

**C. PROTOCOLS ANNEXED TO THE TREATY ESTABLISHING THE EUROPEAN
COMMUNITY**

Protocol on asylum for nationals of Member States of the European Union

THE HIGH CONTRACTING PARTIES,

WHEREAS pursuant to the provisions of Article F(2) of the Treaty on European Union the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950;

WHEREAS the Court of Justice of the European Communities has jurisdiction to ensure that in the interpretation and application of Article F(2) of the Treaty on European Union the law is observed by the European Community;

WHEREAS pursuant to Article O of the Treaty on European Union any European State, when applying to become a Member of the Union, must respect the principles set out in Article F(1) of the Treaty on European Union;

BEARING IN MIND that Article 236 of the Treaty establishing the European Community establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those principles;

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Part Two of the Treaty establishing the European Community;

BEARING IN MIND that the Treaty establishing the European Community establishes an area without internal frontiers and grants every citizen of the Union the right to move and reside freely within the territory of the Member States;

RECALLING that the question of extradition of nationals of Member States of the Union is addressed in the European Convention on Extradition of 13 December 1957 and the Convention of 27 September 1996 drawn up on the basis of Article K.3 of the Treaty on European Union relating to extradition between the Member States of the European Union;

WISHING to prevent the institution of asylum being resorted to for purposes alien to those for which it is intended;

WHEREAS this Protocol respects the finality and the objectives of the Geneva Convention of 28 July 1951 relating to the status of refugees;

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community,

Sole Article

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

- (a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;
 - (b) if the procedure referred to in Article F.1(1) of the Treaty on European Union has been initiated and until the Council takes a decision in respect thereof;
 - (c) if the Council, acting on the basis of Article F.1(1) of the Treaty on European Union, has determined, in respect of the Member State which the applicant is a national, the existence of a serious and persistent breach by that Member State of principles mentioned in Article F(1);
 - (d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.
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Protocol on the application of the principles of subsidiarity and proportionality

THE HIGH CONTRACTING PARTIES,

DETERMINED to establish the conditions for the application of the principles of subsidiarity and proportionality enshrined in Article 3b of the Treaty establishing the European Community with a view to defining more precisely the criteria for applying them and to ensure their strict observance and consistent implementation by all institutions;

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union;

TAKING ACCOUNT of the Interinstitutional Agreement of 25 October 1993 between the European Parliament, the Council and the Commission on procedures for implementing the principle of subsidiarity;

HAVE CONFIRMED that the conclusions of the Birmingham European Council on 16 October 1992 and the overall approach to the application of the subsidiarity principle agreed by the European Council meeting in Edinburgh on 11-12 December 1992 will continue to guide the action of the Union's institutions as well as the development of the application of the principle of subsidiarity, and, for this purpose,

HAVE AGREED UPON the following provisions which shall be annexed to the Treaty establishing the European Community:

- (1) In exercising the powers conferred on it, each institution shall ensure that the principle of subsidiarity is complied with. It shall also ensure compliance with the principle of proportionality, according to which any action by the Community shall not go beyond what is necessary to achieve the objectives of the Treaty.
- (2) The application of the principles of subsidiarity and proportionality shall respect the general provisions and the objectives of the Treaty, particularly as regards the maintaining in full of the *acquis communautaire* and the institutional balance; it shall not affect the principles developed by the Court of Justice regarding the relationship between national and Community law, and it should take into account Article F(4) of the Treaty on European Union, according to which 'the Union shall provide itself with the means necessary to attain its objectives and carry through its policies'.
- (3) The principle of subsidiarity does not call into question the powers conferred on the European Community by the Treaty, as interpreted by the Court of Justice. The criteria referred to in the second paragraph of Article 3b of the Treaty shall relate to areas for which the Community does not have exclusive competence. The principle of subsidiarity provides a guide as to how those powers are to be exercised at the Community level. Subsidiarity is a dynamic concept and should be applied in the light of the objectives set

out in the Treaty. It allows Community action within the limits of its powers to be expanded where circumstances so require, and conversely, to be restricted or discontinued where it is no longer justified.

- (4) For any proposed Community legislation, the reasons on which it is based shall be stated with a view to justifying its compliance with the principles of subsidiarity and proportionality; the reasons for concluding that a Community objective can be better achieved by the Community must be substantiated by qualitative or, wherever possible, quantitative indicators.
- (5) For Community action to be justified, both aspects of the subsidiarity principle shall be met: the objectives of the proposed action cannot be sufficiently achieved by Member States' action in the framework of their national constitutional system and can therefore be better achieved by action on the part of the Community.

