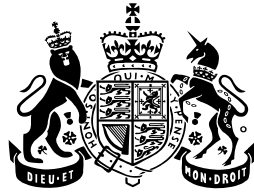


Foreign &  
Commonwealth Office  
London

# THE REFORM TREATY

The British Approach to the  
European Union  
Intergovernmental Conference,  
July 2007



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## The British Approach to the European Union Intergovernmental Conference, July 2007

Presented to Parliament by the  
Secretary of State for Foreign and Commonwealth Affairs  
By Command of Her Majesty  
July 2007

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## **Foreword by the Prime Minister**

Britain has taken the lead in driving for a Europe that rises to the task of delivering opportunity, fairness and prosperity to all our citizens. Now, at the beginning of the 21st century, Europe faces new opportunities and new challenges: globalisation, trade, climate change, energy security, migration, and terrorism. These call for responses that are both global and local. Effective cooperation in the European Union is essential to meeting such challenges.

The proposed Reform Treaty provides the framework for the enlarged Union of 27 nation states to do this. The Treaty will set out clearly where the EU does and does not have power to act and that EU action is governed by the principle of subsidiarity. This will be overseen for the first time by national parliaments. It will enhance the EU's capacity to act where it is in our interest for it to do so.

Ahead of the June European Council, we set out our red lines to ensure that there would not be a transfer of power away from the UK on issues of fundamental importance to our sovereignty. The Mandate for the new amending Treaty meets these red lines. It ensures that our existing labour and social legislation remains intact; protects our common law system, police and judicial processes, as well as our tax and social security systems; and preserves our independent foreign and defence policy. In addition, the Treaty will make clear for the first time that national security remains a matter for Member States.

This amending Treaty will allow the EU to move on from debates about institutions to creating the outward-facing, flexible Europe that we need to meet the fundamental challenges of globalisation.

This White Paper sets out our approach to the forthcoming Intergovernmental Conference (IGC) which will negotiate the detailed text of the Reform Treaty for the European Union. The Government will ensure that the agreement made in June is reflected in the Reform Treaty. All 27 Member States will be part of this process, and I look forward to working with our partners. I am confident that the resulting amending Treaty will be good for Britain, and good for Europe.

**Gordon Brown**  
July 2007

## **Preface by the Secretary of State for Foreign and Commonwealth Affairs**

It is easy to take Europe's stability for granted. For centuries, Europe was disfigured by conflict. Tens of millions of innocent Europeans died in two world wars. In the last half of the last century, we forged a different way. Through enlargement, the benefits of European membership have spread to those countries that have only recently emerged from the shadow of Communist tyranny.

This year marks the 50th anniversary of the founding of the European Union, and is an opportunity not only to celebrate the achievements of the EU over the past half century, but also to look to the future.

We face a very different set of challenges today to those of 50, or even 10 years ago.

Globalisation of the world economy, climate change, terrorism and organised crime are just some of the new challenges we face. It is in the UK's interests to work with our EU partners to deliver more effectively for our citizens on these global challenges, to ensure that the EU responds as well to this century's challenges as it did to the last century's.

On 23 July 2007, the Member States of the European Union will launch an Intergovernmental Conference (IGC) to draw up a new Reform Treaty for an EU of 27 Member States.

The IGC will negotiate the reform of the European Union, to make its institutions more transparent, more accountable, more effective and more efficient, and thus better able to meet the challenges of the 21st century.

This White Paper sets out Her Majesty's Government's approach to the IGC. It also includes a comprehensive glossary and the text of the IGC Mandate agreed at the June 2007 European Council.

The full text of the Paper can also be accessed on the Foreign and Commonwealth Office website at [www.fco.gov.uk](http://www.fco.gov.uk)

**David Miliband**  
**July 2007**

## 1. Britain in Europe

Membership of the EU brings huge practical benefits to Britain: in trade, jobs, travel and work, lower prices and greater choice for consumers.

Working with our EU partners, we are better able to meet the global challenges that we face in today's increasingly interdependent world. By doing so we can achieve much more than we can on our own, on important issues such as climate change, energy, cross-border crime, counter terrorism and the fight against world poverty.

The EU is the world's largest multilateral trading bloc, with a single market of over 490 million people. Membership of this market brings significant opportunities to UK business and consumers and allows us to trade freely within Europe. 57% of total British trade is with the EU. In 2006, British companies exported almost £150 billion worth of goods to EU countries (statistics from HM Revenue and Customs). This represented 62% of our total exports, and a rise of 25% on the year before. In 2005, British companies invested €25.8 billion (£17.3 billion) in the EU – up from €17.1 billion (£11.5 billion) the year before. The single market fosters the competitiveness of Europe's businesses, reducing barriers to the free movement of goods, services, workers and capital across the EU, and is backed by tough competition rules.

But we must continually adapt to ensure the EU responds to new economic challenges. The EU must now increasingly face outwards, and ensure that it is globally competitive as rapidly emerging economies catch up. In this context, the EU needs to create and maintain conditions that will enable internationally competitive businesses to thrive, position it at the forefront of technological change and innovation, and provide its people with the skills and opportunities to ensure their collective prosperity in the future. China's trade is doubling every three years; it could be the world's largest exporter by 2010. India has also shown similarly dramatic growth in exports of services. By working through the EU, the UK increases its influence in global markets.

The 'Hampton Court' agenda agreed during the UK Presidency in 2005 is helping to refocus the EU's energies on tackling the challenges of the 21st century: further action on energy and climate security; developing a 21st century economy driven by innovation and high educational achievement; on migration and on improving security.

This agenda is making progress. For example, EU leaders agreed in March this year on a crucial package of measures on climate change and energy. A unilateral reduction in greenhouse gas emissions of 20% by 2020 – rising to 30% in the context of an international agreement – demonstrates that the EU is serious about tackling climate change. Through this agreement, the EU is setting itself on the path to becoming the world's first competitive, energy-secure, low carbon economy, and to continue to lead global efforts for effective measures to tackle climate change and energy security. The EU Emissions Trading Scheme and the future deployment of low carbon technologies such as Carbon Capture and Storage are further evidence that when the EU acts together, with Britain playing a leading role, we can take the right decisions to shape our future.

EU cooperation is also vital in the field of Justice and Home Affairs: working with EU partners on issues such as terrorism, illegal migration and organised crime provides a real opportunity to improve the security of UK citizens. The European Arrest Warrant, agreed in 2004, was used to extradite Hussain Osman, one of the attempted London Underground bombers of 21 July 2005, to the UK from Italy within weeks; a significant improvement on previous procedures. During 2004 and 2005 seventy-five suspects were

returned to the UK under the arrest warrant. The Dublin System, underpinned by the Eurodac database, enables the UK Immigration Service to identify asylum seekers who have already lodged a claim in another EU state, and return them to that state. The UK removes on average around 130 asylum seekers per month to other States under the Dublin arrangements. And the EU has recently agreed to make information sharing between European police forces easier, which will be a vital tool in combating organised crime and terrorism.

Enlargement has made Europe more secure and more prosperous. An enlarged community of stable, prosperous democracies helps to ensure that Europe stays free of armed conflict and that it responds effectively to threats from outside its borders. Enlargement has strengthened the competitiveness of the EU; the ten countries which joined in 2004 have, on average, significantly higher economic growth than the former 'EU 15'. The enlargement process promotes democracy, the rule of law and respect for human rights and minority rights in candidate countries, making Europe safer. Through the European Neighbourhood Policy, the EU is already driving positive change beyond the EU's borders, for example in Ukraine, to consolidate a ring of prosperity, security and stability among the EU's neighbours to the East and South.

More broadly, the UK has global interests and a significant role on the world stage, with a permanent seat on the UN Security Council and membership of the G8. We can and often do act alone. But on many foreign policy issues we can best achieve our foreign policy objectives by working with and through the EU. In many situations, 27 voices are louder than one, and when we speak in concert with our EU partners, our demands have a greater chance of being heard. The Common Foreign and Security Policy (CFSP) now makes a significant contribution to peace and security across the globe.

This position is strengthened by the European Security and Defence Policy (ESDP), which was a Franco-British initiative. This was a bold step forward in 1998: it now makes a significant contribution to conflict prevention and conflict resolution in the Balkans, Middle East, Africa and Asia. The EU has the ability to deploy a comprehensive range of tools to address crisis situations – civilian and military operations, diplomatic and political pressure, economic and development support. As such it covers the full spectrum of work that is needed to address conflict. ESDP is designed to complement our efforts in NATO by allowing the EU to share the burden for international crisis management. Our objective is both effective co-ordination on the ground and a strategic partnership between the two organisations.

Membership of the EU also brings benefits for the UK when negotiating external trade agreements. As the world's largest trading bloc, the EU has a leading role in the current round of World Trade Organisation negotiations. By negotiating with a single voice, the EU can make a stronger contribution to global trade negotiations than each Member State could alone.

The EU is crucial to the future prospects of this country. It is at the heart of our efforts to open markets, combat crime and tackle pollution. And we believe that the UK should remain a leader in the EU, shaping the agenda and advancing our objectives.



## 2. From the Treaty of Rome to the Reform Treaty

The European Economic Community (EEC), one of the predecessors of the European Union, came into being in 1958. It had just 6 Member States. The EEC operated on the premise that working together would enable neighbours to tackle cross-Europe issues. It had a Council of national Ministers from the Member States. It had a Commission to enforce the Treaty and propose new legislation, a Court of Justice to resolve disputes, and an Assembly of national parliamentarians to reinforce democratic accountability. Member States collectively agreed to confer certain powers (competences) on these institutions. By the time the UK joined the EEC in 1973, the principle of primacy (that European law takes precedence over national law) was also firmly established. That was the shape of what is now the European Union in the early 1970s. It is still recognisable today.

