.

The members of the Court of Auditors shall be eligible for reappointment.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

5. The members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with their duties.

6. The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

7. Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 8.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement, members of the Court of Auditors shall remain in office until they have been replaced.

8. A member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

9. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

10. The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors."

ARTICLE 8

Article 78f of the Treaty establishing the European Coal and Steel Community is replaced by the following:

"ARTICLE 78f

1. The Court of Auditors shall examine the account of all administrative expenditure and administrative revenue of the Community, including the revenue from the tax for the benefit of the Community levied on the salaries, wages and emoluments of officials and other servants of the latter. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude such examination.

2. The Court of Auditors shall examine whether all revenue referred to in paragraph 1 has been received and all expenditure referred to in that paragraph has been incurred in a lawful and regular manner and whether the financial management has been sound.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The institutions of the Community and the national audit bodies or, if these do not have the necessary powers, the competent national departments shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities.

The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community.

It shall adopt its annual reports or opinions by a majority of its members.

It shall assist the Assembly and the Council in exercising their powers of control over the implementation of the budget.

5. The Court of Auditors shall also draw up a separate annual report stating whether the accounting other than that for the expenditure and revenue referred to in paragraph 1 and the financial management by the High Authority relating thereto have been effected in a regular manner. It shall draw up this report within six months of the end of the financial year to which the accounts refer and shall submit it to the High Authority and the Council. The High Authority shall forward it to the Assembly.”

ARTICLE 9

The following provisions shall be added to the Treaty establishing the European Coal and Steel Community :

“ARTICLE 78g

The Assembly, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the High Authority in respect of the implementation of the administrative budget. To this end, the Council and the Assembly in turn shall examine the accounts and the financial statement referred to in Article 78d, and the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors.”

ARTICLE 10

The following provisions shall be added to the Treaty establishing the European Coal and Steel Community:

“ARTICLE 78h

The Council, acting unanimously on a proposal from the High Authority and after consulting the Assembly and obtaining the opinion of the Court of Auditors, shall:

- (a) make financial regulations specifying in particular the procedure to be adopted for establishing and implementing the administrative budget and for presenting and auditing accounts;
- (b) lay down rules concerning the responsibility of authorising officers and accounting officers and concerning appropriate arrangements for inspection.”

CHAPTER II

Provisions amending the Treaty establishing the European Economic Community

ARTICLE 11

After Article 4 of the Treaty establishing the European Economic Community the following paragraph is added:

“3. The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.”

ARTICLE 12

Article 203 of the Treaty establishing the European Economic Community is replaced by the following:

“ARTICLE 203

1. The financial year shall run from 1 January to 31 December.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council acting by a qualified majority, establish the draft budget and forward it to the Assembly.

4. The draft budget shall be placed before the Assembly not later than 5 October of the year preceding that in which the budget is to be implemented.

The Assembly shall have the right to amend the draft budget, acting by a majority of its members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within forty-five days of the draft budget being placed before it, the Assembly has given its approval, the budget shall stand as finally adopted. If within this period the Assembly has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the Assembly has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

(a) The Council may, acting by a qualified majority, modify any of the amendments adopted by the Assembly;

(b) With regard to the proposed modifications:

—where a modification proposed by the Assembly does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;

—where a modification proposed by the Assembly has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;

—where, in pursuance of one of the two preceding sub-paragraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within fifteen days of the draft budget being placed before it, the Council has not modified any of the amendments adopted by the Assembly and if the modifications proposed by the latter have been accepted, the budget

shall be deemed to be finally adopted. The Council shall inform the Assembly that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the Assembly or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the Assembly. The Council shall inform the Assembly of the results of its deliberations.

6. Within fifteen days of the draft budget being placed before it, the Assembly, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its members and three-fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the Assembly has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the Assembly shall declare that the budget has been finally adopted.

8. However, the Assembly, acting by a majority of its members and two-thirds of the votes cast, may if there are important reasons reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States; and
- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the Assembly may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the Assembly, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the Assembly, acting by a majority of its members and three-fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure."

