

12-1-1994

Maastricht Treaty's Opt-Out Provisions for Denmark Keep EC Intact

Vincent G. Saccomando

Follow this and additional works at: <http://lawdigitalcommons.bc.edu/iclr>

 Part of the [International Law Commons](#)

Recommended Citation

Vincent G. Saccomando, *Maastricht Treaty's Opt-Out Provisions for Denmark Keep EC Intact*, 17 B.C. Int'l & Comp. L. Rev. 223 (1994), <http://lawdigitalcommons.bc.edu/iclr/vol17/iss1/14>

This Recent Developments is brought to you for free and open access by the Law Journals at Digital Commons @ Boston College Law School. It has been accepted for inclusion in Boston College International and Comparative Law Review by an authorized editor of Digital Commons @ Boston College Law School. For more information, please contact nick.szydowski@bc.edu.

Maastricht Treaty's Opt-Out Provisions For Denmark Keep EC Intact

INTRODUCTION

On May 18, 1993, Danish voters approved by referendum the Maastricht Treaty (Treaty), the purpose of which is to move closer toward the goals of the European Community (EC or Community) by creating a stronger European Union.¹ The passage of the 1993 referendum reversed the narrow rejection of the Treaty in the original referendum held on June 2, 1992.² The Treaty expands the EC's power over several matters formerly under the control of the Member States' national governments.³

The supporters of the EC view the Maastricht Treaty as vital to the Community's progress because it expands the EC's role from fostering free and open trade in Europe to developing Community-wide policies on economic, social, foreign, and security matters.⁴ During

¹ Treaty on European Union and Final Act, Feb. 7, 1992, pmbl., 31 I.L.M. 247, 253 [hereinafter Maastricht Treaty]; Roger Smith, *Maastricht: The Long and Winding Road*, Press Ass'n Newsfile, July 21, 1993, available in LEXIS, Europe Library, Denmark File. The vote was 56.8 percent in favor of the Treaty to 43.2 percent opposed. *Id.* Post-vote rioting by Treaty opponents in Copenhagen resulted in the shooting of at least 11 rioters by police and in injuries to 26 police officers. *Rioters, Police Clash After Danes OK European Unity*, CHI. TRIB., May 20, 1993, at 6. Nevertheless, there were no fatalities. *Id.*

² *European Community Leaders Agree at Maastricht Summit to Treaties on Monetary and Political Union; UK Stands Outside Some Accords*, FACTS ON FILE WORLD NEWS DIG., Dec. 12, 1991, at 940 [hereinafter *Community Leaders Agree*]; David Lawday et al., *To Join or Not to Join?*, U.S. NEWS & WORLD REP., June 15, 1992, at 35. The margin of difference in the first referendum was less than fifty thousand votes out of the 3.5 million cast or 50.7 percent to 49.3 percent. Lawday, *supra*, at 35; Christopher Follett, *Denmark Confirms May 18 Date For Maastricht Vote*, Reuters, Feb. 4, 1993, available in LEXIS, Europe Library, Denmark File.

³ See generally Maastricht Treaty, *supra* note 1, 31 I.L.M. 247; *Community Leaders Agree*, *supra* note 2.

⁴ *New Union, New Upheavals For Europe*, U.S. NEWS & WORLD REP., Dec. 23, 1991, at 13. French President Francois Mitterand stated that the Treaty was the most important in Europe since the 1957 Treaty Establishing the European Economic Community (EEC Treaty) and that Europe will be the world's top power by the next century. *Community Leaders Agree*, *supra* note 2, at 940; *New Union, New Upheavals For Europe*, *supra*, at 13. German Chancellor Helmut Kohl characterized the Maastricht Treaty as "enormous progress" and a "decisive breakthrough" and declared that "Europe is no longer the same." *Community Leaders Agree*, *supra* note 2, at 940. British Prime Minister John Major's office asserted that the Treaty was the "best

the Edinburgh Summit held in December 1992, the EC nations reached an agreement which allows Denmark to opt-out of certain key provisions of the Treaty in the hope that these concessions would convince the Danish people to ratify the Treaty in their second referendum.⁵

This Comment analyzes the EC's decision to allow the opt-out provisions for Denmark. Part I explains the Treaty provisions. Part II examines Denmark's reasons for voting against the Treaty. Part III explains the opt-out provisions themselves. Part IV analyzes the wisdom of allowing these opt-out provisions for Denmark and concludes that allowing the provisions was necessary to continue the viability and development of the European Community.