The most significant change to the EU in the last 30 years is how much it has grown. From the 6 founder members, the EU now has 27 Member States. Turkey, Croatia and the Republic of Macedonia are also candidates to join this unique success story. Yet the EU's rules and its institutions have not kept pace with this growth. The EU has continued to deliver real benefits, which is a tribute to the strength of the core concept of Member States cooperating to achieve more than they could alone. But we now need to review how the enlarged EU operates, to make it more effective, efficient and better able to deliver on the issues which most concern citizens. Europe also needs to be equipped to maximise the opportunities (and minimise the risks) that globalisation presents.

The recent debate on institutional reform has developed in three distinct phases, beginning with the Treaty of Nice in 2001, which made the first institutional changes to prepare for an enlarged EU. The Treaty establishing a Constitution for Europe was an attempt to create a new Treaty structure to make the EU more effective, more accountable, and easier to understand. An Intergovernmental Conference agreed the Constitutional Treaty, and it was signed in October 2004. However, the people of France and the Netherlands voted against the Constitutional Treaty in referenda in 2005.

Consequently, the June 2006 European Council tasked the German Presidency to present a report at the June 2007 European Council based on extensive consultations with Member States about the future of Europe. The 50th Anniversary Declaration in March 2007 identified the EU's key future challenges and set a target for placing the EU on a "renewed common basis" before the European Parliament elections in June 2009. The British Government's overall aim in discussions was to improve the ability of the EU to deliver for its citizens. As set out in the Minister for Europe's statement of December 2006, the UK's approach was guided by the following six principles: pursuing British interests, a modern and effective EU, consensus among 27 Member States, emphasis on subsidiarity, making best use of existing Treaties, and openness to global change.

At the European Council in June 2007, EU leaders agreed a detailed Mandate for a new Reform Treaty. The proposed Reform Treaty will close the institutional debate for the foreseeable future.

Member States have agreed and ratified four main amending Treaties since the UK joined the EU (the changes introduced are set out below) – the Reform Treaty will be the fifth. This new Treaty will be firmly in the tradition of the Single European Act and the Treaties of Maastricht, Amsterdam and Nice. As the IGC Mandate clearly states, it will be based upon the existing Treaties and it will not have constitutional characteristics. It will not contain any of the symbols of the Union, the anthem, flag and motto. It will not fundamentally change the relationship between the EU and the Member States.

## **Previous Treaties and what they did**

The Member States have agreed successive Treaties to extend the benefits of cooperation to other areas.

The **Single European Act** of 1986 set out to complete the single market and provided for cooperation in foreign policy. It also strengthened the role of the European Parliament introducing a 'cooperation procedure' in several policy areas and requiring the Parliament's approval for the accession of new Member States, as well as for the conclusion of Association Agreements with countries outside the EU. It set up the Court of First Instance and conferred powers on the Commission to implement Council rules. It introduced the concept of the convergence of economic and monetary policies, and added the objective of harmonisation of health and safety of workers, and the policies of economic and social cohesion, research and technological development and the environment.

The **Treaty of Maastricht** of 1992 established the European Union, structured into a 'three-pillars' system. It renamed the European Economic Community as the European Community (first pillar). It established the Common Foreign and Security Policy (second pillar), cooperation in Justice and Home Affairs (third pillar) and paved the way for the single currency. Maastricht also extended the EU's competence to new policy areas, including economic and monetary policy, social policy, education, vocational training and youth, culture, public health, consumer protection, Trans-European Networks, industry and development. It established the concept of Union citizenship. It also provided for an Ombudsman and established a Committee of the Regions. Maastricht introduced the 'co-decision' procedure for the European Parliament.

The **Treaty of Amsterdam** of 1997 added provisions on social policy and employment. It also moved asylum, immigration and judicial cooperation in civil matters to the first pillar. It incorporated the Schengen acquis on free movement in a protocol, added a protocol on subsidiarity and proportionality and endorsed the progressive framing of a common defence policy. It provided for closer cooperation between sub-groups of Member States (now called 'enhanced cooperation'), though not in foreign policy. Amsterdam simplified and extended the co-decision procedure. It also added a provision on suspending certain rights of Member States if the Council finds a Member State to be in serious breach of principles of liberty, democracy, respect for human rights and fundamental freedoms and rule of law.

The **Treaty of Nice** of 2001 adjusted the institutions in the light of the EU's enlargement. It reweighted the system of Council voting and altered the number of seats in the European Parliament, as well as streamlining the structure and functioning of the European Commission. Nice developed the provisions for enhanced cooperation including extending it to foreign policy (but not defence). A declaration on the future of the Union, annexed to the Final Act of the Intergovernmental Conference which negotiated the Treaty of Nice, began the process which led to the drafting of the now defunct Constitutional Treaty.

### 3. IGC Process

The detailed Mandate for the IGC agreed at the June European Council by Heads of State and Government is at Annex B. The Portuguese Presidency will open an Intergovernmental Conference to agree the EU Reform Treaty on 23 July 2007. Technical work will be taken forward by lawyers from Member States and, if necessary, a senior officials' group. The Treaty text will be discussed by Foreign Ministers at their informal meeting on 8 September.

The Presidency aims to reach agreement on a text at the informal European Council in Lisbon on 18 October, and sign it off formally at the 13-14 December European Council. This is an ambitious timetable.

The Reform Treaty will have to be ratified by all Member States according to their own constitutional procedures. In the UK, all Treaties, including EU Treaties, are laid before Parliament, which has the right to examine and debate them in detail. An Act of Parliament will give legal effect to the Treaty. So Parliament must be satisfied that a Treaty is in the national interest before that Treaty can be implemented in national law.

Throughout the process, the Government will also keep Parliament informed in terms of scrutiny, evidence sessions and debates.

In the run-up to the 2007 June European Council, the UK argued that the EU needed a new amending Treaty without constitutional characteristics. The Government also set out preconditions for agreement on a new Treaty. These four conditions were:

- protection of the UK's existing labour and social legislation;
- protection of the UK's common law system, and our police and judicial processes;
- maintenance of the UK's independent foreign and defence policy; and
- protection of the UK's tax and social security system.

In addition, the Government wanted to clearly establish that national security is a matter for Member States.

These remain our guiding principles for the IGC, which needs to follow precisely the terms of the Mandate agreed at the June European Council.

## 4. IGC Mandate

### Treaty Structure

The 1992 Treaty on European Union (or ‘Maastricht Treaty’) created a structure for the EU based on three ‘pillars’. The first pillar was the current European Communities (broadly economic areas such as the single market, trade, the environment, agriculture and competition rules). These matters are governed by the 1957 Treaty establishing the European Community (or ‘Treaty of Rome’) and the European Atomic Energy Community (‘Euratom’), as amended by subsequent Treaties.

The second pillar was the Common Foreign and Security Policy (CFSP). The third pillar was cooperation in the field of Justice and Home Affairs (JHA). Second and third pillar matters are currently governed by the Treaty on European Union. Subsequent EU Treaties have amended this structure. For example, the Treaty of Amsterdam moved asylum and immigration and judicial cooperation in civil matters from the third to the first pillar.

The Constitutional Treaty would have abolished the three-pillar structure completely, merging the two main Treaties into one. By replacing all of the existing Treaties with a single, new consolidated Treaty, it would – in effect – have refounded the European Union. **However, the IGC Mandate, agreed by the European Council, states clearly that “The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called “Constitution”, is abandoned.”**

The IGC Mandate rejects the Constitutional Treaty approach; the Reform Treaty will instead be an amending Treaty based upon the existing EU Treaties (namely the Treaty on European Union, the Treaty establishing the European Community, and the Euratom Treaty) with their distinctive features (e.g. CFSP will remain in the Treaty on European Union under special arrangements (see below)).

The current Treaty establishing the European Community will be amended and renamed the ‘Treaty on the Functioning of the Union’. The remainder of the third pillar for residual areas of JHA will be abolished but special arrangements will remain (and the UK will have the right to choose whether or not to participate in these individual measures – see below).

### Common Foreign and Security Policy

The Reform Treaty will affirm that CFSP will remain an intergovernmental process, distinct from other policy areas. Unanimity in decision-making will remain the norm (i.e. the UK will hold a veto). CFSP provisions will also remain in the Treaty on European Union. **The IGC Mandate contains a declaration confirming that the provisions on CFSP will not affect the responsibilities of the Member States, as they currently exist, for the formation and conduct of their foreign policy, or of their national representations in third countries and international organisations.**

The IGC Mandate specifies that the Reform Treaty will make provision for a ‘High Representative of the Union for Foreign Affairs and Security Policy’. This will merge the existing roles of High Representative for Common Foreign and Security Policy and the Commissioner for External Affairs. The High Representative will be supported by a European External Action Service comprising officials from the relevant departments of the Council Secretariat and the Commission, as well as seconded diplomats from the Member States. The service will be established in line with a unanimous Council decision on its composition and functioning.

The High Representative will be appointed by the European Council, by Qualified Majority. He or she will chair the Foreign Affairs Council and will be able to present agreed Union positions in international organisations – just as the Member State that holds the Presidency does now. Where we agree, we can work together and express our common position. Where the UK wishes to pursue its aims independently, we can do so.

