



Statewatch

EU Reform Treaty: Likely text of the 'First Pillar' External relations provisions (Annotated version)

Prepared by
Professor Steve Peers, University of Essex
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Introduction

The following text sets out what will likely be the text of the external relations Part of the European Community Treaty (EC Treaty), to be renamed the Treaty on the Functioning of the European Union (TFEU), following the agreement on a mandate to negotiate at an Intergovernmental Conference a 'Reform Treaty' for the EU (the IGC mandate), on June 23rd.

This text is based on the relevant text of the EU's Constitutional Treaty as signed in 2004 (OJ 2004 C 310), the text of which would be inserted by the planned 'Reform Treaty' into the current EU Treaty (the TEU) and the current EC Treaty (future TFEU), including the amendments agreed in the IGC mandate.

This is **not** an official text. The official text of a draft Treaty is due to be circulated when the IGC officially begins (likely to be late July), and this text will be finalised upon conclusion of the IGC (planned for mid-October). Some further changes to the text are possible before its signature - which is now planned for December.

Any text which I consider is particularly likely to be altered is set out in square brackets.

The text of this Part of the TFEU would not alter much from the text agreed as part of the Constitutional Treaty. The only changes to these issues agreed as part of the IGC mandate were the separation of the foreign policy provisions (which will be inserted into the TEU; this requires a new cross-reference clause), the renaming of the EU Minister for Foreign Affairs, the insertion of the 'solidarity' clause into the TEC/TFEU, and the requirement for unanimous voting/national ratification for the EU to accede to the ECHR.

I have assumed that the new Part on external relations will be inserted as a new Part Five of the TEC/TFEU, and have numbered the Treaty Articles accordingly. The numbering of the Treaty Articles will obviously change (we can surely expect that the entire TEC/TFEU will be renumbered), and the wording of the text

relating to the decision-making process is provisional, as it is not clear how the Reform Treaty drafters will refer to decision-making processes.

The footnotes compare the text of the Constitutional/Reform Treaty to the current Treaty rules, and explain the changes to the Constitutional Treaty text which EU leaders have agreed in the IGC mandate for negotiations on the Reform Treaty.

Part [Five]

THE UNION'S EXTERNAL ACTION

TITLE I [PROVISIONS HAVING GENERAL APPLICATION]

[Article 188a (no provision in Constitutional Treaty)¹]

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 Treaty on European Union.

TITLE II COMMON COMMERCIAL POLICY

[Article 188b (ex Article III-314)]²

By establishing a customs union in accordance with [Article III-151], the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

[Article 188c (ex Article III-315)]³

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial

¹ The IGC mandate provides for a new clause linking the TFEU external policies with the clauses on the general principles of EU external relations and on the adoption of strategic decisions covering all aspects of EU external relations (ie the current 'Common Strategies'), which appear in Articles III- and III- of the Constitutional Treaty, and which will be inserted into the revised TEU.

² Art. 131 EC, amended to refer to direct investment, to state that the *Union* (rather than the Member States) has created the customs union, and to delete a reference to the corresponding abolition of internal customs duties. Arts. 132 and 134 EC would be deleted.

³ Art. 133 EC, amended: to update the scope in para. 1 (including both WTO measures already within the scope, and foreign direct investment generally, which is not); to change the decision-making process for adoption of internal legislation; to require reports to the EP on negotiations; to provide implicitly for exclusive EC competence for all aspects of CCP (see also Art. I-12, which will be inserted into the TFEU); to reduce the cases in which unanimous voting is required; to delete the Council's power to extend the CCP to other aspects of intellectual property; and apparently to extend the EU's CCP power to include *internal* legislation concerning external trade in services, intellectual property and direct investment.

policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. A [European law or framework law] shall establish the measures required to implement the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, the relevant provisions of [Article III-325] shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements:

- a) in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity;
- b) in the field of social, educational and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the possibility of Member States to deliver them.

5. The negotiation and conclusion of agreements in the field of transport shall be subject to [Section 7 of Chapter III of Title III and Article III-325].

6. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the [Treaty] excludes such harmonisation.

TITLE III
COOPERATION WITH THIRD COUNTRIES
AND HUMANITARIAN AID

SECTION 1
DEVELOPMENT COOPERATION

[Article 188d (ex Article III-316)]⁴

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

[Article 188e (ex Article III-317)]⁵

1. [European laws or framework laws] shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Articles [III-292 and III-316].

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

[Article 188f (ex Article III-318)]⁶

1. In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may

⁴ Amended text of Arts. 177 and 178 TEC; parts of Art. 177 were moved to the clause on the general principles of EU external relations. Note the amendment to give priority to poverty reduction and eradication.