I. THE SUBSTANCE OF THE MAASTRICHT TREATY

All twelve EC nations negotiated the Maastricht Treaty at a summit in the Dutch city of Maastricht.⁶ The Treaty amends and augments the 1957 Treaty of Rome, which created the European common market, and the 1987 Single European Act, which prepared for the coming of the EC's open internal market after 1992.⁷ The Treaty consists of four major sections.⁸ The first main section, the preamble or "chapeau,"⁹ is entitled "Common Provisions."¹⁰ The preamble establishes an "ever closer Union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen."¹¹ Negotiators refer to the other three sections as "the pillars."¹²

The first pillar (Title II) gives the EC a greater role in subjects such as the environment, public health, education, consumer pro-

of all agreements" and former-U.S. President Bush called it "a milestone." *Id.*; John Palmer, *Netherlands: EC Unites on Historic Treaty With Britain in the Slow Lane*, *GUARDIAN*, Dec. 11, 1991, at 1.

⁵ Denmark and the Treaty on European Union, 1992 O.J. (C 348) 1; Andrew Marshall & Sarah Lambert, *The Edinburgh Summit: What the Leaders of Europe Agreed*, *INDEPENDENT*, Dec. 14, 1992, at 10; Follett, *supra* note 2.

⁶ *Community Leaders Agree*, *supra* note 2, at 940.

⁷ *Id.*; TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY [EEC TREATY], 1987 O.J. (L 169) 1 (as amended 1987).

⁸ Maastricht Treaty, *supra* note 1, 31 I.L.M. at 247; *The EC's New Treaty at a Glance*, *Reuter Libr. Rep.*, Dec. 11, 1991, available in LEXIS, Europe Library, Denmark File.

⁹ Chapeau is French for the word "hat." *The EC's New Treaty at a Glance*, *supra* note 8.

¹⁰ *Id.*; Maastricht Treaty, *supra* note 1, 31 I.L.M. at 255.

¹¹ Maastricht Treaty, *supra* note 1, 31 I.L.M. at 255. This language is taken from the EEC Treaty. *The EC's New Treaty at a Glance*, *supra* note 8. Great Britain spent months protesting over the original reference to a "federal goal." *Id.*

¹² *The EC's New Treaty at a Glance*, *supra* note 8.

tection, and pan-European networks such as roads, power systems, and communications.¹³ Ninety pages of separate provisions in pillar one also contain the blueprint for the Economic and Monetary Union (EMU), including the implementation of the third stage of EMU which establishes a single currency by 1999.¹⁴ In addition, the first pillar establishes the concept of EC citizenship which, among other things, allows citizens residing in EC nations other than their own to vote in elections for the EC and local posts.¹⁵

The second pillar (Title V) establishes the Common Foreign and Security Policy (CFSP) for the EC.¹⁶ This pillar requires unanimity for joint action by EC countries in matters of security and foreign policy.¹⁷ National governments, however, are allowed to take action on their own to implement EC policy in these areas.¹⁸ This section also recognizes the already-established Western European Union (WEU) as the defense organization of the Community.¹⁹ The same section asserts that the foreign and defense policies will be compatible with the NATO alliance.²⁰

The third section (Title VI), commonly referred to as "the cops' pillar," embodies provisions for police and judicial cooperation on

¹³ Maastricht Treaty, *supra* note 1, tit. II, 31 I.L.M. at 256-57; *The EC's New Treaty at a Glance*, *supra* note 8.

