APPENDIX VII

MEMORANDUM TO THE MEMBERS OF THE COMMISSION[1]

Summary of the Treaty of Nice

The Intergovernmental Conference (ICG) concluded its work on 11 December 2000 in Nice with an agreement on the institutional issues which had not been settled at Amsterdam and which had to be resolved before enlargement, and on a series of other points not directly connected with enlargement.

This agreement (Doc. SN 533/1/00 REV1)1 is now going through a process of legal and linguistic editing; the Treaty will be ready for signature in Nice in February. The process for the ratification of the Treaty of Nice will then begin and it is generally considered that this could take up to 18 months. Be that as it may, in accordance with the conclusions of the Helsinki and Nice European Councils, the Union must as from the end of 2002 be in a position to take in the new Member States which are ready.

The purpose of this memorandum is to provide a brief summary of the Treaty of Nice. A list of provisions which change over to qualified-majority voting is attached.

I. THE INSTITUTIONS

A. Changes within the institutions during the enlargement process

First of all, as it is not yet known exactly when and in what order the applicant countries will join the Union, the new distribution of seats in the European Parliament, the new composition of the Commission and the new definition of qualified majority within the Council are determined by the Treaty of Nice for a Union of 15 Member States. The Treaty restricts itself to setting out the principles and methods for changing this system as the Union grows.

These principles and methods are listed in the **protocol on enlargement** (doc. SN 533/1, p.71) and **attached declarations**. particularly the declaration on the enlargement of the European Union (doc. SN 533/1, p.78) which establishes the "common position" to be adopted by the current Member States during the accession negotiations with the applicant countries. The number of seats in the European Parliament for the new Member States, the number of votes allocated to them within the Council, and particularly the qualified majority threshold applicable in the future, will thus be legally determined in the **accession treaties**. The document is available on the ICG site: http://europa.eu.int/igc2000/

This protocol on enlargement and the relevant declarations take account only of the (twelve) applicant countries with which accession negotiations have actually begun. The changes brought by the Treaty of Nice to the composition of the Commission and the weighting of votes will be **applicable only as from 2005** and the new composition of the European Parliament will apply as from the elections in 2004. For the applicant countries joining before these dates, the accession treaties must therefore also establish the number of MEPs, commissioners, votes within the Council which will be allocated to them, and the qualified majority threshold, up until the

[1] http://ec.europa.eu/comm/nice_treaty/summary_en.pdf.

entry into force of the new rules. These temporary provisions will be based on the principles which have applied up until now in the accession negotiations, i.e. the transposal of the current system, ensuring equal treatment with the Member States of equivalent size.

B. European Parliament

– Composition

The ICG has introduced a **new distribution of seats** in the European Parliament looking ahead to a Union of 27 Member States (cf. the table in Doc. SN 533/1, p.78), which will be applicable as from the next European elections in 2004. The **maximum number** of European Members of Parliament (currently set at 700) will rise to **732**.

The number of seats allocated to the current Member States has been brought down by 91 (from the current 626 to 535). Only Germany and Luxembourg retain the same number of MEPs. However, this reduction will be applicable in full only for the assembly elected in 2009. As the Union will undoubtedly not yet have 27 Member States in 2004, it has been decided for the 2004 European elections to increase on a pro rata basis the number of MEPs to be elected (in the current Member States and in the new Member States with which accession treaties will have been signed by 1 January 2004) to reach the total of 732 (although the number of MEPs to be elected in each Member State cannot be higher than the current number).

As the likelihood is that new Member States will enter the Union during the 2004-2009 term of office — and that as a result additional MEPs will be elected in these countries — it is anticipated that the maximum number of 732 seats in the European Parliament may be temporarily exceeded in order to accommodate MEPs from the countries which will have signed accession treaties after the 2004 European elections.

– Other changes

Article 191 of the EC Treaty has been supplemented by a legal base which allows the adoption via the codecision procedure of a **statute of European level political parties** and particularly of rules concerning their funding. The **regulations and general conditions governing the performance of the duties of members of the European Parliament** will be approved by the Council by qualified majority, with the exception of the provisions relating to taxation (Article 190 of the EC Treaty).