⁵ Amended text of Art. 179 and part of Art. 181. The reference to programmes with a thematic approach is new (but reflects practice). The current Art. 179(3), specifying that cooperation with ACP countries within the ACP-EC Convention is separate, would be deleted.

⁶ Amended text of Art. 180 and part of Art. 181 (in para. 3). The reference to complementarity and efficiency is new.

undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

SECTION 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

[Article 188g (ex Article III-319)]⁷

1. Without prejudice to the other provisions of this Constitution, and in particular those of Articles [III-316 to III-318], the Union shall carry out economic, financial and technical cooperation measures, including financial aid in particular, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's measures and those of the Member State shall complement and reinforce each other.

2. [European laws or framework laws] shall establish the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned. ~~The Council of Ministers shall act unanimously for the association agreements referred to in Article III-226(2) and for the agreements with the States which are candidates for accession to the Union.~~

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

[Article 188h (ex Article III-320)]⁸

When the situation in a third country requires urgent financial aid from the Union, the Council shall adopt the necessary [European decisions] on a proposal from the Commission.

7 Art. 181a, amended to replace a reference to human rights to a reference to general EU external objectives, which include human rights (see the general clause to be inserted into the TEU), to refer expressly to financial aid, and to change the decision-making procedure for internal measures to 'co-decision'. The line in ~~strikeout~~ would also be deleted.

⁸ New; the current practice is to use the 'residual powers' clause in Art. 308 EC (unanimous vote in Council, consultation of EP) for such measures. This clause would be subject to qualified majority voting, with no role for the EP.

SECTION 3 HUMANITARIAN AID

[Article 188i (ex Article III-321)]⁹

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of impartiality, neutrality and non-discrimination.

3. [European laws or framework laws] shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in [Article III-292].

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. [European laws] shall determine the rules and procedures for the operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

TITLE IV RESTRICTIVE MEASURES

[Article 188j (ex Article III-322)]¹⁰

⁹ New; the current practice is to adopt humanitarian aid rules as part of development policy.

¹⁰ Para. 1 is Art. 301 EC, amended to include information for the EP and a requirement of a joint proposal of the Commission and the High Representative. This provision also incorporates the current EC power to impose financial sanctions as provided for in the current Art. 60 EC; the possibility referred to in the current Art. 60 of *national* financial sanctions, which could then be overturned by the Council, is dropped. Para. 2 is new; such measures are now adopted in practice using Art. 308 EC, but this has been challenged in cases before the EU courts (the practice has been upheld several times by the Court of First Instance, but those judgments are on appeal to the Court of Justice).

1. Where a [European decision on a Union position or action] adopted in accordance with the provisions on the common foreign and security policy in [Title V of the Treaty on European Union] provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary [European regulations or decisions]. It shall inform the European Parliament thereof.

2. In the areas referred to in paragraph 1, the Council may adopt restrictive measures under the same procedure against natural or legal persons and non-State groups or bodies.

TITLE V INTERNATIONAL AGREEMENTS

It is not clear, following the clearer separation between EU foreign policy and other EU policies as agreed as part of the IGC mandate, whether this Title will be applicable to the EU's foreign policy.

[Article 188k (ex Article III-323)]¹¹

1. The Union may conclude agreements with one or more third countries or international organisations where the [Treaties] so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the [Treaties], or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

[Article 188l (ex Article III-324)]¹²

The Union may conclude association agreements with one or more third countries or international organisations, in order to establish an association involving reciprocal rights and obligations, common actions and special procedures.

[Article 188m (ex Article III-325)]¹³

¹¹ Para. 1 is new, but attempts to summarise the ECJ case law regarding the *existence* (not the nature) of external competence within EC law. Note that this clause would apply to all three 'pillars', unless the Reform Treaty is understood to require a distinction to be made for foreign policy. Para. 2 is taken from the current Art. 300(7) EC and the current Art. 24(6) EU, but the latter does not specify that agreements are binding on the Member States.

¹² Art. 310 EC, effectively not amended; but see the Article on the EU's neighbours to be inserted into the TEU.

¹³ Merger of Art. 300 EC with Art. 24 EU (and in effect Art. 38 EU). Note that there are still separate rules within this article for second pillar treaties, but that third pillar treaty rules would now be covered by the first pillar rules (Art. 37 EU on third pillar representation during international conferences would also be deleted); that negotiating mandates and signature and conclusion of treaties would be adopted in the form of normal 'decisions' (confirming the case law permitting them to be subject to ECJ jurisdiction); that the EP would have assent power whenever the co-decision procedure applies (not just where legislation would have to be amended) and for accession to the ECHR; the EP has information rights throughout; and the Council must be unanimous to agree accession to the ECHR.