¹⁴ Maastricht Treaty, *supra* note 1, tit. II, 31 I.L.M. at 257; *The EC's New Treaty at a Glance*, *supra* note 8, at 2; *Community Leaders Agree*, *supra* note 2, at 940. The EC is currently in stage one of EMU, in which EC members must abolish restrictions on capital movements and adopt economic plans that would hopefully lead to a "convergence" in economic performance among the members. *Community Leaders Agree*, *supra* note 2, at 940. According to the Treaty, stage two is set to begin on January 1, 1994 and establishes conditions of "convergence" to be met before nations can join the single currency. *Id.* These conditions set goals for inflation rates, interest rates, budget deficits, and government debt. *Id.* The Treaty states that by the end of 1996 the EC nations will meet to decide whether the stage two conditions have been met by a majority of Member States and whether to move into stage three, which establishes the single currency, known as the "ecu," for European currency unit. *Id.* It also creates a European Central Bank. *Id.*

¹⁵ Maastricht Treaty, *supra* note 1, tit. II, 31 I.L.M. at 258; *Community Leaders Agree*, *supra* note 2, at 940.

¹⁶ Maastricht Treaty, *supra* note 1, tit. V, 31 I.L.M. at 323; *The EC's New Treaty at a Glance*, *supra* note 8.

¹⁷ Maastricht Treaty, *supra* note 1, tit. V, art. J8(2), 31 I.L.M. at 323; *The EC's New Treaty at a Glance*, *supra* note 8.

¹⁸ Maastricht Treaty, *supra* note 1, tit. V, 31 I.L.M. at 323; *The EC's New Treaty at a Glance*, *supra* note 8.

¹⁹ Maastricht Treaty, *supra* note 1, tit. V, art. J.4, 31 I.L.M. at 323; *The EC's New Treaty at a Glance*, *supra* note 8. The Western European Union currently is comprised of nine EC states. *The EC's New Treaty at a Glance*, *supra* note 8.

²⁰ Maastricht Treaty, *supra* note 1, tit. V, art. J.4, 31 I.L.M. at 323; *The EC's New Treaty at a Glance*, *supra* note 8.

immigration and asylum policies.²¹ This section also includes provisions dealing with organized crime and drug smuggling.²² Furthermore, Title VI creates an EC police intelligence agency known as Europol.²³

Apart from the three pillars, the Member States annexed several protocols and declarations to the Treaty.²⁴ One protocol allows EC nations to establish common social legislation; however, Great Britain will not be bound by social legislation because it is exempted from this protocol.²⁵ Another protocol allows Great Britain to opt-out of the final stage of the monetary union and the single currency.²⁶ Although it states that Denmark supports the principle, a further protocol grants Denmark the right to hold a referendum before joining the single currency.²⁷ An agreement allows Ireland to continue its ban on abortions, while another protocol allows the Danes to continue banning Germans and other foreigners from buying summer homes in their country.²⁸

²¹ Maastricht Treaty, *supra* note 1, tit. VI, 31 I.L.M. at 327; *The EC's New Treaty at a Glance*, *supra* note 8.

²² Maastricht Treaty, *supra* note 1, tit. VI, 31 I.L.M. at 327; *The EC's New Treaty at a Glance*, *supra* note 8.

²³ Maastricht Treaty, *supra* note 1, tit. VI, 31 I.L.M. at 327; *The EC's New Treaty at a Glance*, *supra* note 8.

²⁴ Maastricht Treaty, *supra* note 1, 31 I.L.M. at 331-73; *The EC's New Treaty at a Glance*, *supra* note 8.

²⁵ Maastricht Treaty, *supra* note 1, Protocol On Social Policy, 31 I.L.M. at 357; Maastricht Treaty, *supra* note 1, Agreement on Social Policy Concluded Between the Member States of the European Community With the Exception of the United Kingdom of Great Britain and Northern Ireland, 31 I.L.M. at 358; *The EC's New Treaty at a Glance*, *supra* note 8. The social policy provisions are intended to establish a level playing field for competition among EC countries. Palmer, *supra* note 4, at 1. They will use EC institutions to "support and complement" member governments' policies in the areas of workers' health and safety, sexual equality in the workplace, and provide information and consultation to workers. *Id.*; Maastricht Treaty, *supra* note 1, Agreement on Social Policy Concluded between the Member States of the European Community with the Exception of the United Kingdom of Great Britain and Northern Ireland, arts. 2, 6, 31 I.L.M. at 358, 360. British Prime Minister John Major's office stated that the U.K. wanted the exemption because the provisions "would endanger British jobs and competitiveness." Palmer, *supra* note 4, at 1.