The European Parliament will henceforth be able, in the same way as the Council, the Commission and the Member States, to institute proceedings to have acts of the institutions to be **declared void** without having to demonstrate specific concern (Article 230 of the EC Treaty) and to seek a **prior opinion** from the Court of Justice on the compatibility of an international agreement with the Treaty (Article 300 (6) of the EC Treaty). As will be described in greater detail hereafter, the responsibilities of the European Parliament have been extended by expanding the scope of the codecision (cf. *infra* point II.A) and by the assent required to establish enhanced cooperation in an area covered by the codecision process (cf. *infra* point II.B). The European Parliament will also be called upon to state its opinion when the Council intends to declare that a clear danger exists of a serious breach of fundamental rights occurring (cf. *infra* point III.A).

C. The Council

– Definition of qualified majority

The decision-making system by qualified majority will be changed as from 1 January **2005**. In future, a qualified majority will be obtained if:

- the decision receives at least **a specified number of votes** (the qualified majority threshold) **and**
- the decision is approved by a **majority of Member States**.

The **number of votes** allocated to each Member State has been changed (see the table in Doc. SN 533/1, p.79). While the number of votes has been increased for all Member States, the increase is higher for the most populated Member States. The five biggest Member States' population-wise will in the 15-strong European Union have 60% of votes compared with 55% at present.

The qualified majority threshold was at the centre of debates during the closing stages of the ICG. The final compromise is complex2. This notwithstanding, the qualified majority threshold will be fixed in the successive accession treaties on the basis of principles determined by the Treaty of Nice, particularly by the declaration on the qualified majority threshold, cf. Doc. SN 533/1, p.82)

The Treaty also provides for the **possibility** for a member of the Council to **request verification that** the qualified majority represents **at least 62% of the total population** of the European Union. If this condition is not met, the decision will not be adopted. However, this condition applies only if verification is requested. 2 The threshold has been fixed for the 15-strong Union (probably in a theoretical manner inasmuch as the Union, when the weighting enters into force in 2005, should have more than 15 Member States) at 169 votes out of 237 (i.e. a threshold of 71.31%, slightly above the current percentage of 71.26%). Subsequently, the threshold will change depending on the pace of accession, starting at a percentage lower than the current percentage (71.26%) and up to a maximum of 73.4%. In the Union of 27 Member States, the qualified majority threshold will rise to 73.91% of the votes.

D. Commission

– Composition

The ICG has decided to defer imposing a ceiling on the number of members of the Commission. With effect from **2005**, the Commission will comprise **one national per Member State**. The biggest Member States thus lose at that time the opportunity of proposing a second member of the Commission, irrespective of how many Member States the European Union has at that date.

As from the first Commission which will be appointed **once the Union reaches 27 Member States**, there will be **fewer Commissioners than there are Member States**. The Commissioners will be selected by a system of rotation that will be fair to all countries. In concrete terms, once the accession treaty for the twenty-seventh Member State has been signed, the Council will have to take a unanimous decision:

- on the exact number of Commissioners;
- on the arrangements for a fair system of rotation, bearing in mind that all Member States will be treated on an equal footing and that each Commission must satisfactorily reflect the different demographic and geographic characteristics of the Member States.

– Appointment

The ICG has decided to change the procedure for nominating the Commission (Art. 214 of the EC Treaty). Henceforth, the **nomination of the President** is a matter for the **European Council acting by qualified majority**. This appointment must be approved by the European Parliament. Thereafter, the Council, **acting by qualified majority and in agreement with the appointed president, will adopt the list of the other persons** it intends to appoint as members of the Commission, drawn up in accordance with the proposals made by each Member State.

The purpose of this is solely to ensure that the Council cannot designate as a member of the Commission a person not proposed by the government of the Member State of which he/she is a national. It has no effect on the procedure whereby the president appointed, before he gives his agreement to this list, undertakes political contacts with each government to ensure that the new Commission is composed in a harmonious and balanced manner. Lastly, the president and the members of the Commission will be **appointed by the Council acting by qualified majority after approval of the body of Commissioners by the European Parliament.**

– Increased powers for the president

The new wording of Article 217 of the EC Treaty increases the president's powers. He will decide as to the **internal organisation** of the Commission; will **allocate portfolios** to the Commissioners and if necessary reassign responsibilities during his term of office; will appoint, after the collective approval of the body, the **vice-presidents**, whose number is no longer established in the Treaty; may demand a commissioner's resignation, subject to the Commission's approval.