ARTICLE 13

Article 204 of the Treaty establishing the European Economic Community is replaced by the following:

"ARTICLE 204

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the regulations made pursuant to Article 209; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one-twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one-twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the Assembly; within thirty days the Assembly, acting by a majority if its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the Assembly has taken its decision. If within the period the Assembly has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article."

ARTICLE 14

The following provisions shall be added to the Treaty establishing the European Economic Community:

"ARTICLE 205a

The Commission shall submit annually to the Council and to the Assembly the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community."

ARTICLE 15

Article 206 of the Treaty establishing the European Economic Community shall be replaced by the following :

“ ARTICLE 206

1. A Court of Auditors is hereby established.

2. The Court of Auditors shall consist of nine members.

3. The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

4. The members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the Assembly.

However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only.

The members of the Court of Auditors shall be eligible for reappointment.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

5. The members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government or from any other body. They shall refrain from any action incompatible with their duties.

6. The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

7. Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 8.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement, members of the Court of Auditors shall remain in office until they have been replaced.

8. A member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

9. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

10. The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors."

ARTICLE 16

The following provisions shall be added to the Treaty establishing the European Economic Community:

" ARTICLE 206a

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude such examination.

2. The Court of Auditors shall 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.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The institutions of the Community and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities.

The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community.

It shall adopt its annual reports or opinions by a majority of its members.

It shall assist the Assembly and the Council in exercising their powers of control over the implementation of the budget."

ARTICLE 17

The following provisions shall be added to the Treaty establishing the European Economic Community:

"ARTICLE 206b

The Assembly, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the Assembly in turn shall examine the accounts and the financial statement referred to in Article 205a and the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors."

ARTICLE 18

Article 209 of the Treaty establishing the European Community shall be replaced by the following:

"ARTICLE 209

The Council, acting unanimously on a proposal from the Commission and after consulting the Assembly and obtaining the opinion of the Court of Auditors, shall:

- (a) make financial regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Communities' own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- (c) lay down rules concerning the responsibility of authorising officers and accounting officers and concerning appropriate arrangements for inspection."

CHAPTER III

Provisions amending the Treaty establishing the European Atomic Energy Community

ARTICLE 19

After Article 3 of the Treaty establishing the European Atomic Energy Community the following paragraph is added :

“3. The audit shall be carried out by a Court of Auditors acting within the limits of the powers conferred upon it by this Treaty.”

ARTICLE 20

Article 177 of the Treaty establishing the European Atomic Energy Community is replaced by the following :

“ARTICLE 177

1. The financial year shall run from 1 January to 31 December.

Within the meaning of this Article, “budget” shall include the operating budget and the research and investment budget.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall include an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council shall, acting by a qualified majority, establish the draft budget and forward it to the Assembly.

4. The draft budget shall be placed before the Assembly not later than 5 October of the year preceding that in which the budget is to be implemented.

The Assembly shall have the right to amend the draft budget acting by a majority of its members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within forty-five days of the draft budget being placed before it, the Assembly has given its approval, the budget shall stand as finally adopted. If within this period the Assembly has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If within this period the Assembly has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions :

(a) The Council may, acting by a qualified majority, modify any of the amendments adopted by the Assembly;

(b) With regard to the proposed modifications :

—where a modification proposed by the Assembly does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;

—where a modification proposed by the Assembly has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;

—where, in pursuance of one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within fifteen days of the draft budget being placed before it, the Council had not modified any of the amendments adopted by the Assembly and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the Assembly that it has not modified any of the amendments and that the proposed modifications have been accepted.

If within this period the Council has modified one or more of the amendments adopted by the Assembly or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the Assembly. The Council shall inform the Assembly of the results of its deliberations.

6. Within fifteen days of the draft budget being placed before it, the Assembly, which shall have been notified of the action taken on its proposed modifications may, acting by a majority of its members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If within this period the Assembly has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the Assembly shall declare that the budget has been finally adopted.

