

**CONFERENCE
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES**

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NOTE

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Draft declarations

**DRAFT
DECLARATIONS**

N.B.:

This document is only a working document for examination by the IGC. The cross-references between Articles which appear in square brackets will, as usual, be corrected by the Legal/Linguistic experts when they finalise the text before the Treaty is signed.

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration on Article [I-9(2)] of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

2. Declaration on Articles [I-22, I-27 and I-28] of the Treaty on European Union

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and Union Minister for Foreign Affairs, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

3. Declaration on Article [I-24(7)] of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the European Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, and should give its political approval within six months. The draft decision is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the Union Minister for Foreign Affairs.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

4. Declaration on Article [I-25] of the Treaty on European Union

The Conference declares that the decision relating to the implementation of Article [I-25] will be adopted by the Council within six months from the date of the signature of the Treaty amending the Treaty on European Union and will enter into force on the day that Treaty enters into force. The draft decision is set out below:

Draft decision of the Council relating to the implementation of Article [I-25] between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- (1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in Article 2(3) of the Protocol on the transitional provisions, which will continue to apply until 31 October 2014, to the voting system provided for in Article [I-25] of the Treaty on European Union, which will apply with effect from 1 November 2014, including, during a transitional period until 31 March 2017, specific provisions laid down in Article 2(2) of that Protocol.

- (2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority.
- (3) It is judged appropriate to maintain this decision as long as is necessary to ensure smooth transition to the new voting system provided for in the Treaties,

HAS DECIDED AS FOLLOWS:

Section 1
Provisions to be applied from 1 November 2014 to 31 March 2017

Article 1

From 1 November 2014 to 31 March 2017, if members of the Council, representing:

- (a) at least three quarters of the population, or
- (b) at least three quarters 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 Council shall discuss the issue.

Article 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

Article 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 2
Provisions to be applied as from 1 April 2017

Article 4

As from 1 April 2017, if members of the Council, representing:

- (a) at least 55 % of the population, or
- (b) 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)], indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 5

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 4.

Article 6

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 3
Entry into force of the decision

Article 7

This decision shall take effect on 1 November 2014.

5. Declaration on Article [I-26] of the Treaty on European Union

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

6. Declaration on Article [I-27] of the Treaty on European Union

The Conference considers that, in accordance with the provisions of the Treaties, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with Article [I-27(1)]. The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

7. Declaration on Article [I-36] of the Treaty on the Functioning of the Union

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.

8. Declaration on Articles [I-43 and III-329] of the Treaty on the Functioning of the Union

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Articles [I-43 and III-329] is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

9. Declaration on Article [I-51] of the Treaty on the Functioning of the Union

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article [I-51] could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

10. Declaration on Article [I-57] of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

11. Declaration on the proclamation of the Charter of Fundamental Rights by the European Parliament, the Council and the Commission

The Conference declares that the Charter of Fundamental Rights of the European Union will be solemnly proclaimed by the European Parliament, the Council and the Commission on the day the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed. The text is as follows:

"The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union:

THE CHARTER OF FUNDAMENTAL RIGHTS OF THE UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I DIGNITY

Article [II-61] Human dignity

Human dignity is inviolable. It must be respected and protected.

Article [II-62] Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article [II-63]
Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - (a) the free and informed consent of the person concerned, according to the procedures laid down by law;
 - (b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;
 - (c) the prohibition on making the human body and its parts as such a source of financial gain;
 - (d) the prohibition of the reproductive cloning of human beings.

Article [II-64]
Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article [II-65]
Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

TITLE II
FREEDOMS

Article [II-66]
Right to liberty and security

Everyone has the right to liberty and security of person.

Article [II-67]
Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article [II-68]
Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

Article [II-69]
Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article [II-70]
Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article [II-71]
Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article [II-72]
Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article [II-73]
Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article [II-74]
Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article [II-75]
Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article [II-76]
Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article [II-77]
Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law insofar as is necessary for the general interest.
2. Intellectual property shall be protected.

Article [II-78]
Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaties.