E. The Union's legal system

The ICG has made **major reforms** to the Union's legal system. The main provisions concerning the **Court of First Instance**, and particularly its responsibilities, are henceforth to be found in the **Treaty**. In addition, the Treaty provides for the possibility to set up internal chambers to deal at first instance with certain proceedings relating to specific issues.

The Treaty has introduced **greater flexibility in order to prepare the legal system** for the future, settling certain issues in the Court's statute, which can henceforth be amended by the Council acting unanimously at the request of the Court or of the Commission. The approval of the rules of procedure of the Court of Justice and of the Court of First Instance will henceforth be by qualified majority.

– Composition

While the **Court of Justice** will, as before, be composed of **one judge from each Member State,** steps have been taken to maintain the effectiveness of the jurisdiction and coherence of its jurisprudence. The "**grand chamber**", comprising eleven judges (including the president of the Court and the presidents of the five-judge chambers), will generally deal with cases today handled by plenary session. The presidents of the five-judge chambers will be elected for a three-year term of office which will be renewable once.

The **Court of First Instance** will have **at least one judge from each Member State** (the number is determined in the **statute,** which currently makes provision for fifteen judges). As before, the number of judges in the Court of First Instance (stipulated up to now in the Decision establishing the CFI) can be changed. It should be noted that in response to a request submitted by the Court outside the

framework of the ICG, the COREPER agreed to an increase of six judges for the CFI. The arangements regarding the system of rotation for appointments has still to be decided.

– Distribution of responsibilities between the Court of Justice and the Court of First Instance

The Treaty sets out the distribution of responsibilities between the Court of Justice and the Court of First Instance but it will be possible to make adjestments through the statute. The **Court of First** Instance becomes the common law judge for all **direct actions** (particularly proceedings against a decision (Article 230 of the EC Treaty), action for failure to act (Article 232 of the EC Treaty), action for damages (Article 235 of the EC Treaty), with the exception of those which will be attributed to a specialised chamber and those the **statute** reserves for the Court itself.

The **Court of Justice** retains responsibility for other proceedings (particularly action for failure to fulfil obligations, Art. 226 of the EC Treaty), but the **statute** can entrust to the Court of First Instance categories of proceedings other than those listed in Art. 225 of the EC Treaty. The idea is to maintain within the Court, as the jurisdictional supreme body of the European Union, disputes concerning essential Community issues. The ICG has accordingly asked the Court and the Commission to review the distribution of responsibilities as soon as possible so that appropriate proposals can be examined as soon as the Treaty of Nice comes into force.

The **Court of Justice**, which is responsible for ensuring uniform application of Community law within the European Union, in principle retains competence for investigating **questions referred for a preliminary ruling**; however, pursuant to Art. 225 of the EC Treaty, the **statute may entrust to the Court of First Instance** the responsibility for preliminary rulings in certain specific matters.

– Specialised chambers

The Council can set up specialised chambers to examine at first instance certain categories of actions in specific matters (e.g. in the area of intellectual property). The ICG through a declaration asks that a draft decision be prepared to set up such **chambers** in order to settle **disputes between the Community and its servants** (Article 236 of the EC Treaty). An appeal in cassation can be made before the Court of First Instance against a decision by the specialised chambers.

– Community patent

Lastly, the new Article 229a of the EC Treaty will allow the Council, acting unanimously, to attribute to the Court of Justice the responsibility for settling disputes related to Community intellectual property rights. This provision is aimed essentially at disputes between private parties in which the future European patent is involved. This Council decision will enter into force only after it has been adopted by the Member States (i.e. after ratification).

F. Court of Auditors

The Treaty henceforth stipulates explicitly that the Court of Auditors will consist of **one national from each Member State**. The Court of Auditors may establish internal chambers to adopt certain categories of reports or opinions.