²⁶ Maastricht Treaty, *supra* note 1, Protocol On Certain Provisions Relating to the United Kingdom and Northern Ireland, 31 I.L.M. at 355; *The EC's New Treaty at a Glance*, *supra* note 8.

²⁷ Maastricht Treaty, *supra* note 1, Protocol on Certain Provisions Relating to Denmark, 31 I.L.M. at 356; *The EC's New Treaty at a Glance*, *supra* note 8.

²⁸ Maastricht Treaty, *supra* note 1, Protocol On the Acquisition of Property in Denmark, 31 I.L.M. at 331; *The EC's New Treaty at a Glance*, *supra* note 8.

II. DENMARK'S REASONS FOR VOTING "NO" ON THE MAASTRICHT TREATY

There are several reasons for the Danish people's reluctance to accept a united Europe, thus explaining their decision to vote down the Maastricht Treaty. The first and perhaps most important reason for this reluctance may be fear that Denmark will lose its identity in a unified Europe because of Denmark's small size; at about five million people, it makes up less than 2 percent of the EC's population.²⁹ Denmark's second fear, closely related to the first, is that the nation will be swallowed up by its much larger neighbor, Germany.³⁰ Denmark's historic fear and animosity toward Germany is exemplified in the Treaty clause, aimed mainly at Germans, which prevents foreigners from buying summer homes in Denmark.³¹

A third concern of Denmark is that the EC will undermine its social-welfare system and standard of living.³² The Danes are the wealthiest people in the Community, with an average per capita income of U.S. \$25,000.³³ Danes pay about half of their income in taxes in order to provide the highest health, unemployment, and pension benefits in Europe.³⁴ Danes worry, therefore, that their living standards will fall as a result of closer unification.³⁵ Although they view the EC as necessary for their long-term economic prosperity, the Danes want to ensure that the EC does not move too far too quickly.

III. DENMARK'S OPT-OUT PROVISIONS

The EC nations held the Edinburgh Summit in order to deal with several issues facing the Community;³⁶ however, Denmark's failure to pass the referendum on the Treaty was perhaps the most crucial

²⁹ See David Lawday, *Making the Pieces Fit*, U.S. NEWS AND WORLD REP., June 1, 1992, at 38.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ David Lawday, *supra* note 29, at 38.

³⁵ *Id.* A confidential report issued by the Danish Finance Minister, however, estimates a drop in living standards of between 6 and 7 percent and a record unemployment level of four hundred thousand, or 15 percent of the working population if Denmark fails to ratify the Treaty again. *Denmark: Another No in Maastricht Referendum Would Mean Leaving the EC—Report*, AGENCE EUR., Mar. 2, 1993, available in LEXIS, Europe Library, Denmark File.

³⁶ Marshall & Lambert, *supra* note 5, at 10. The Summit dealt with immigration policies, the Yugoslavian crisis, changes in the European Parliament, the EC's relationship with eastern

of these issues.³⁷ All twelve EC nations needed to approve the Treaty before it went into effect; at the time of the Summit only Denmark and Great Britain had yet to ratify the Treaty.³⁸ In fact, Great Britain suggested that it would not ratify the Treaty if Denmark refused to do so.³⁹ The EC Member States believed that it was essential that the Treaty be passed in order for the EC to continue on its path to closer unification.⁴⁰ Community leaders also believed that all twelve Member States needed to remain in the EC to continue the organization in its most viable and prosperous form.⁴¹

Denmark demanded four tailor-made opt-out provisions which would apply only to itself. Denmark's demand represented an attempt to increase the chance of referendum passage the second time around.⁴² In response, the eleven remaining Member States reached an agreement which met Denmark's following demands: (1) the conditions of Danish citizenship need not be modified as a result of the EC citizenship provision; (2) Denmark would not be forced to adopt a single currency or join stage three of EMU;⁴³ (3) Denmark would not participate in common defense policies or be forced to carry them out;⁴⁴ and (4) decisions on police and judicial cooperation would require unanimity.⁴⁵