1. Without prejudice to the specific provisions laid down in Article [III-315], agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.
3. The Commission, [or the [High Representative of the Union for Foreign Affairs and Security Policy](#) where the agreement relates exclusively or principally to the common foreign and security policy], shall submit recommendations to the Council, which shall adopt a [European decision] authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or head of the Union's negotiating team.
4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.
5. The Council, on a proposal from the negotiator, shall adopt a [European decision] authorising the signing of the agreement and, if necessary, its provisional application before entry into force.
6. The Council, on a proposal by the negotiator, shall adopt a [European decision] concluding the agreement.

[Except where agreements relate exclusively to the common foreign and security policy], the Council shall adopt the [European decision] concluding the agreement

a) after obtaining the consent of the European Parliament in the following cases:

- (i) association agreements;
- (ii) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (iii) agreements establishing a specific institutional framework by organising cooperation procedures;
- (iv) agreements with important budgetary implications for the Union;
- (v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure with consent by the European Parliament applies.

The European Parliament and the Council may, in an urgent situation, agree on a time-limit for the assent.

b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement; the Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements, for the agreements referred to in Article III-319 with the states which are candidates for accession, and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The [Decision] concluding the treaty providing for Union accession to the ECHR must also be ratified by Member States in accordance with their national constitutional requirements.

9. The Council, on a proposal from [the High Representative or] the Commission, shall adopt a European decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the [Treaties]. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless it is amended or the [Treaties are] revised.

[Article 188n (ex Article III-326)]¹⁴

1. By way of derogation from Article [III-325], the Council, either on a recommendation from the European Central Bank or a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on a system of exchange rates for the euro in relation to currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure laid down in paragraph 3.

The Council, either on a recommendation from the European Central Bank or a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the central rates of the euro.

2. In the absence of an exchange-rate system in relation to one or more currencies of third states, the Council, acting either on a recommendation from the European Central Bank or a recommendation from the Commission and after consulting the European Central Bank, may formulate general orientations for

¹⁴ This is the current Art. 111 EC with no real amendments. The current Art. 111(4) on international positions and external representation would be moved to the monetary policy section of the TEC/TFEU, according to the Constitutional Treaty. It is not known whether the Reform Treaty will follow the same approach.

exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the European System of Central Banks, to maintain price stability.

3. By way of derogation from Article [III-325], where agreements on matters relating to the monetary or exchange-rate system are to be the subject of negotiations between the Union and one or more States or international organisations, the Council, acting on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of the agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

TITLE VI

THE UNION'S RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

It is not clear from the IGC mandate whether this Title will also apply to EU foreign policy.

[Article 188o (ex Article III-327)]¹⁵

1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

The Union shall also maintain such relations as are appropriate with other international organisations.

2. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall be instructed to implement this Article.

[Article 188p (ex Article III-328)]¹⁶

1. Union delegations in third countries and to international organisations shall represent the Union.

2. Union delegations shall operate under the authority of the High Representative of the Union for Foreign Affairs and Security Policy and in close cooperation with Member States' diplomatic missions.

¹⁵ This Article is based on current Arts. 302-304 EC. The new clause would apply to all pillars (although it is not clear whether this approach will be followed after the Reform Treaty); a reference to the OSCE would be added; and the current reference in Art. 302 to Commission competence regarding relations with the UN and other international organisations would be removed.

¹⁶ New clause; in practice the Commission has delegations which represent the *Community* and are subject to the Commission's authority.

TITLE VII

IMPLEMENTATION OF THE SOLIDARITY CLAUSE

[Article 188q (ex Article I-43 and III-329)]¹⁷

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:
 - (a)-
 - prevent the terrorist threat in the territory of the Member States;
 - protect democratic institutions and the civilian population from any terrorist attack;
 - assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
 - (b) - assist a Member State in its territory at the request of its political authorities in the event of a natural or man-made disaster.
 2. Should a Member State be the object of a terrorist attack or fall victim to a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.
 3. The arrangements for the implementation of paragraphs 1 and 2 shall be defined by a [European decision] adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article [III-300(1)] when the decision has defence implications. The European Parliament shall be informed.
- For the purposes of this paragraph and with prejudice to Article [207], the Council shall be assisted by the Political and Security Committee, with the support of the structures developed in the context of the common security and defence policy, and by the Committee provided for in [Article III-262] which shall, if necessary, submit joint opinions.
4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

¹⁷ This is a new clause as compared to the current Treaties. The Constitutional Treaty contained a clause on this issue in Part I and then another clause in Part III addressing implementation of the principle. According to the IGC mandate, the clause in Part I of the Constitutional Treaty should be inserted into the TEC/TFEU. However, the mandate did not include the text of the planned Article(s). I have assumed that the two clauses from the Constitutional Treaty will be merged, and have drafted a text which merges them without changing the content. The Committee in Art. [III-262] is the standing [JHA] committee on internal security.