8. However, the Assembly, acting by a majority of its members and two-thirds of the votes cast may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is, as it results from :

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States; and
- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the Assembly may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the Assembly, the Council or the Commission considers that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the Assembly, acting by a majority of its members and three-fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of this Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure."

ARTICLE 21

Article 178 of the Treaty establishing the European Atomic Energy Community is replaced by the following :

“ ARTICLE 178

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the regulations made pursuant to Article 183; this arrangement shall not however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the Assembly; within thirty days the Assembly, acting by a majority of its members and three-fifths of the votes cast, may adopt a different decision on the expenditure in excess of one-twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the Assembly has taken its decisions. If within this period, the Assembly has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.”

ARTICLE 22

The following provisions shall be added to the Treaty establishing the European Atomic Energy Community :

“ ARTICLE 179a

The Commission shall submit annually to the Council and to the Assembly the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.”

ARTICLE 23

Article 180 of the Treaty establishing the European Atomic Energy Community is replaced by the following :

“ ARTICLE 180

1. A Court of Auditors is hereby established.
2. The Court of Auditors shall consist of nine members.

3. The members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

4. The members of the Court of Auditors shall be appointed for a term of six years by the Council, acting unanimously after consulting the Assembly.

However, when the first appointments are made, four members of the Court of Auditors, chosen by lot, shall be appointed for a term of office of four years only.

The members of the Court of Auditors shall be eligible for reappointment.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

5. The members of the Court of Auditors shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any Government, or from any other body. They shall refrain from any action incompatible with their duties.

6. The members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

7. Apart from normal replacement, or death, the duties of a member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 8.

The vacancy thus caused shall be filled for the remainder of the member's term of office.

Save in the case of compulsory retirement under the provisions of paragraph 8, members of the Court of Auditors shall remain in office until they have been replaced.

8. A member of the Court of Auditors may be deprived of his office or his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

9. The Council, acting by a qualified majority, shall determine the conditions of employment of the President and the members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also, by the same majority, determine any payment to be made instead of remuneration.

10. The provisions of the Protocol on the Privileges and Immunities of the European Communities applicable to the Judges of the Court of Justice shall also apply to the members of the Court of Auditors."

ARTICLE 24

The following provisions shall be added to the Treaty establishing the European Atomic Energy Community:

“ARTICLE 180a

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community insofar as the relevant constituent instrument does not preclude such examination.

2. The Court of Auditors shall 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.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Communities.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the institutions of the Community and in the Member States. In the Member States the audit shall be carried out in liaison with the national audit bodies or, if these do not have the necessary powers, with the competent national departments. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The institutions of the Community and the national audit bodies or, if the latter do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Communities.

The Court of Auditors may also, at any time, submit observations on specific questions and deliver opinions at the request of one of the institutions of the Community.

It shall adopt its annual reports or opinions by a majority of its members.

It shall assist the Assembly and the Council in exercising their powers of control over the implementation of the budget.”

ARTICLE 25

The following provisions shall be added to the Treaty establishing the European Atomic Energy Community:

“ ARTICLE 180b

The Assembly, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the Assembly in turn shall examine the accounts and the financial statement referred to in Article 179a, and the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors.”

ARTICLE 26

The following provisions shall be substituted for Article 183 of the Treaty establishing the European Atomic Energy Community:

“ ARTICLE 183

The Council, acting unanimously on a proposal from the Commission and after consulting the Assembly and obtaining the opinion of the Court of Auditors, shall:

- (a) make financial regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts,
- (b) determine the methods and procedure whereby the budget revenue provided for under the arrangements relating to the Communities' own resources, shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements,
- (c) lay down rules concerning the responsibility of authorising officers and accounting officers and concerning appropriate arrangements for inspection.”