G. European Central Bank and European Investment Bank

The Treaty of Nice does not change the composition of the **Governing Council of the European Central Bank** (comprising the members of the executive board and the governors of the national central banks) but allows for **changes to the**

rules on decision making (at present, decisions are generally adopted by simple majority of the members, each having one vote — Article 10 of the statute of the European Central Bank). This change requires a unanimous European Council decision which must then be ratified by the Member States. The ICG has stated that it expects the Governing Council to submit as quickly as possible a recommendation for amending the voting rules.

As far as the **EIB** is concerned, the Treaty of Nice allows for **the possibility of altering the composition of the board of directors and the rules on decision-making** by a unanimous Council decision.

H. Economic and Social Committee and Committee of the Regions

The ICG **has not altered the number and distribution per Member State** of the seats of the ECS and the COR. The Treaty henceforth stipulates that the number of members of these committees **cannot exceed 350** (Art. 258 and 263 of the EC Treaty), but this ceiling is not reached with the seats envisaged for the new Member States (see table in Doc. SN 533/1, pp.80-81).

The description of the members of the ECS has been changed and the Treaty states that the Committee is to consist of "representatives of the various economic and social components of organised civil society" (Article 257 of the EC Treaty). For the COR, the Treaty of Nice henceforth explicitly stipulates that the members must hold a regional or local electoral mandate or be politically accountable to an elected assembly.

II. THE DECISION-MAKING PROCESS

A. Extension of the qualified majority vote

The Treaty of Nice to some extent widens the scope of decision-making by qualified majority. A **list of the 27 provisions** which change over completely or partly from unanimity to qualified-majority voting is attached. The most important provisions which do so **as soon as the Treaty of Nice enters into force** are:

- measures to **facilitate freedom of movement for the citizens** of the Union (Article 18 of the EC Treaty);
- **judicial cooperation in civil matters** (Article 65 of the EC Treaty);
- the conclusion of **international agreements** in the area of trade in **services** and the commercial aspects of **intellectual property** (Article 133 of the EC Treaty), with exceptions (see below);
- **industrial policy** (Article 157 of the EC Treaty);
- **economic, financial and technical cooperation with third countries** (Article 181a of the EC Treaty, new provision to adopt measures hitherto based on Article 388 of the EC Treaty);
- approval of the regulations and general conditions governing the performance of the duties of **members of the European Parliament** (Article 190 of the EC Treaty), with the exception of matters relating to the fiscal regime;
- the statute of the **political parties at European level** (Article 191 of the EC Treaty, new provision);
- the approval of the **rules of procedure** of the Court of Justice and the Court of First Instance (Articles 223 and 224 of the EC Treaty).

It should be noted that the **appointment** of members of certain institutions or bodies will henceforth be done by qualified majority (members of the Commission, of the Court of Auditors, of the Economic and Social Committee and of the Committee of the Regions; the High Representative/Secretary General and the Deputy Secretary General of the Council; the Pesc special envoys.

The changeover to qualified majority voting has been deferred until 2007 for the **Structural Funds and the Cohesion Funds** (Article 161 of the EC Treaty), and for the adoption of the **financial regulations (**Article 279 of the EC Treaty). Lastly, for the provisions of Title IV of the EC Treaty (**visas, asylum, immigration** and other policies linked to the free movement of persons), the ICG has agreed on a **partial and deferred switch to qualified majority** voting by means of different instruments (amendment of Article 67 of the EC Treaty, protocol or political declaration) and subject to different conditions (either from 1 May 2004, or after the adoption of Community legislation setting out the common rules and essential principles, see annex, points 23 and 24).