As is the case now, it will be the Member States, acting by unanimity, who set the strategic interests and objectives of the Union. It will be the Member States who task the High Representative to take forward activity under the CFSP. And it will be the Member States (in the European Council) that will set the strategic interests and objectives of the Union's external action as a whole. In his Commission role the High Representative will be bound by Commission rules and procedures only for issues clearly within Commission competence and to the extent that this is consistent with his or her responsibility to the Council on CFSP.

### **European Security and Defence Policy**

The Reform Treaty will meet UK objectives on the development of a flexible, militarily robust and NATO-friendly ESDP. The Reform Treaty will also preserve the principle of unanimity (and therefore the UK veto) for ESDP policy decisions and for initiating missions, and will maintain the prerogatives of Member States for defence and security issues (in the same way as it does for foreign policy).

The Treaty will recognise the provision in the UN Charter that Member States may come to each other's assistance in the face of armed aggression. The text will explicitly make it clear that, for its members, NATO remains the foundation of their collective defence and the forum for implementing such a commitment. The Government also supports the new 'solidarity Clause', which will reflect the Member States' desire to assist each other in the event of a terrorist attack or other disaster on their territory.

The Government also supports the further definition in the Treaty of the so-called 'Petersberg' tasks, which define what ESDP does. This will allow the EU, where Member States agree, to contribute to joint disarmament operations and security sector reform, in addition to more general conflict stabilisation missions.

The Treaty will introduce 'Permanent Structured Cooperation', which will provide for an inclusive process focused exclusively on the development of military capabilities, a key UK objective. The EU Battlegroup concept, which provides the EU with a rapid reaction capability, is an example of where good cooperation on capabilities can deliver practical results. 'Enhanced cooperation' will also be extended to ESDP, allowing smaller groups of Member States to pursue particular ESDP projects. The requirement for a unanimous Council decision to trigger enhanced cooperation in this area ensures that the UK will always be able to protect its interests.

### **Justice and Home Affairs**

The Amsterdam Treaty of 1997 moved JHA provisions on asylum, immigration, and judicial cooperation in civil matters from the Third to the First Pillar. The Reform Treaty will move the remainder of the Third Pillar (police and judicial cooperation in criminal matters), into the First Pillar in the new Treaty. The Treaty of Amsterdam gave the UK an opt-in on asylum, immigration and judicial cooperation in civil matters.

As a consequence of this change, qualified majority voting and co-decision will apply as the general rule to Justice and Home Affairs. The UK has always been clear that EU cooperation must be in the national interest. **It must not affect fundamental aspects of our criminal justice system, nor undermine our ability to safeguard national security.**



The Government therefore secured an important safeguard in negotiations: the extension of the UK's current opt-in arrangement for cooperation in asylum, immigration and civil justice to the judicial and police cooperation areas. This gives the UK the right to opt-in to new measures where it is in our national interest to do so. The Government has made it clear that we would not opt in to any proposal that was inconsistent with the UK's policy of retaining control of its borders.

The Mandate agreed at the June European Council stipulates that, as part of the IGC process, the UK's right not to participate in new measures in the JHA area can be made to apply even where those measures build upon earlier agreements.

The new Treaty will also enable certain proposals for laws in criminal matters to be referred to the European Council for decision if they would affect fundamental aspects of a Member State's legal system. This is the so-called 'emergency brake'. If all the members of the European Council do not unanimously agree the proposal will fall, or will go ahead only in the Member States that want it – and then only if at least one third choose to go forward in that way. This additional safeguard will be available even where the UK had previously chosen to opt-in to a proposal in these areas.

More generally, bar in the circumstances described above, the move to QMV means that no single Member State will be able to block action on issues like cross-border crime, drug trafficking, illegal immigration and terrorism. These are international issues where it is in our interest to work within the EU, and the UK will continue to play an active role in the field of JHA. The Treaty will also amend the rules under which national courts can make reference to the ECJ to ensure uniformly high standards in implementation of JHA legislation throughout the EU.

The Government also secured an important exemption for national security from the scope of the Treaty: for the first time, the new Treaty will state, explicitly, that national security remains the sole responsibility of each Member State. This is an important clarification, and will ensure that the UK will retain full control of matters relating to national security.

We welcome the new provision in the Treaty which will strengthen the role of national parliaments in the scrutiny, implementation and evaluation of JHA policy. Under a new Treaty Article in the TEU, national parliaments will have responsibility for the peer review of Member States' implementation of JHA policy, for evaluation of the activities of Eurojust, the EU's judicial cooperation unit, and for monitoring Europol, the European Police Office.

The Reform Treaty retains the requirement for unanimity (i.e. a UK veto) for measures concerning family law with cross border implications. In addition, it will include a provision enabling a single national Parliament to veto any move to use the 'mini-passerelle', which would allow for decision making on aspects of family law with cross-border implications to be changed from unanimity to co-decision and QMV.

The new Treaty allows for the possibility of the creation of a European Public Prosecutor. The Government considers that there is no need for such a Prosecutor. Under the new Treaty, the UK would be able to prevent a European Public Prosecutor from having any role in the UK.

### **Charter of Fundamental Rights**

The Government sought to ensure that nothing in the Charter of Fundamental Rights would give national or European courts any new powers to strike down or reinterpret UK law, including labour and social legislation. This has been achieved.

Respect for human rights, civil liberties and democracy lie at the heart of the Government's policy agenda. These are enshrined in the UK through our constitutional traditions and the Human Rights Act 1998.

The Charter of Fundamental Rights was 'solemnly proclaimed' at the Nice European Council in December 2000 but is not currently legally binding. Its aim is to make more visible the fundamental rights that are already recognised in the EU, by virtue of the EU Treaties, the European Convention on Human Rights (ECHR), and the common constitutional traditions of the Member States. The Reform Treaty will make the Charter of Fundamental Rights, with the additional safeguards agreed in 2004, legally binding on the EU institutions and on Member States when implementing EU legislation. The Treaty will also give effect to the interpretative Explanations agreed in 2004.

A UK-specific Protocol annexed to the Treaty, as set out in the IGC Mandate will clarify beyond doubt the application of the Charter in relation to UK laws and measures, and in particular its justiciability in relation to labour and social articles. This Protocol is legally binding and sets out clearly that the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law.

### **Accession to the European Convention on Human Rights**

The IGC Mandate specifies that the Reform Treaty will enable the EU to accede to the ECHR. This would make the EU directly accountable to the Council of Europe's European Court of Human Rights for the rights contained in the ECHR. It would thus ensure harmony between the EU's legal order and the ECHR – as interpreted by the European Court of Human Rights. However, EU accession to the ECHR would have to be approved by all Member States and ratified by all national parliaments.

There are complex legal issues involved in EU accession to the ECHR. These problems would have to be resolved before the Government could support it.

### **Tax and Social Security**

It is long-standing Government policy that tax matters should continue to be decided by unanimity. The Reform Treaty proposal meets this commitment; there is no change to the status of unanimous decision-making on tax.

The Government sought to ensure that the UK would have the final say on any matters affecting important aspects of its social security system – including cost, scope, financial balance or structure. It achieved this; the IGC Mandate includes a strengthened 'emergency brake' mechanism. This allows any Member State to refer a proposal to the European Council, for decision by consensus (i.e. by unanimity), where it might affect any of these important aspects of its social security system. If the European Council does not reach agreement within four months, the proposal will automatically fall. This means that the UK retains ultimate control over any proposals which might adversely affect its social security system.

### **Subsidiarity and National Parliaments**

The application of 'subsidiarity' is a priority for the Government. Subsidiarity is the principle whereby, in policy areas where competence is shared between the EU level and Member States, the EU should only act when "the objectives of the intended action cannot be sufficiently achieved by the Member States" alone. In other words, the EU should only get involved where it can add value.

The Reform Treaty strengthens the role of national Parliaments in EU decision-making. National parliaments will be given a direct say in the EU's law-making procedures for the first time. At present, there is no obligation on the EU institutions to consult national parliaments about EU laws. Under the new mechanism, all national parliaments must be notified by the EU institutions of proposed EU legislation and be given eight weeks to comment.

National parliaments will also gain the power to challenge the EU institutions if one-third of them consider a proposal legislates in an area where the EU need not get involved. If challenged, the EU institutions would have to reconsider and decide whether to maintain, amend or withdraw the proposal. If a majority of national parliaments object to a proposal but the Commission decides to maintain it, the final decision on whether the legislation should proceed would be made by the relevant sectoral Council and European Parliament. There is some lack of clarity on how the IGC Mandate provisions enhancing the role of national parliaments will apply in practice. The Government will seek early clarification of this in the IGC.

We also welcome the recognition the Reform Treaty gives to cultural and linguistic diversity and to regional and local self-government within the EU.

### **Legal Personality**

Two parts of the EU – the European Community and Euratom – already have express legal personality. In particular, this enables them to act at international level, including the capacity to make treaties. The EU, when it acts on CFSP and some areas of JHA, currently has a degree of 'functional' legal personality by virtue of its power to make international agreements (as does the United Nations, for example). On this basis, the EC and the EU already conclude numerous agreements with third countries in a wide range of areas (such as trade and development). Member States currently decide the negotiating mandate by unanimity or QMV, depending on the policy area in question, and approve any final agreement on the same basis. The method of tasking the EU to negotiate on behalf of the Member States will not change under the Reform Treaty.

The Reform Treaty will formally give the EU a single legal personality. This will be simpler than the existing situation and will therefore allow the EU to act in the international arena in a more coherent way. This should lead to streamlined procedures for negotiating agreements through the EU.