The agreement, organized mainly in the form of a decision, is legally binding.⁴⁶ Doubts about its enforceability remain, however, because the concessions are not subject to judgments by the Euro-

Europe, economic growth of the EC, a new framework for the EC budget, enlargement of the Community, and issues of subsidiarity. *Id.*

³⁷ *Id.*

³⁸ David Gow, *Germany: Chancellor Kohl 'Agrees to Big Changes in Maastricht Treaty'*, GUARDIAN, Oct. 8, 1992, at 8; John Palmer, *UK: Edinburgh Summit—Agreement Speeds Poll Timetable*, GUARDIAN, Dec. 14, 1992, at 2 [hereinafter *Edinburgh Summit*].

³⁹ John Palmer, *UK: Edinburgh Briefing—The Problem—EC Summit*, GUARDIAN, Dec. 11, 1992, at 11.

⁴⁰ Lawday et al., *supra* note 2, at 35.

⁴¹ *See generally id.*

⁴² Dick Leonard, *UK: Danes and Delors Snatch Victory in the Smoke of Battle*, OBSERVER, Dec. 13, 1992, at 7.

⁴³ Denmark and the Treaty on European Union, *supra* note 5, at 2. Leonard, *supra* note 42, at 7. Denmark would, however, participate in stages one and two of EMU. Leonard, *supra* note 42, at 7.

⁴⁴ Denmark and the Treaty on European Union, *supra* note 5, at 2; Leonard, *supra* note 42, at 7. Denmark could claim observer status in the Western European Union. Leonard, *supra* note 42, at 7.

⁴⁵ Denmark and the Treaty on European Union, *supra* note 5, at 2; Leonard, *supra* note 42, at 7. All EC states including Denmark now have an effective veto. Leonard, *supra* note 42, at 7.

⁴⁶ *Edinburgh Summit*, *supra* note 38, at 2.

pean Court or any other international court.⁴⁷ "The final agreement was deliberately vague in this respect."⁴⁸ The eleven other Member States were satisfied that the concessions took a form that would not require re-negotiation or ratification.⁴⁹ All of the EC nations including Denmark agreed that no changes should be made to the Treaty itself.⁵⁰ The agreement has four parts: (1) the decision itself; (2) summit conclusions about the Maastricht Treaty and Denmark; (3) a statement by EC leaders clarifying certain aspects of the Treaty; and (4) a unilateral declaration by Denmark concerning its own position.⁵¹

Without the opt-out clauses, Denmark stated that it would refuse to even hold a second vote on the Treaty referendum.⁵² France, Germany, and several other EC nations were determined to move forward with the EC and the Treaty without Denmark and Great Britain if necessary.⁵³ Such a plan, however, would have required the other nations to re-ratify the Treaty.⁵⁴ The EC decided, therefore, that it was far better to meet Denmark's demands.

IV. THE NECESSITY OF ALLOWING THE OPT-OUT PROVISIONS

A treaty which seeks to establish unification among a group of nations should, ideally, apply its provisions to all the nations involved. Many EC advocates believe that allowing opt-out clauses for Denmark creates a danger of establishing a "Europe a la carte" or a "two-speed Europe."⁵⁵ Wilfried Martens, Chairman of the European

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Leonard, *supra* note 42, at 7.

⁵⁰ Gow, *supra* note 38, at 8; Patrick Wintour, *UK: FO Confirms Doubt On Satisfying Danes*, *GUARDIAN*, Oct. 30, 1992, at 6. Negotiators labeled the provisions as amendments or clarifications rather than actual changes to the text of the Treaty. Wintour, *supra*, at 6.

⁵¹ Denmark and the Treaty on European Union, *supra* note 5, at 1-4; *Edinburgh Summit*, *supra* note 38, at 2.

⁵² *Denmark: Maastricht—Danish Parliamentarians Seek Solution Other Than Recognition*, *AGENCE EUR.*, Nov. 6, 1992, available in LEXIS, Europe Library, Denmark File.

⁵³ *Kohl Not in Favor of Two-speed European Unity*, *AGENCE FRANCE PRESSE*, Feb. 23, 1993, available in LEXIS, Europe Library, Denmark File; *EC: Maastricht—Concern Over Danish Concerns and British Positions*, *AGENCE EUR.*, Nov. 10, 1992, available in LEXIS, Europe Library, Denmark File.