The picture is somewhat mixed for the five areas the Commission had identified as key areas:

- **taxation** (Articles 93, 94 and 175 of the EC Treaty): maintenance of unanimity for all measures;
- **social policy** (Articles 42 and 137 of the EC Treaty): maintenance of the status quo. However, the Council, acting in unanimity, can make the codecision procedure applicable to those areas of social policy which are currently still subject to the rule of unanimity. This "bridge" cannot, however, be used for social security;
- **cohesion policy** (Article 161 of the EC Treaty): it has been decided to switch to qualified majority voting but this will not apply until after the adoption of the multi-annual financial perspectives applicable as from 1 January 2007;
- **policy on asylum and immigration** (Articles 62 and 63 of the EC Treaty): application of the qualified majority rule has been postponed (2004) and will not concern the central elements of these policies, e.g. the "sharing of the burden" (Article 63(2)(b) or the conditions for entry and residence of nationals from third countries (Article 63(3)a);
- **common commercial policy** (Article 133 of the EC Treaty): this henceforth includes the negotiation and conclusion of international agreements in the area of trade in services and the commercial aspects of intellectual property.

These agreements are concluded by qualified majority, except when the agreement includes provisions for which unanimity is required for the adoption of internal rules or when the agreement concerns an area on which the Community has not yet exercised its responsibilities. In addition, the agreements concerning the harmonisation of cultural and audiovisual services, education services, social services and health services continue to be the subject of responsibility shared with the Member States.

The Treaty of Nice has **extended the scope of codecision**. This procedure will be applicable for seven provisions which change over from unanimity to qualified majority voting (Articles 13, 62, 63, 65, 157, 159 and 191 of the EC Treaty; for

Article 161 of the EC Treaty, the Treaty stipulates assent). Accordingly, most of the legislative measures which, after the Treaty of Nice, require a decision from the Council acting by qualified majority will be decided via the codecision procedure. The ICG has not, however, extended the codecision procedure to legislative measures which already come under the qualified majority rule (e.g. in agricultural policy or trade policy).

B. Enhanced cooperation

The ICG has comprehensively **overhauled** the provisions on enhanced cooperation, particularly by listing in a single provision the ten conditions necessary to establish enhanced cooperation ("clause A", Doc. SN 533/1, p. 12). While **the essential characteristics of this instrument are largely unchanged** (such as the principles whereby enhanced cooperation can be undertaken only as a last resort and must be open to all Member States), substantial changes have nevertheless been agreed.

The **minimum number** of Member States required to establish enhanced cooperation is now set at **eight**, whereas the Treaty currently stipulates that the majority of Member States is needed. Thus the minimum number of States needed to establish enhanced cooperation will fall, with the successive enlargements, to under one-third of the members of the Union (as had been proposed by the Commission).

In the Treaty establishing the **European Community** (first pillar) the possibility of opposing enhanced cooperation (the "**veto**") has been **removed**. It has been replaced by the possibility for a Member State to take the matter up with the European Council. In such an event, the Council may nevertheless act by qualified majority on any proposal for enhanced cooperation. Furthermore, when enhanced cooperation concerns an area which comes under the codecision process, the **assent** of the European Parliament is required.

The Treaty of Nice has introduced the possibility of establishing enhanced cooperation in the area of **common foreign and security policy** (second pillar), for the **implementation of joint action or a common position**. Enhanced cooperation of this kind cannot be used for issues which have military implications or which affect defence matters. The authorisation for enhanced cooperation is given by the Council after receiving the opinion of the Commission, particularly on the consistency of this enhanced cooperation with the Union's policies. The Council will decide by qualified majority but each Member State may ask that the matter be referred to the European Council for the purposes of a unanimous decision ("emergency brake").

For **police and judicial cooperation in criminal matters** (third pillar), the possibility of the "veto" has been removed in line with what is envisaged for enhanced cooperation for the first pillar.

III. OTHER CHANGES

The Treaty of Nice brings other changes to the treaties. The most significant are:

A. Fundamental rights

Pursuant to **Article 7 of the Treaty on European Union**, the European Council can declare the existence of a serious and persistent breach of fundamental rights. If this occurs, the Council may suspend certain of the rights of the country concerned. The Treaty of Nice has **supplemented** this procedure with a **preventive**

instrument. Upon a proposal of one-third of the Member States, the Parliament or the Commission, the Council, acting by a four-fifths majority of its members and with the assent of the European Parliament, can **declare that a clear danger exists of a Member State committing a serious breach of fundamental rights** and address to that Member Statre appropriate **recommendations**. The Court of Justice will be competent (Article 46 of the Treaty on European Union) only for disputes concerning procedural provisions under Article 7, and not for the appreciation of the justification or the appropriateness of the decisions taken pursuant to this provision.