**However, it does not create any new powers for the EU. The Reform Treaty will contain a Declaration by all Member States stating explicitly that “the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or act beyond the competences conferred upon it by the Member States in the Treaties”.**

This will not impact on the independence of Member States' foreign policies. The IGC Mandate also includes a Declaration stating that nothing in the Treaty affects the responsibilities and powers of Member States in foreign policy.

### **President of the European Council**

The Reform Treaty will create a permanent President of the European Council. He or she will be elected by the members of the European Council by qualified majority, for a mandate of two and a half years, renewable once. The President cannot hold a national mandate at the same time. Nor can the President also hold the job of President of the Commission.



The EU already has a President of the European Council, in the figure of the Head of State or Government of the Member State holding the EU Presidency. This is a rotating position, however, changing every six months. This creates problems with continuity.

The President will chair the European Council, drive forward its work, ensure its preparation and continuity on the basis of the work of the General Affairs Council, and facilitate cohesion and consensus. The President will also have a role in the most high-level aspects of the EU's external relations.

The Government supports this reform. It will bring much greater coherence and consistency to the EU's actions. Moreover, it will give the Member States, through the European Council, much greater capacity to give direction and momentum to the EU's agenda.

### **The Presidency System**

At present, the Presidency of the EU is held by individual Member States on a rotating six-monthly basis. The Reform Treaty will provide for a new 'Team Presidency' system. Teams of three successive Member State Presidencies will take charge of sectoral Councils over an 18-month period. Separate arrangements will apply to the Foreign Affairs Council (which will be chaired by the European Union High Representative). This change should provide a longer-term, more stable perspective to help deliver policy outcomes through the sectoral Councils.

### **Commission Reform**

The Reform Treaty envisages, from 2014, a reduction in the number of Commissioners to two-thirds of the number of Member States, selected from all Member States on a basis of equal rotation. The Government has consistently supported a smaller, stronger and more effective Commission, and is therefore content with this change.

### **European Parliament**

The Reform Treaty will strengthen the role of the European Parliament, primarily by increasing the number of policy areas subject to co-decision and so requiring the agreement of both the Council and the European Parliament. The new Treaty will apply co-decision to all areas where EU legislation is adopted under the Community method, unless an explicit provision to the contrary is made.

The European Parliament's size will decrease from 786 MEPs currently to 750, with a minimum of 6 and a maximum of 96 MEPs per Member State. The final number of MEPs for each country will be decided by the European Council, based on a recommendation from the European Parliament itself.

### **Qualified Majority Voting**

Since the UK joined the EU, successive British Governments have recognised that it is in the UK's interest for a range of decisions to be taken by majority vote. The Treaty of Rome established a special system of voting known as qualified majority voting (QMV).

The Government supports QMV to unlock decision-making in the right areas where it is in Britain's interest. Without the use of QMV, a single country can veto any policy proposal making the EU decision-making process slower and more cumbersome. Without QMV, for example, the EU's single market could not have been built. But the UK has always insisted on maintaining ultimate national control in key areas of justice and home affairs, social security, tax, foreign policy and defence.

The Government believes that the package of decision-making as set out in the IGC Mandate is a good one for the UK. The UK has safeguards on key areas. Several of the new articles that will be subject to QMV reflect the existing practice for EU legislation in that field. And QMV in many areas is in line with the Government's wish to see improved decision-making – for example on energy policy, humanitarian aid, and urgent financing of CFSP measures. The Reform Treaty will also streamline and speed up decision-making in a number of technical areas (e.g. comitology and appointments to the European Central Bank's executive board).

The second pillar remains based on decision-making by unanimity. It also retains provisions for an 'emergency brake'. The UK keeps its veto on CFSP matters

Overall, the impact of QMV under the Reform Treaty will be significantly less than, for example, under the Single European Act or the Treaty of Maastricht.

### **The Voting System**

The Reform Treaty will introduce a new system of majority voting called Double Majority Voting. It is a 'dual majority' system, which means that a threshold number of Member States representing a certain percentage of the EU's population is required to pass legislation.

Under the new formula, 55% of Member States (i.e. currently 15 out of 27 Member States) representing 65% of the EU's population will need to support a proposed law in order for it to pass. However, there is a further special mechanism. Under it, if Member States representing at least three-quarters of either of those figures indicate their opposition to a proposal, the Council must delay a decision and do all in its power to reach a satisfactory solution.

Double Majority Voting will not operate until 2014. Until then, the present weighted votes system will remain. Between 2014-17, DMV will be the norm but a Member State may request the use of the current weighted votes system for a particular vote. From 2017 onwards, DMV will be the sole voting system. The special mechanism, requiring further consultation if a vote is close, will also be strengthened further.

The Government is content with the introduction of Double Majority Voting, which provides a reasonable balance between passing and blocking legislation. It will be a clearer, simpler and more democratic voting system. This should lead to greater transparency and more effective decision-making. The UK's share of votes in the Council of Ministers will increase.

### **Simplified Treaty Revision**

Procedures to revise the Treaties without an IGC already exist, and can be found in the Single European Act and the Treaties of Maastricht, Amsterdam and Nice. The Reform Treaty will extend these procedures including to allow for changes from unanimity to qualified majority voting, or from other legislative procedures to co-decision, or for changes to the details of EU policies in certain areas, without a formal IGC. The Government's position has always been that such moves must require unanimity (i.e. the UK has a veto). This will be the case; any such changes must be agreed unanimously. The three new passerelles in the Reform Treaty that provide for simplified Treaty revision procedures, will, furthermore, require Parliamentary approval. We support this increased flexibility in decision-making but would only agree to its use when clearly in British interests. The UK will insist that any fundamental change to the Treaties will still require an IGC.

## **Enhanced Cooperation**

The Reform Treaty simplifies the existing procedures, which originate in the Treaty of Amsterdam, for 'enhanced cooperation'. This allows a group of Member States to work together without affecting those that do not want to. Under the Reform Treaty, this process could be triggered where at least nine Member States want to cooperate in a specific area. Enhanced cooperation must work towards the EU's objectives, in a way that does not undermine the single market. Those countries undertaking cooperation in this way must also be open to others who want to join in at any time. Unanimity will continue to be required for any such cooperation in the fields of foreign policy or defence.

## **Exit Clause**

The Reform Treaty will confirm, for the first time, that any Member State may decide to withdraw from the EU. This would be done in accordance with that country's own constitutional requirements. The Reform Treaty sets out a mechanism for negotiation and conclusion of such a withdrawal agreement with the other Member States.

## **Single Market**

The provisions of existing Treaties which guarantee the development of the internal market (the 'single market') – and the substantive powers to further its development or to take action against anti-competitive behaviour – are unchanged by the Reform Treaty proposals. The internal market principles will continue to apply to most forms of commercial activity carried out within the boundaries of the Union in both public and private sectors.

The internal market has been of huge benefit to UK businesses, consumers and employees. The enlarged EU of over 490 million people is the largest multinational single market in the world. The Government is committed to ensuring that the four freedoms underpinning the internal market – the free movement of goods, persons, services and capital – remain at the centre of Union internal policies and their implementation. The new Treaty proposals deliver this.

## **Competition**

The new Treaty proposals make no change to existing Treaty provisions on EU competence for establishing the competition rules necessary for the functioning of the internal market. Member States remain able to have additional domestic competition rules, except where these could affect the functioning of the internal market, which rightly remains the preserve of the Union.

The Reform Treaty proposals include a new, legally binding Protocol, which makes clear that the internal market includes a system ensuring that competition is not distorted and confirms the legal base for the EU to take action to ensure this.

## **Competences**

The Reform Treaty will set out a more transparent and accountable structure for the EU. It includes a definition of the Union's competences, which sets out where the EU can and cannot act. It also makes clear that Treaties can be revised to increase or reduce the competences conferred upon the EU. Therefore, the Member States would have the ability to transfer competences from the EU if they agree to do so.

## ANNEX A: GLOSSARY OF EU TERMS

### Amsterdam Treaty

The Treaty of Amsterdam was agreed in June 1997 and entered into force in May 1999. It provided for important changes in the range of matters falling under EC competence – incorporation of the **Schengen** acquis, moving asylum and immigration policy to the first pillar, addition of an employment chapter, and incorporation of the Social Chapter Protocol. Amsterdam also introduced the CFSP High Representative, endorsed “the progressive framing of a common defence policy” and extended the use of **co-decision** and **QMV**.

### Acquis

The phrase *acquis communautaire* refers to the whole range of principles, policies, laws, practices, obligations and objectives that have been agreed within the EU. It includes the Treaties, EU legislation, and judgements of the **European Court of Justice**.

### Charter of Fundamental Rights

The Charter sets out the fundamental rights and principles applicable at EU level. It was drawn up by a Convention during 2000 and adopted at the Nice **European Council** in December 2000. Amendments to the Charter were agreed by the Inter-governmental Conference in 2004.

### Co-decision procedure

Introduced by the Treaty of Maastricht, this procedure has been modified by the **Amsterdam Treaty** and now applies to most areas of Community legislation. It involves both the **Council** and **European Parliament** proposing amendments to a piece of legislation proposed by the **Commission**. Both the **Council** and the **European Parliament** need to agree if the draft is to become law. It is a lengthy procedure: it can often take a year or more to approve legislation.

### Commission

An EU institution currently made up of 27 Commissioners (one from each Member State). Its President is Jose Manuel Durao Barroso, former Prime Minister of Portugal. The British Commissioner is Peter Mandelson. The Commission is central to the conduct of EU business. It has the tasks of ensuring the Treaties are correctly applied, of proposing new legislation to the **Council** and **European Parliament** for approval, and of exercising implementing powers given to it by the Council.