The following guidelines should be used in examining whether the abovementioned condition is fulfilled:

- the issue under consideration has transnational aspects which cannot be satisfactorily regulated by action by Member States;
 - actions by Member States alone or lack of Community action would conflict with the requirements of the Treaty (such as the need to correct distortion of competition or avoid disguised restrictions on trade or strengthen economic and social cohesion) or would otherwise significantly damage Member States' interests;
 - action at Community level would produce clear benefits by reason of its scale or effects compared with action at the level of the Member States.
- (6) The form of Community action shall be as simple as possible, consistent with satisfactory achievement of the objective of the measure and the need for effective enforcement. The Community shall legislate only to the extent necessary. Other things being equal, directives should be preferred to regulations and framework directives to detailed measures. Directives as provided for in Article 189 of the Treaty, while binding upon each Member State to which they are addressed as to the result to be achieved, shall leave to the national authorities the choice of form and methods.
 - (7) Regarding the nature and the extent of Community action, Community measures should leave as much scope for national decision as possible, consistent with securing the aim of the measure and observing the requirements of the Treaty. While respecting Community law, care should be taken to respect well established national arrangements and the organisation and working of Member States' legal systems. Where appropriate and subject to the need for proper enforcement, Community measures should provide Member States with alternative ways to achieve the objectives of the measures.

- (8) Where the application of the principle of subsidiarity leads to no action being taken by the Community, Member States are required in their action to comply with the general rules laid down in Article 5 of the Treaty, by taking all appropriate measures to ensure fulfilment of their obligations under the Treaty and by abstaining from any measure which could jeopardise the attainment of the objectives of the Treaty.
- (9) Without prejudice to its right of initiative, the Commission should:
- except in cases of particular urgency or confidentiality, consult widely before proposing legislation and, wherever appropriate, publish consultation documents;
 - justify the relevance of its proposals with regard to the principle of subsidiarity; whenever necessary, the explanatory memorandum accompanying a proposal will give details in this respect. The financing of Community action in whole or in part from the Community budget shall require an explanation;
 - take duly into account the need for any burden, whether financial or administrative, falling upon the Community, national governments, local authorities, economic operators and citizens, to be minimised and proportionate to the objective to be achieved;
 - submit an annual report to the European Council, the European Parliament and the Council on the application of Article 3b of the Treaty. This annual report shall also be sent to the Committee of the Regions and to the Economic and Social Committee.
- (10) The European Council shall take account of the Commission report referred to in the fourth indent of point 9 within the report on the progress achieved by the Union which it is required to submit to the European Parliament in accordance with Article D of the Treaty on European Union.
- (11) While fully observing the procedures applicable, the European Parliament and the Council shall, as an integral part of the overall examination of Commission proposals, consider their consistency with Article 3b of the Treaty. This concerns the original Commission proposal as well as amendments which the European Parliament and the Council envisage making to the proposal.
- (12) In the course of the procedures referred to in Articles 189b and 189c of the Treaty, the European Parliament shall be informed of the Council's position on the application of Article 3b of the Treaty, by way of a statement of the reasons which led the Council to adopt its common position. The Council shall inform the European Parliament of the reasons on the basis of which all or part of a Commission proposal is deemed to be inconsistent with Article 3b of the Treaty.
- (13) Compliance with the principle of subsidiarity shall be reviewed in accordance with the rules laid down by the Treaty.
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Protocol on external relations of the Member States with regard to the crossing of external borders

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the need of the Member States to ensure effective controls at their external borders, in cooperation with third countries where appropriate,

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty establishing the European Community,

The provisions on the measures on the crossing of external borders included in Article 73j(2)(a) of Title IIIa of the Treaty shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Community law and other relevant international agreements.

Protocol on the system of public broadcasting in the Member States

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism,

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty establishing the European Community,

The provisions of the Treaty establishing the European Community shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting insofar as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and insofar as such funding does not affect trading conditions and competition in the Community to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

Protocol on protection and welfare of animals

THE HIGH CONTRACTING PARTIES,

DESIRING to ensure improved protection and respect for the welfare of animals as sentient beings,

HAVE AGREED UPON the following provision which shall be annexed to the Treaty establishing the European Community,

In formulating and implementing the Community's agriculture, transport, internal market and research policies, the Community and the Member States shall pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.