B. Security and defence

The Nice European Council adopted the Presidency's report on the **European security and defence policy** which *inter alia* provides for the development of the Union's military capacity, the creation of permanent political and military structures and the incorporation into the Union of the crisis management functions of the WEU.

While this is not a precondition for making the security and defence policy quickly operational on the basis of the current provisions of the Treaty, the Nice Treaty amends Article 17 of the Treaty on European Union by removing **the provisions defining the relations between the Union and the WEU**.

In addition, the political and security committee ("**PSC**", a new designation of the political committee in the Treaty) may be authorised by the Council, in order to manage a crisis and for the duration of that crisis, to itself take the **appropriate decisions under the second pillar in order to ensure the political control and strategic leadership of the crisis management operation**.

C. Judicial cooperation in criminal matters

The ICG has not added, as the Commission proposed, a provision which would have made it possible to create a European prosecutor to protect the financial interests of the Community. However, the Nice Treaty does supplement Article 31 of the Treaty on European Union with reference to and the description of the tasks of "**Eurojust**", a unit of seconded magistrates whose task it will be, within the framework of judicial cooperation in criminal matters, to contribute to proper coordination of the national authorities responsible for criminal proceedings.

D. Interinstitutional agreements

The ICG adopted a **declaration** attached to the Treaty of Nice on **interinstitutional agreements**. This declaration states that relations between the Community institutions are governed by the duty to cooperate sincerely and that when necessary to facilitate the application of the provisions of the Treaty, the Parliament, the Council and the Commission can conclude interinstitutional agreements. These agreements **can neither change nor supplement the provisions of the Treaty and can be concluded only with the agreement of these three institutions**.

E. Social Protection Committee

Through a new Article 144 of the EC Treaty, the Treaty of Nice incorporates within the Treaty the Social Protection Committee which had been established by the Council pursuant to the conclusions of the Lisbon European Council.

F. Name of the Official Journal

The name of the Official Journal of the European Communities will be changed to "Official Journal of the European Union" (Article 254 of the EC Treaty).

G. Venue for European Council meetings

The ICG adopted a **declaration** annexed to the Treaty of Nice stipulating that "**as from 2002, one European Council meeting per presidency will be held in Brussels. When the Union comprises 18 members, all European Council meetings will be held in Brussels"**. It should be noted that this declaration relates only to the formal European Council meetings, and the presidencies are free to organise the informal European Council meetings wherever they like (or even not to organise any), in line with the informal Council meetings which can be organised in places other than those stipulated in the protocol on the seat of the institutions.

H. Financial consequences of the expiry of the ECSC Treaty

The ECSC Treaty will expire on 23 July 2002. At the request of the Council, Commission in September 2000 put forward a draft decision on the **transfer of ECSC funds to the European Community** to be used for research in sectors related to the coal and steel industry. For reasons of legal certainty, it has been deemed preferable to settle this matter through a protocol annexed to the Treaty of Nice.

IV. DECLARATION ON THE FUTURE OF THE UNION

The Intergovernmental Conference adopted a declaration concerning the future of the Union whereby it calls for a **deeper and wider debate about the future of the European Union**. In 2001, the Swedish and Belgian Presidencies, in cooperation with the Commission, will encourage wide-ranging discussions with all interested parties. The candidate countries will be associated in this process. Following a report for the Göteborg European Council**, the Laeken European Council** (December 2001) will adopt a **declaration** containing appropriate initiatives for pursuing this process.

The subjects to be considered include the demarcation of responsibilities between the Union and the Member States, the status of the Charter of Fundamental Rights of the European Union, simplification of the treaties, and the role of the national parliaments in the institutional architecture of the European Union. The ICG agrees that once this preparatory work has been completed another **Intergovernmental Conference** will be convened in **2004** to deal with these matters, but the conference will in no way impede or be a pre-condition to the enlargement process.