### Common Foreign and Security Policy (CFSP)

An area of intergovernmental activity within the **European Union**, that sees the EU Member States work together to achieve common objectives. CFSP covers all areas of foreign and security policy.

### Conclusions

There are three basic forms of Conclusions. Presidency Conclusions, which are not binding and which are typically issued as a summary of Presidency thinking after informal meetings of sectoral Councils. Council Conclusions record the agreement of sectoral Councils, including political agreement on individual legislative proposals and

formal adoption of legislative acts. The European Council does not take legally binding decisions. Its Conclusions are a particular form of Presidency Conclusions. They have no formal legal status but carry political weight through Heads' endorsement. This is in line with the European Council's role, set out in Article 4 TEU, in shaping the EU's internal and external policy agenda. European Council conclusions are produced on the authority of the Presidency only, but agreed by consensus among Heads of State or Government.

## **COREPER**

Coreper stands for the Committee of Permanent Representatives. It is composed of the Member States' ambassadors to the EU and prepares the meetings of the **Council of Ministers**. COREPER I (deputy Permanent Representatives) deals mainly with pillar I issues, while COREPER II (Ambassadors) deals primarily with second and third pillar issues.

## **Council of Ministers of the European Union**

The primary decision-making body of the Union. It meets in different formations, chaired by the **Presidency** and attended by the relevant national ministers. Examples include the Economic/Finance Council (ECOFIN), the Competitiveness Council, and the General Affairs and External Relations Council (GAERC). They are also attended by the **Commission** (usually the relevant Commissioner). Working Groups and the Committee of Permanent Representatives (**COREPER**) prepare the Council's work. It is supported by the Council Secretariat.

## **Enhanced cooperation**

The Treaty of Amsterdam made provision for closer cooperation between sub-groups of Member States (now called 'enhanced cooperation'). These provisions were amended by the Treaty of Nice to make them simpler to operate.

## **EU High Representative**

The representative of the **Council of Ministers** for **Common Foreign and Security Policy** matters. Javier Solana was appointed High Representative for the CFSP in June 1999 by the Cologne **European Council** and re-appointed for a second term in June 2004. He is also Secretary-General of the Council and, as such, head of the Council Secretariat.

## **European Council**

A summit of Heads of State or Government that has met regularly since the 1970s. It now normally meets four times a year, twice under each six-monthly **Presidency**. Originally an informal gathering, the European Council was given formal recognition in the **Single European Act** of 1986. It has the task of providing the EU with the necessary impetus for its development and defining the necessary general political guidelines for its work. These meetings are sometimes referred to as European Summits. The European Council will normally agree Conclusions, signalling its commitment to a course of action.

## **European Court of Justice (ECJ)**

The European Court of Justice is made up of Judges appointed by the **Member States**. It ensures that the law is observed in the interpretation and application of the Treaties. It

therefore rules on questions relating to interpretation of the Treaties and secondary legislation in direct actions and in cases referred to it by national courts. ECJ judgements form part of national law. It also has certain powers in relation to certain Third Pillar measures (see **European Union**), but no jurisdiction over **CFSP**. There is also a Court of First Instance to deal with certain specified issues.

### **European Parliament (EP)**

The European Parliament is composed of 786 members and is directly elected every five years in each Member State. Originally a consultative body, successive Treaties have increased the EP's role in scrutinising the activities of the **Commission** and extended its legislative and budgetary powers. The Parliament meets in plenary session in Strasbourg and Brussels.

### **European Security and Defence Policy (ESDP)**

The European Security and Defence Policy was launched in response to proposals put forward jointly by the then Prime Minister and President Chirac in 1998. It centres on strengthening Europe's capability for crisis management and can undertake other tasks such as humanitarian and rescue tasks, and peacekeeping through both NATO and the EU. The Policy is designed to give the EU the tools to take on humanitarian and peacekeeping tasks where NATO as a whole is not engaged.

### **European Union**

The European Union was created by the Treaty of Maastricht in 1992. It currently consists of three pillars. The First Pillar is the European Community, which covers largely, though by no means exclusively, economic business. The Second Pillar is the **Common Foreign and Security Policy**. The Third Pillar, after amendment by the Treaty of Amsterdam, covers certain police and judicial cooperation in criminal matters. The main differences between the First Pillar and the rest are that under the latter Member States, as well as the Commission, have the right to propose policies and decision-making is more strongly intergovernmental. The **European Court of Justice** has jurisdiction in the First Pillar and, under certain circumstances, in parts of the Third Pillar.

### **Europol**

EU Member States agreed to establish Europol in the **Maastricht Treaty** of 1992 and the organisation started its full activities in July 1999. It is based in Amsterdam. Its purpose is to improve cooperation between the law-enforcement authorities of the **EU Member States**.

### **Legal Base (or basis)**

The article of the EU Treaties that gives the Union the power to act is often called the legal base. It also describes the voting procedure and type of legislative procedure (e.g. co-decision) that must be used.

### **Lisbon economic reform agenda or Lisbon process**

In Lisbon in March 2000 the **European Council** set itself a new strategic goal for the next decade: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and



greater social cohesion.” Progress towards this goal is reviewed at successive Spring European Councils.

### **Maastricht Treaty**

See **European Union**.

### **Member State**

A country which is a member of the **European Union**.

### **Nice Treaty**

The Treaty of Nice was agreed at the Nice **European Council** in December 2000 and came into force in 2003. It set out new arrangements for the size and composition of the **European Commission**, and agreed reforms to the system of **Qualified Majority Voting** in **Council** while extending it to a number of new policy areas.

### **‘Petersberg’ Tasks**

These are humanitarian and rescue tasks, peacekeeping tasks, and tasks of combat forces in crisis management, including peacemaking. It takes its name from the Hotel Petersberg in Germany, where these tasks were first defined, at a summit in 1992.

### **Presidency**

This is in effect the chairmanship of the **European Union**. Under current arrangements, the Presidency rotates every six months among the **Member States**. Germany held the EU Presidency in the first half of 2007. Portugal holds it in the second half. The Presidency chairs most Working Groups, COREPER and meetings of the **Council of Ministers**. The Presidency plays a key role in setting the Union’s agenda and working towards an agreement.

### **Qualified Majority Voting**

This is a voting mechanism in the Council under which a proposal can be adopted without every **Member State** agreeing to it. New vote weighting arrangements agreed in the **Nice Treaty** came into force on 1 November 2004. There are 345 votes in total, allocated among the Member States. 255 votes are needed for a qualified majority and 91 for a blocking minority.

### **Schengen acquis**

“Schengen” is the shorthand for measures originally agreed in 1985, in the Luxembourg village of Schengen, by certain **Member States** on the gradual elimination of border controls at their common frontiers. These agreements were incorporated into the Treaties with the **Amsterdam Treaty** in 1999.

### **Single European Act**

This Treaty, which was agreed in 1986 and entered into force in 1987, was the first substantial revision of the Community Treaties. Among the main changes it made were the initiation of cooperation in environment policy and foreign policy; the extension of **qualified majority voting** (notably to allow the rapid development of the Single Market); the granting of a greater role in legislation to the **European Parliament**; and

the setting up of the Court of the First Instance (see the **European Court of Justice**). It also formally recognised the **European Council**.

### **Single Market**

Shorthand for the EU's commitment to create an internal market in which all obstacles to the free movement of goods, persons, services and capital between Member States have been abolished. The most significant steps towards the completion of the Single Market were taken in 1992 but it remains incomplete in some areas.

### **Subsidiarity**

Subsidiarity is the principle whereby, in policy areas where competence is shared between the Union and **Member States**, the Union should only act when “the objectives of the intended action cannot be sufficiently achieved by the Member States” alone. In other words, the Union should only get involved where it can add value.

### **Unanimity**

A form of voting in the Council. A proposal requiring unanimity must have no **Member State** voting against (abstentions do not matter). See also **Qualified Majority Voting**.



## **ANNEX B: EXTRACT OF THE EUROPEAN COUNCIL PRESIDENCY CONCLUSIONS OF 21/22 JUNE 2007**

### **TREATY REFORM PROCESS**

- “8. The European Council agrees that, after two years of uncertainty over the Union’s treaty reform process, the time has come to resolve the issue and for the Union to move on. The period of reflection has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution.
9. Against this background, the European Council welcomes the report drawn up by the Presidency (doc.10659/07) following the mandate given to it in June 2006, and agrees that settling this issue quickly is a priority.
10. To this end the European Council agrees to convene an Intergovernmental Conference and invites the Presidency without delay to take the necessary steps in accordance with Article 48 of the TUE, with the objective of opening the IGC before the end of July as soon as the legal requirements have been met.
11. The IGC will carry out its work in accordance with the mandate set out in the Annex to these conclusions. The European Council invites the incoming Presidency to draw up a draft Treaty text in line with the terms of the mandate and to submit this to the IGC as soon as it opens. The IGC will complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009.
12. The IGC will be conducted under the overall responsibility of the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The Representative of the Commission will participate in the Conference. The European Parliament will be closely associated with and involved in the work of the Conference with 3 representatives. The General Secretariat of the Council will provide the secretariat support for the Conference.
13. Having consulted the President of the European Parliament, the European Council invites the European Parliament, in order to pave the way for settling the issue of the future composition of the European Parliament in good time before the 2009 elections, to put forward by October 2007 a draft of the initiative foreseen in Protocol 34 as agreed in the 2004 IGC.
14. The incoming presidency is invited to ensure that the candidate countries are kept fully and regularly briefed throughout the Intergovernmental Conference.”