⁵⁴ *EC: Maastricht—Three Danish Opposition Parties Reject British Proposals*, *AGENCE EUR.*, Dec. 8, 1992, at 8, available in LEXIS, Europe Library, Denmark File.

⁵⁵ *EC Summit: As Europe Teeters on 'Razor's Edge,' Ministers Seek Maastricht Compromise*, *EUROWATCH*, Dec. 14, 1992, available in LEXIS, Nexis Library, Omni File.

People's Party, summed up this position by stating that "it is not possible to be inside and outside [of the EC] at the same time."⁵⁶

Those who are opposed to the opt-out clauses give three major arguments against them. First, as mentioned above, the opt-out clauses water down the Treaty and allow the Danes to be half-in and half-out.⁵⁷ Second, they establish a precedent by which other nations seeking EC membership may demand their own specially-tailored opt-out provisions.⁵⁸ Finally, opponents assert that Denmark's opt-out provisions are unnecessary because the other nations simply would re-ratify the Treaty without Denmark and Great Britain.⁵⁹ Both nations quite possibly would re-join the EC at a later time for its economic benefits and to protect their own economic interests. In other words, although the two countries would hurt the EC in the short term, they only would hurt themselves in the long run if the EC lives-up to its economic potential.

Despite the foregoing problems pointed out by opponents of the opt-out clauses, allowing these clauses for Denmark was the lesser of two evils. The agreement reached at Edinburgh is far from ideal. Nevertheless, it is quite a triumph for the Community. The EC walked a "razor's edge" by pushing the limits of what is acceptable on the concessions, but reached a compromise satisfying both sides: legal enforceability for Denmark and no re-negotiation for the EC. The Treaty itself was not changed and none of the concessions are blatantly contrary to the words of the Treaty.⁶⁰

The opt-out clauses are not as radical as their opponents claim.⁶¹ For example, the clause allowing Denmark to opt-out of the third stage of EMU and the single currency bears little difference to the provision already in the Treaty allowing Denmark to hold a referendum before joining the third stage.⁶² The clause allowing the Danes to opt-out of common defense policies is not contrary to the Treaty because the Treaty only vaguely speaks of a "European defense," and does not impose any obligations for countries to contribute to a European army.⁶³ The clauses dealing with EC citizenship and police

⁵⁶ EC: Maastricht—Three Danish Opposition Parties Reject British Proposals, *supra* note 54, at 8.

⁵⁷ See *id.*

⁵⁸ Marshall & Lambert, *supra* note 5, at 10.

⁵⁹ Kohl Not in Favor of Two-speed European Unity, *supra* note 53.

⁶⁰ Denmark: Opting Out to Opt Back In, *GUARDIAN*, Oct. 29, 1992, at 21.

⁶¹ *Id.*

⁶² *Id.*; Maastricht Treaty, *supra* note 1, Protocol on Denmark, 31 I.L.M. at 354.

⁶³ Maastricht Treaty, *supra* note 1, tit. V, 31 I.L.M. at 323; Denmark: Opting Out to Opt Back In, *supra* note 60, at 21.

and judicial cooperation are only minor changes regarding Denmark's participation in these areas.⁶⁴ A great advantage of the opt-out provisions is that they all allow Denmark to opt-in at a later date.

The opponents of the Denmark agreement at Edinburgh also exaggerate the effect that the opt-out clauses could have in creating a slippery slope upon which other nations seeking membership in the Community could demand their own exemptions. First, the Maastricht Treaty itself contains several provisions allowing specific nations to maintain their own policies in certain areas or opt-out of certain EC policies.⁶⁵ Great Britain is allowed exemptions from the common currency and from the protocol dealing with common social legislation.⁶⁶ Another agreement allows Ireland to continue its ban on abortions.⁶⁷ The precedent for nation-specific exceptions, therefore, was established within the Treaty already.