CHAPTER IV

Provisions amending the Treaty establishing a Single Council and a Single Commission of the European Communities

ARTICLE 27

Article 22 of the Treaty establishing a Single Council and a Single Commission of the European Communities shall be replaced by the following:

“ ARTICLE 22

1. The powers and jurisdiction conferred upon the Court of Auditors established by Article 78e of the Treaty establishing the European Coal and Steel Community, by Article 206 of the Treaty establishing the European Economic Community, and by Article 180 of the Treaty establishing the European Atomic Energy Community shall be exercised in accordance with those Treaties by a single Court of Auditors of the European Communities constituted as provided in these articles.

2. Without prejudice to the powers and jurisdiction referred to in paragraph 1, the Court of Auditors of the European Communities shall exercise the powers and jurisdiction conferred, before the entry into force of this Treaty, upon the Audit Board of the European Communities and upon the Auditor of the European Coal and Steel Community under the conditions laid down in the various instruments referring to the Audit Board and to the Auditor. In all these instruments the words "Audit Board" and "Auditor" shall be replaced by the words "Court of Auditors".

CHAPTER V

Final provisions

ARTICLE 28

1. The members of the Court of Auditors shall be appointed upon the entry into force of this Treaty.

2. The terms of office of the members of the Audit Board and that of the Auditor shall expire on the day they submit their Report on the financial year preceding that in which the members of the Court of Auditors are appointed; their powers of audit shall be confined to operations relating to that financial year.

ARTICLE 29

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

ARTICLE 30

This Treaty shall enter into force on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step⁽³⁾.

If this Treaty enters into force during the budgetary procedure, the Council shall, after consulting the Assembly and the Commission, adopt the measures required in order to facilitate the application of this Treaty to the remainder of the budgetary procedure.

ARTICLE 31

This Treaty, drawn up in a single original in the Danish, Dutch, English, French, German, Irish and Italian languages, all seven texts being authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the Governments of the other signatory States.

⁽³⁾ The Treaty entered into force on 1 June 1977.

In witness whereof, the undersigned Plenipotentiaries have signed this Treaty.

Done at Brussels on the twenty-second day of July in the year one thousand nine hundred and seventy-five.

SIGNATURES AND RATIFICATIONS

| <i>State</i> | <i>Date of signature</i> | <i>Date of deposit of instrument of ratification</i> |
|-----------------------------------|--------------------------|--|
| Belgium | 22 July 1975 | 10 March 1977 |
| Denmark | 22 July 1975 | 23 July 1976 |
| France | 22 July 1975 | 4 March 1977 |
| Germany, Federal Republic of* ... | 22 July 1975 | 25 November 1976 |
| Ireland | 22 July 1975 | 23 May 1977 |
| Italy | 22 July 1975 | 19 May 1977 |
| Luxembourg | 22 July 1975 | 11 October 1976 |
| Netherlands | 22 July 1975 | 15 February 1977 |
| United Kingdom | 22 July 1975 | 29 March 1976 |

* Including West Berlin.

STATEMENTS

1. Re first subparagraph of Article 206a (1) of the EEC Treaty:

“It is agreed that the Court of Auditors shall have jurisdiction to audit the operations of the European Development Fund.”

2. Re second subparagraph of Articles 78f (2) of the ECSC Treaty, 206a (2) of the EEC Treaty and 180a (2) of the Euratom Treaty:

“With regard to entitlements established by the Member States in accordance with Article 2 of Regulation (EEC, Euratom, ECSC No. 2/71 of the Council of 2 January 1971 implementing the Decision of 21 April 1970 on the replacement of financial contributions for Member States by the Communities' own resources, the provisions of the second subparagraph of paragraph 2 of the abovementioned Articles must be interpreted to mean that the audit shall not cover substantive transactions properly so called shown in the supporting documents which relate to such establishment; accordingly, the audit on the spot shall not be carried out by recourse to the debtor.”

3. Re first subparagraph of Articles 78f (3) of the ECSC Treaty, re Article 206a (3) of the EEC Treaty and re Article 180a (3) of the Euratom Treaty:

“Member States shall notify the Court of Auditors of the institutions and departments concerned and of their respective powers.”

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