## IGC MANDATE

The present mandate will provide the exclusive basis and framework for the work of the IGC that will be convened according to paragraph 10 of the European Council conclusions.

### I. GENERAL OBSERVATIONS

1. The IGC is asked to draw up a Treaty (hereinafter called "*Reform Treaty*") amending the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned. The *Reform Treaty* will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC, as set out below in a detailed fashion.
2. The *Reform Treaty* will contain two substantive clauses amending respectively the *Treaty on the European Union (TEU)* and the *Treaty establishing the European Community (TEC)*. The *TEU* will keep its present name and the *TEC* will be called *Treaty on the Functioning of the Union*, the Union having a single legal personality. The word "Community" will throughout be replaced by the word "Union"; it will be stated that the two Treaties constitute the Treaties on which the Union is founded and that the Union replaces and succeeds the Community. Further clauses will contain the usual provisions on ratification and entry into force as well as transitional arrangements. Technical amendments to the *Euratom Treaty* and to the existing *Protocols*, as agreed in the 2004 IGC, will be done via *Protocols* attached to the *Reform Treaty*.
3. The *TEU* and the *Treaty on the Functioning of the Union* will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice<sup>1</sup>.
4. As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the *TEU* and the *Treaty on the Functioning of the Union*, as specified in this mandate. Modifications to these innovations introduced as a result of the consultations held with the Member States over the past 6 months are clearly indicated below. They concern in particular the respective competences of the EU and the Member States and their delimitation, the specific nature of the Common Foreign and Security Policy, the enhanced role of national parliaments, the treatment of the Charter of

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<sup>1</sup> Whilst the Article on primacy of Union law will not be reproduced in the *TEU*, the IGC will agree on the following Declaration: "The Conference recalls that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law." In addition, the opinion of the Legal Service of the Council (doc. 11197/07) will be annexed to the Final Act of the Conference.

Fundamental Rights and a mechanism, in the area of police and judicial cooperation in criminal matters, enabling Member States to go forward on a given act while allowing others not to participate.

## II. AMENDMENTS TO THE EU TREATY

5. Clause 1 of the *Reform Treaty* will contain the amendments to the present *TEU*.

In the absence of indications to the contrary in this mandate, the text of the existing Treaty remains unchanged.

6. The text of the first recital as agreed in the 2004 IGC will be inserted as a second recital into the Preamble.
7. The *TEU* will be divided into 6 Titles: *Common Provisions (I)*, *Provisions on democratic principles (II)*, *Provisions on institutions (III)*, *Provisions on enhanced cooperation (IV)*, *General Provisions on the Union's External Action and specific Provisions on the Common Foreign and Security Policy (V)*, and *Final Provisions (VI)*. Titles I, IV (present VII), V and VI (present VIII) follow the structure of the existing *TEU*, with amendments as agreed in the 2004 IGC.<sup>1</sup> The two other titles (II and III) are new and introduce innovations agreed in the 2004 IGC.

### *Common Provisions (I)*

8. Title I of the existing *TEU*, containing inter alia Articles on the Union's values and objectives, on relations between the Union and the Member States, and on the suspension of rights of Member States, will be amended in line with the innovations agreed in the 2004 IGC (see Annex 1, Title I).
9. The Article on fundamental rights will contain a cross reference<sup>2</sup> to the *Charter on fundamental rights*, as agreed in the 2004 IGC, giving it legally binding value and setting out the scope of its application.
10. In the Article on fundamental principles concerning competences it will be specified that the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties.

### *Provisions on democratic principles (II)*

11. This new Title II will contain the provisions agreed in the 2004 IGC on democratic equality, representative democracy, participatory democracy and the citizens' initiative. Concerning national parliaments, their role will be further enhanced compared to the provisions agreed in the 2004 IGC (see Annex 1, Title II):
- The period given to national parliaments to examine draft legislative texts and to give a reasoned opinion on subsidiarity will be extended from 6 to 8 weeks (the *Protocols on national Parliaments and on subsidiarity and proportionality* will be modified accordingly).
  - There will be a reinforced control mechanism of subsidiarity in the sense that if a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft act, which it may decide to maintain, amend or withdraw. If it chooses to maintain the draft,

1 The content of Title VI on police and judicial cooperation in criminal matters will be put into the Title on the Area of freedom, security and justice in the Treaty on the Functioning of the Union (*TFEU*), see below under "Amendments to the EC Treaty".

2 Therefore, the text of the Charter on fundamental rights will not be included in the Treaties.

the Commission will have, in a reasoned opinion, to justify why it considers that the draft complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national parliaments, will have to be transmitted to the EU legislator, for consideration in the legislative procedure. This will trigger a specific procedure:

- before concluding first reading under the ordinary legislative procedure, the legislator (Council and Parliament) shall consider the compatibility of the legislative proposal with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national parliaments as well as the reasoned opinion of the Commission;
- If, by a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration. (the *Protocol on subsidiarity and proportionality* will be modified accordingly).

A new general Article will reflect the role of the national parliaments.

### *Provisions on institutions (III)*

12. The institutional changes agreed in the 2004 IGC will be integrated partly into the *TEU* and partly into the *Treaty on the Functioning of the Union*. The new Title III will give an overview of the institutional system and will set out the following institutional modifications to the existing system, i.e. the Articles on the Union's institutions, the European Parliament (new composition), the European Council (transformation into an institution<sup>1</sup> and creation of the office of President), the Council (introduction of the double majority voting system and changes in the six-monthly Council presidency system, with the possibility of modifying it), the European Commission (new composition and strengthening of the role of its President), the Union Minister for Foreign Affairs (creation of the new office, its title being changed to High Representative of the Union for Foreign Affairs and Security Policy) and the Court of Justice of the European Union.<sup>2</sup>
13. The double majority voting system, as agreed in the 2004 IGC, will take effect on 1 November 2014, until which date the present qualified majority system (Article 205(2) TEC) will continue to apply. After that, during a transitional period until 31 March 2017, when a decision is to be adopted by qualified majority, a member of the Council may request that the decision be taken in accordance with the qualified majority as defined in Article 205(2) of the present TEC.

In addition, until 31 March 2017, if members of the Council representing at least 75% of the population or at least 75% of the number of Member States necessary to constitute a blocking minority resulting from the application of Article [I-25(1) first subparagraph], or Article [I-25(2)], indicate their opposition to the Council adopting an act by a qualified majority, the mechanism provided for in the draft Decision contained in Declaration n° 5 annexed to the Final Act of the 2004 IGC will apply. As from 1 April 2017, the same mechanism will apply, the relevant percentages being, respectively, at least 55% of the population or at least 55% of the number of Member States necessary to constitute a blocking minority resulting from the application of Article [I-25(1) first subparagraph], or Article [I 25(2)].

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<sup>1</sup> Including modalities of vote.

<sup>2</sup> There will be some drafting adaptations due to the merging of some provisions.

#### *Provisions on enhanced cooperation (IV)*

14. Title IV (former Title VII of the existing TEU) will be amended as agreed in the 2004 IGC. The minimum number of Member States required for launching an enhanced cooperation will be nine.

#### *General Provisions on the Union's external action and specific Provisions on the Common Foreign and Security Policy (V)*

15. In Title V of the existing TEU, a first new Chapter on the general provisions on the Union's external action will be inserted containing two Articles, as agreed in the 2004 IGC, on the principles and objectives of the Union's external action and on the role of the European Council in setting the strategic interests and objectives of this action. The second Chapter contains the provisions of Title V<sup>1</sup> of the existing TEU, as amended in the 2004 IGC (including the European External Action Service and the permanent structured cooperation in the field of defence). In this Chapter, a new first Article will be inserted stating that the Union's action on the international scene will be guided by the principles, will pursue the objectives and will be conducted in accordance with the general provisions on the Union's external action which are laid down in Chapter 1. It will be clearly specified in this Chapter that the CFSP is subject to specific procedures and rules. There will also be a specific legal basis on personal data protection in the CFSP area<sup>2</sup>.

#### *Final Provisions (VI)*

16. Title VI (former Title VIII of the existing TEU) will be amended as agreed in the 2004 IGC. There will in particular be an Article on the legal personality of the Union<sup>3</sup>, an Article on voluntary withdrawal from the Union and Article 48 will be amended so as to bring together the procedures for revising the Treaties (the ordinary and the two simplified procedures). This Article, in its paragraph on the ordinary revision procedure, will make it clear that the Treaties can be revised to increase or reduce the competences conferred upon the Union. In Article 49, on conditions of eligibility and the procedure for accession to the Union, the reference to the principles will be replaced by a reference to the Union's values and the addition of a commitment to promoting such values, an obligation to notify the European Parliament and national parliaments of an application for accession to the Union and a reference to take into account the conditions of eligibility agreed upon by the European Council (see Annex 1, Title VI). The usual final provision will also be adapted (territorial scope, duration, ratification and authentic texts and translations).<sup>4</sup>

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1 The IGC will agree on the following Declaration: "The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security."

2 With regard to the processing of such data by the Member States when carrying out activities which fall within the CFSP and ESDP and the movement of such data.

3 The IGC will agree on the following Declaration: "The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties."

4 Articles 41, 42, 46 and 50 of the TEU will be deleted, Article 47 being placed, as amended in the 2004 IGC, in the CFSP Chapter.