Furthermore, few of the nations applying for EC membership have requested any special provisions; Norway made no such requests when it formally requested to begin talks on EC membership in November 1992.⁶⁸ In addition, Austria, Finland, and Sweden, all of whom hope to become Member States by 1995, have not made any special requests.⁶⁹ The EC must follow the lead of European Commission President Jaques Delors who warned that new Member States cannot expect concessions like those given to Denmark and Great Britain.⁷⁰ Only Switzerland rejected full participation in the economic area.⁷¹

The opponents of the opt-out clauses claim that the EC could have moved forward without Denmark or Great Britain because they would have returned once they realized the economic disadvantages of leaving the EC. Such reasoning is questionable, however, because

⁶⁴ *Denmark: Opting Out to Opt Back In*, *supra* note 60, at 21.

⁶⁵ *The EC's New Treaty at a Glance*, *supra* note 8.

⁶⁶ Maastricht Treaty, *supra* note 1, 31 I.L.M. at 358.

⁶⁷ *Denmark: Opting Out to Opt Back In*, *supra* note 60, at 21.

⁶⁸ See John Palmer, *Denmark: Denmark Confident EC Will Back Safeguards For Second Poll*, *GUARDIAN*, Nov. 26, 1992, at 8.

⁶⁹ See *France: Mitterand Believes Danes Will Have Ratified Maastricht By End of Presidency*, *AGENCE EUR.*, Jan. 8, 1993, available in LEXIS, Europe Library, Denmark File. Sweden, Finland, and Austria have stated their willingness to participate in a European defense. David Gardner, *New Applicants to Give Up Neutrality Habit*, *FIN. TIMES*, Feb. 2, 1993, at 2.

⁷⁰ *EC News in the European Press on Thursday, February 11, 1993*, Reuter Eur. Community Rep., Feb. 11, 1993, available in LEXIS, Europe Library, Denmark File. Delors characterized the exemptions as more or less a type of bonus for long and faithful service. *Id.*

⁷¹ See David Gow, *Germany: Edinburgh Summit—Germany Resists Danish Demands*, *GUARDIAN*, Dec. 10, 1992, at 12.

the Danish concessions actually may have avoided the collapse of the EC as a viable organization. A second defeat of the Treaty referendum by Denmark may well have led to doubts about unification in other EC countries.⁷² For those with doubts, Denmark's decision to remain in the Community as a result of the concessions should be enough to placate any fears or uncertainties for the EC's future.

More importantly, Denmark's ratification encouraged British Parliamentary approval of the Treaty on July 23, 1993.⁷³ The only remaining obstacles to the Treaty's full implementation are court challenges in Great Britain and Germany.⁷⁴ Most observers believe, however, that these challenges will fail.⁷⁵

CONCLUSION

The agreement reached by the EC at the Edinburgh Summit which allows Denmark to opt-out of certain provisions of the Maastricht Treaty, while far from ideal, was necessary to maintain the EC in its most viable and effective form. Without the agreements, Denmark and Great Britain would not have ratified the Treaty. The opt-out provisions are not contrary to the Treaty, which already incorporates certain exceptions and opt-out clauses for various Member States. Although the opt-out clauses are legally binding, they do not require re-negotiation or re-ratification of the Treaty. As a result of the agreement, the EC will move forward with all twelve nations on board.

Vincent G. Saccomando

⁷² Lawday et al., *supra* note 2, at 35. Many EC countries experienced significant opposition to EC issues, such as the protests of farmers in France and Germany. Graham Barrett, *EC: Britain Bids To Keep Danes In EC*, THE AGE (Melbourne), Dec. 10, 1992, at 10.

⁷³ William Tuohy, *Major Wins Confidence Vote On Europe Treaty; Britain: Tory Rebels Back Down. House of Commons' Approval Completes Ratification Process For EC Unity Pact*, L.A. TIMES, July 24, 1993, at 1.

⁷⁴ *Id.* The British lawsuit claims that a referendum must be held in order for the Treaty ratification to be valid. *Id.* The German lawsuit challenges the constitutionality of the treaty under the German Constitution. Peter Gumbel, *Maastricht Faces German Legal Test In Suit Over Scope of Treaty's Powers*, WALL ST. J., June 21, 1993, at 8.

⁷⁵ Tuohy, *supra* note 73, at 1; Gumbel, *supra* note 74, at 8.