### III. AMENDMENTS TO THE EC TREATY

17. Clause 2 of the *Reform Treaty* will contain the amendments to the present *TEC*, which will become the *Treaty on the Functioning of the European Union*.
18. The innovations as agreed in the 2004 IGC will be inserted into the Treaty by way of specific modifications in the usual manner. They concern the categories and areas of competences, the scope of qualified majority voting and of codecision, the distinction between legislative and non legislative acts, provisions *inter alia* on the Area of freedom, security and justice, the solidarity clause, the improvements to the governance of the euro, horizontal provisions such as the social clause, specific provisions such as public services, space, energy, civil protection, humanitarian aid, public health, sport, tourism, outermost regions, administrative cooperation, financial provisions (own resources, multiannual financial framework, new budgetary procedure).
19. The following modifications will be introduced compared to the results of the 2004 IGC (see Annex 2):
  - a) A new Article 1 will state the purpose of the Treaty on the functioning of the Union and its relation with the EU Treaty. It will state that the two Treaties have the same legal value.
  - b) In the Article on categories of competences, placed at the beginning of the *TEC*, it will be clearly specified that the Member States will exercise again their competence to the extent that the Union has decided to cease exercising its competence.<sup>1</sup>
  - c) In the Article on supporting, coordinating or complementary action, the introductory sentence will be amended so as to underline that the Union carries out actions to support, coordinate or supplement the actions of the Member States.
  - d) In Article 18(3), as amended in the 2004 IGC, the phrase on the adoption of measures on passports, identity cards, residence permits and similar documents will be removed and transferred to a similar legal basis on this issue to be placed in the Title on the Area of freedom, security and justice, in the Article on border checks.
  - e) In Article 20 (diplomatic and consular protection), as amended in the 2004 IGC, the legal basis will be amended so as to provide in this field for adoption of directives establishing coordination and cooperation measures.

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<sup>1</sup> (a) The IGC will also agree a Declaration in relation to the delimitation of competences: “*The Conference underlines that, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union, competences not conferred upon the Union in the Treaties remain with Member States. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular to better ensure the constant respect for the principles of subsidiarity and proportionality. The Council may request, at the initiative of one or several of its Members (representatives of Member States) and in accordance with Article 208, the Commission to submit proposals for repealing a legislative act.* Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article [IV-443] of the Treaty on European Union, may decide to amend the Treaties on which the Union is founded, including either to increase or to reduce the competences conferred on the Union in the said Treaties.”

(b) The following Protocol will be annexed to the Treaties:

“*With reference to Article[ I-12(2)] on shared competences, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.*”

- f) In Article 286 (personal data protection), as amended in the 2004 IGC, a subparagraph will be inserted stating that the rules adopted on the basis of this Article will be without prejudice to those adopted under the specific legal basis on this subject which will be introduced in the CFSP Title (the IGC will also adopt a declaration on personal data protection in the areas of police and judicial cooperation in criminal matters, as well as, where appropriate, specific entries in the relevant Protocols on the position of individual Member States clarifying their applicability in this respect).
- g) In Article 42 (aggregation of insurance periods and export of social security benefits), an addition will be made to stress that the procedure is halted in the brake system if the European Council does not take any action within 4 months (see point 1) of Annex 2).<sup>1</sup>
- h) Article 60 (freezing of assets to combat terrorism), as amended in the 2004 IGC, will be transferred towards the end of the Chapter on general provisions in the Title on the Area of freedom, security and justice.
- i) On the issue of services of general economic interest (cf. Article 16, as amended in the 2004 IGC) a Protocol will be annexed to the Treaties.<sup>2</sup>
- j) In the Chapter on general provisions applying to the area of freedom, security and justice, insertion of a provision about cooperation and coordination by Member States in the field of national security (see point 2)(a) of Annex 2).
- k) In the Chapter on judicial cooperation in civil matters, paragraph 3 of the Article on such cooperation, as agreed in the 2004 IGC, will be modified so as to give a role to national parliaments in the “passerelle” clause on family law (see point 2)(b) of Annex 2).
- l) In the Chapters on judicial cooperation in criminal matters and on police cooperation, as amended in the 2004 IGC, in the Articles on mutual recognition of judgments, minimum rules on definition of criminal offences and sanctions, the European Public Prosecutor, and police cooperation, a new mechanism will be inserted enabling Member States to go forward with adopting measures in this field while allowing others not to participate (see point 2)(c) and (d) of Annex 2). Moreover, the scope of the Protocol on the position of the United Kingdom and Ireland (1997) will be extended so as to include, in relation to the UK, and on the same terms, the Chapters on judicial cooperation in criminal matters and on police cooperation. It may also address

1 The IGC will also agree a Declaration in relation to this Article: “The Conference recalls that in that case, in accordance with Article [I-21(4)], the European Council acts by consensus”.

2 The following Protocol will be annexed to the Treaties:

“Protocol on services of general interest

The High Contracting Parties,

Wishing to emphasise the importance of services of general interest

Have agreed upon the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 16 EC Treaty include in particular:

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights;

Article 2

The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest.”

the application of the Protocol in relation to Schengen building measures and amendments to existing measures. This extension will take account of the UK's position under the previously existing Union *acquis* in these areas. Ireland will determine in due course its position with regard to that extension.

- m) In Article 100 (measures in case of severe difficulties in the supply of certain products), a reference to the spirit of solidarity between Member States and to the particular case of energy as regards difficulties in the supply of certain product will be inserted (see point 3) of Annex 2).
- n) In Article 152 (public health), as amended in the 2004 IGC, point (d) on measures concerning monitoring, early warning of and combating serious cross border threats to health will be transferred to the paragraph on adoption of incentive measures (the IGC will also adopt a declaration clarifying the internal market aspect of measures on the quality and safety standards for medicinal products and devices).
- o) In the Article on European space policy, agreed in the 2004 IGC, it will be specified that measures adopted may not entail harmonisation of the laws and regulations of the Member States.
- p) In Article 174 (environment), as amended in the 2004 IGC, the particular need to combat climate change in measures at international level will be specified (see point 4) of Annex 2).
- q) In the Article on energy, agreed in the 2004 IGC, a reference to the spirit of solidarity between Member States will be inserted (see point 5) of Annex 2), as well as a new point (d) on the promotion of interconnection of energy networks.
- r) At the beginning of the Part on the Union's external action, an Article will be inserted stating that the Union's action on the international scene will be guided by the principles, will pursue the objectives and will be conducted in accordance with the general provisions on the Union's external action which are laid down in Chapter 1 of Title V of the *TEU*.
- s) In the Article on the procedure for concluding international agreements, it will be added that the agreement on the accession of the Union to the ECHR will be concluded by the Council, by unanimity and with ratification by Member States.
- t) Article 229 A (extension of ECJ jurisdiction on disputes relating to European intellectual property rights) will remain unchanged.
- u) In Article 249 (definition of EU acts: regulation, directive and decision), in a new Section 1 on the Union's legal acts, the definition of a decision will be aligned with the one agreed in the 2004 IGC.
- v) As a consequence of dropping the denominations "law" and "framework law", the innovations agreed in the 2004 IGC will be adapted, while maintaining the distinction between what is legislative and what is not and its consequences. Accordingly, after Article 249, three Articles will be introduced on, respectively, acts which are adopted in accordance with a legislative procedure, delegated acts and implementing acts. The Article on legislative acts will state that acts (regulations, directives or decisions) adopted under a legislative procedure (ordinary or special) will be legislative acts. The terminology in the Articles on delegated and implementing acts, as agreed in the 2004 IGC, will be adapted accordingly.



- w) In Article 308 (flexibility clause), as amended in the 2004 IGC, a paragraph will be added stating that this Article cannot serve as a basis for attaining objectives pertaining to the CFSP, and that any acts adopted pursuant to this Article will have to respect the limits set out in Article [III-308, second subparagraph].<sup>1</sup>
  - x) After Article 308, an Article will be inserted excluding from the coverage of the simplified revision procedure those legal bases which were not covered by this procedure in the texts as agreed in the 2004 IGC.
20. In addition, a number of provisions agreed in the 2004 IGC will be located in the *Treaty on the Functioning of the Union* (see list in Part B of Annex 2).

#### IV. PROTOCOLS AND THE EURATOM TREATY

- 21. The new Protocols agreed in the 2004 IGC<sup>2</sup> will be annexed to the existing Treaties (i.e. Protocol on the role of national Parliaments in the European Union, Protocol on the application of the principles of subsidiarity and proportionality, Protocol on the Euro Group, Protocol on permanent structured cooperation in the field of defence and Protocol on the accession of the Union to the ECHR).
- 22. A Protocol annexed to the *Reform Treaty* will amend the existing Protocols, as agreed in the 2004 IGC (including the deletion of 10 of them).
- 23. A Protocol annexed to the *Reform Treaty* will make the necessary technical amendments, as agreed in the 2004 IGC, to the *Euratom Treaty*.

#### V. DECLARATIONS

- 24. In addition to the Declarations referred to in the present mandate, the Declarations as agreed by the 2004 IGC will be taken over by the present IGC, to the extent they relate to provisions or protocols examined during the present IGC.

1 The IGC will also agree two Declarations in relation to this Article:

1) "The Conference declares that the reference in Article 308 to objectives of the Union refers to the objectives as set out in Article [I-3(2) and (3)] and to the objectives of Articles [I-3(4)] with respect to external action under Part III, Title V of the Treaty. It is therefore excluded that an action based on Article 308 would only pursue objectives set out in Article [I-3(1)]. In this connection, the Conference notes that in accordance with Article [I-40(6)], legislative acts may not be adopted in the area of Common Foreign and Security Policy."

2) "The Conference underlines that, in accordance with the settled case-law of the Court of Justice of the European Union, Article 308, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, Article 308 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose."

2 Some of these Protocols are not necessary due to the fact that the existing Treaties are not repealed and are therefore not listed. It is underlined that all existing Treaties, including the Accession Acts, remain in force.

**Title I – Common provisions**

*The purpose of this Annex is to clarify the exact drafting where necessary*

- 1) *Insertion in the Preamble of the EU Treaty of the following second whereas clause\*<sup>1</sup>:*

“DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,”

- 2) *In Article 1, insertion of the following sentences:*

*At the end of the first subparagraph:* “... on which the Member States confer competences to attain objectives they have in common.”

*To replace the last subparagraph:* “The Union shall be founded on the present Treaty and on the Treaty on the functioning of the European Union. It shall replace and succeed the European Community.”

- 2bis *Insertion of an Article 2 on the values of the Union.\**

- 3) *Replacement of Article 2 on the Union’s objectives, renumbered 3, with the following text:<sup>2</sup>*

“1. The Union’s aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

<sup>1</sup> Throughout this Annex, this sign (\*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.

<sup>2</sup> The following Protocol will be annexed to the Treaties:

*“Protocol on internal market and competition*

*The High Contracting Parties, considering that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted*

*Have agreed that,*

*to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 of the Treaty on the Functioning of the Union.”*

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

- 3bis. The Union shall establish an economic and monetary union whose currency is the euro.
  4. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.
  5. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.”
- 4) *Replacement of Article 3 by an Article 4 on the relations between the Union and the Member States\**, with the addition of the following at the beginning and of a sentence at the end of the present paragraph 1, renumbered 2:
- “1. In accordance with Article [I-11], competences not conferred upon the Union in the Treaties remain with the Member States.
  2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.  
*(present paragraph 2 renumbered 3)”*.

5) Replacement of Article 6 on fundamental rights with a text reading as follows:<sup>1 2 3 4</sup>

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted on [... 2007<sup>5</sup>], which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.”

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.
3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.

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1 The IGC will agree the following Declaration: “The Conference declares that:

1. The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.
2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.”

2 Unilateral Declaration by Poland:

“The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law as well as the protection of human dignity and respect for human physical and moral integrity.”

3 The following Protocol will be annexed to the Treaties:

“The High Contracting Parties

Whereas in Article [xx] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;

Whereas the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [xx] and Title VII of the Charter itself;

Whereas the aforementioned Article [xx] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the Explanations referred to in that Article;

Whereas the Charter contains both rights and principles;

Whereas the Charter contains both provisions which are civil and political in character and those which are economic and social in character; Whereas the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;

Recalling the United Kingdom’s obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

Noting the wish of the United Kingdom to clarify certain aspects of the application of the Charter;

Desirous therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;

Reaffirming that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;

Reaffirming that this Protocol is without prejudice to the application of the Charter to other Member States;

Reaffirming that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;

Have agreed upon the following provisions which shall be annexed to the Treaty on European Union:

Article 1

1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in [Title IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.

Article 2

To the extent that a provision of the Charter refers to national laws and practices, it shall only apply in the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom.”

4 Two delegations reserved their right to join in the Protocol referred to in footnote 19.

5 I.e. the version of the Charter as agreed in the 2004 IGC which will be re-enacted by the three Institutions in [2007]. It will be published in the Official Journal of the European Union.

6) *Insertion of an Article 7bis on the Union and its neighbours\**.

## **Title II – Provisions on democratic principles**

7) *Insertion of a new Article on the role of national parliaments in the Union reading as follows:*

“National parliaments shall contribute actively to the good functioning of the Union:

- a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the European Union;
- b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article [III-260], and through being involved in the political monitoring of Europol and the evaluation of Eurojust’s activities in accordance with Articles [III-276 and III-273];
- d) by taking part in the revision procedures of the Treaties, in accordance with Article [IV-443 and IV-444];
- e) by being notified of applications for accession to the Union, in accordance with Article [49];
- f) by taking part in the interparliamentary cooperation between national parliaments and with the European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union.”.

## **Title V – General provisions on the Union’s External Action and specific provisions on the Common Foreign and Security Policy**

8) *In Article 11, insertion of a paragraph 1 reading as follows (the current text of paragraph 1 being deleted):<sup>1</sup>*

1. The Union’s competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union’s security, including the progressive framing of a common defence policy that might lead to a common defence.

The common foreign and security policy is subject to specific procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and

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<sup>1</sup> The IGC will agree the following Declaration: “In addition to the specific procedures referred to in [paragraph 1 of Article 11], the Conference underlines that the provisions covering CFSP including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State’s membership of the Security Council of the UN. The Conference also notes that the provisions covering CFSP do not give new powers to the Commission to initiate decisions or increase the role of the European Parliament. The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.”

Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor the compliance with Article [III-308] and to review the legality of certain decisions as provided for by Article [III-376, second subparagraph].”

**Title VI – Final provisions**

- 9) In Article 49, first subparagraph, insertion of a new last sentence, the second subparagraph remaining unchanged:

“Article 49

*Conditions of eligibility and procedure for accession to the Union*

*Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.”*

**A. Modifications compared with the results as agreed in the 2004 IGC**

*The purpose of this Annex is to clarify the exact drafting where necessary (A) and to clarify the location of certain provisions (B)*

- 1) *In Article 42, insertion of amendments as agreed in the 2004 IGC, with addition of the following, at the end:*

“Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

- (a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure, or
- (b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.”

- 2) *Replacement, as agreed in the 2004 IGC, of Title IV with the provisions of a new Title on the area of freedom, security and justice\*, which includes Chapter 1 (general provisions), Chapter 2 (policies on border checks, asylum and immigration), Chapter 3 (judicial cooperation in civil matters), Chapter 4 (judicial cooperation in criminal matters) and Chapter 5 (police cooperation).*

- (a) *In Chapter 1 (general provisions), insertion in [Article III-262] of the following new second subparagraph:*

“It shall be open to Member States to organize between themselves and under their responsibility forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.”

- (b) *In Chapter 3 (judicial cooperation in civil matters), replacement of paragraph 3 of [Article III-269] as follows:*

3. Notwithstanding paragraph 2, measures concerning family law with cross border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the second subparagraph shall not be adopted. In the absence of opposition, the Council may adopt the decision.”

<sup>1</sup> Throughout this Annex, this sign (\*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.



(c) In Chapter 4 (judicial cooperation in criminal matters), replacement of, respectively, paragraphs 3 and 4 of [Article III-270] and of [Article III-271] by the following:

“3. Where a member of the Council considers that a draft directive as referred to in [paragraph 2 of III-270] [paragraphs 1 or 2 of III-271] would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least 9 Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I 44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply.”

(d) In Chapter 4 (judicial cooperation in criminal matters) and in Chapter 5 (police cooperation) insertion of the following new last subparagraphs, respectively, in paragraph 1 of [III-274] and in paragraph 3 of [Article III-275]:

“In case of absence of unanimity in the Council, a group of at least 9 Member States may request that the draft [regulation/measures] be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least 9 Member States wish to establish enhanced cooperation on the basis of the draft [regulation/measures] concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I 44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply.”

[in III-275(3) only: “The specific procedure provided in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis.”].

3) In Article 100, replacement of paragraph 1 with the following:

“1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.”

4) In Title XIX (environment), insertion of amendments as agreed in the 2004 IGC, with the replacement of the last indent in Article 174 by the following:

“– promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.”



5) Insertion of a new Title on energy, as agreed in the 2004 IGC, with the replacement of the introductory sentence in paragraph 1 of the Article [III-256] by the following:

“1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (...)”.

#### **B. Clarifications on the location of certain provisions\***

- 6) Status of churches and non-confessional organisations (end of Title II on provisions of general application);
- 7) Citizenship of the Union (Part Two);
- 8) Legal basis for adopting the arrangements for the submission of a citizens' initiative [I-47(4)] (at the beginning of Article 27);
- 9) Transparency of the proceedings of the Union institutions, bodies, offices and agencies (Article 255, moved in Part Two);
- 10) Social partners and the social dialogue (beginning of the Chapter on social policy);
- 11) Solidarity clause (new Title VII in the Part on External Action);
- 12) European Ombudsman (in Article 195);
- 13) Provision under which the rules on QMV in the Council also apply to the European Council ([Article I-25(3)] in the new Section 1bis on European Council);
- 14) Legal bases for adopting the list of Council configurations [Article I-24(4)] and the decision on the presidency of these configurations (Article I-24(7)) and replacement of Article 205(2) with the QMV rule applicable when the Council does not act on the basis of a Commission proposal [Article I-25(2)] (in Section 2 on Council);
- 15) Legal basis for the adoption of the rotation system for the composition of the Commission [Article I-26(6)(a) and (b)] (Section 3 on Commission);
- 16) European Central Bank (in Section 4bis in Part Five);
- 17) Court of Auditors (in Section 5 in Part Five);
- 18) The Union's Advisory Bodies (in Chapters 3 and 4 in Part Five);
- 19) Specific Title II on financial provisions (Chapters on the Union's own resources, the multiannual financial framework, the Union's annual budget, the implementation of the budget and discharge, common provisions and combating fraud);
- 20) A Title III and provisions on enhanced cooperation, including the transfer of Articles 27 A to 27 E and 40 to 40 B TEU and of the details on voting arrangements [Article I-44(3)];
- 21) Amendment of Article 309 with the details of voting rules in case of suspension of certain rights resulting from Union membership [Article I-59(5) and (6)];
- 22) Insertion in the General and Final Provisions of the details of territorial scope [Article IV-440(2) to (7)].



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