Article [II-79]
Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III
EQUALITY

Article [II-80]
Equality before the law

Everyone is equal before the law.

Article [II-81]
Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article [II-82]
Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article [II-83]
Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article [II-84]
The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article [II-85]
The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article [II-86]
Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV
SOLIDARITY

Article [II-87]
Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article [II-88]
Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article [II-89]
Right of access to placement services

Everyone has the right of access to a free placement service.

Article [II-90]
Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article [II-91]
Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article [II-92]
Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article [II-93]
Family and professional life

1. The family shall enjoy legal, economic and social protection.
2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article [II-94]
Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article [II-95]
Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article [II-96]
Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article [II-97]
Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article [II-98]
Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V
CITIZENS' RIGHTS

Article [II-99]
Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article [II-100]
Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article [II-101]
Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.
2. This right includes:
 - (a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;
 - (b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;
 - (c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article [II-102]
Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article [II-103]
European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article [II-104]
Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article [II-105]
Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article [II-106]
Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI
JUSTICE

Article [II-107]
Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice.

Article [II-108]
Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article [II-109]

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

Article [II-110]

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII
GENERAL PROVISIONS GOVERNING THE INTERPRETATION
AND APPLICATION OF THE CHARTER

Article [II-111]

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.
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 in the Treaties.

Article [II-112]
Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
3. Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
4. Insofar as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.
5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
6. Full account shall be taken of national laws and practices as specified in this Charter.
7. The explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States.

Article [II-113]
Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article [II-114]
Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein."

12. Declaration concerning the explanations relating to the Charter of Fundamental Rights

The Conference takes note of the explanations relating to the Charter of Fundamental Rights prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention, as set out below.

EXPLANATIONS RELATING TO THE
CHARTER OF FUNDAMENTAL RIGHTS

These explanations were originally prepared under the authority of the Praesidium of the Convention which drafted the Charter of Fundamental Rights of the European Union. They have been updated under the responsibility of the Praesidium of the European Convention, in the light of the drafting adjustments made to the text of the Charter by that Convention (notably to Articles [II-111 and II-112]) and of further developments of Union law. Although they do not as such have the status of law, they are a valuable tool of interpretation intended to clarify the provisions of the Charter.

TITLE I – DIGNITY

Explanation on Article [II-61] – Human dignity

The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights. The 1948 Universal Declaration of Human Rights enshrined human dignity in its preamble: "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, [2001] ECR 7079, at grounds 70 – 77, the Court of Justice confirmed that a fundamental right to human dignity is part of Union law.

It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.

Explanation on Article [II-62] – Right to life

1. Paragraph 1 of this Article is based on the first sentence of Article 2(1) of the ECHR, which reads as follows:

"1. Everyone's right to life shall be protected by law..."

2. The second sentence of the provision, which referred to the death penalty, was superseded by the entry into force of Article 1 of Protocol No 6 to the ECHR, which reads as follows:

"The death penalty shall be abolished. No-one shall be condemned to such penalty or executed."

Article 2(2) of the Charter¹ is based on that provision.

3. The provisions of Article [2] of the Charter¹ correspond to those of the above Articles of the ECHR and its Protocol. They have the same meaning and the same scope, in accordance with Article [52(3)] of the Charter². Therefore, the "negative" definitions appearing in the ECHR must be regarded as also forming part of the Charter:

- (a) Article 2(2) of the ECHR:

"Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection."

- (b) Article 2 of Protocol No 6 to the ECHR:

"A State may make provision in its law for the death penalty in respect of acts committed in time of war or of imminent threat of war; such penalty shall be applied only in the instances laid down in the law and in accordance with its provisions..."

¹ Article [II-62(2)].

² Article [II-112(3)].

Explanation on Article [II-63] – Right to the integrity of the person

1. In its judgment of 9 October 2001 in case C-377/98 Netherlands v. European Parliament and Council, [2001] ECR 7079, at grounds 70, 78 to 80, the Court of Justice confirmed that a fundamental right to human integrity is part of Union law and encompasses, in the context of medicine and biology, the free and informed consent of the donor and recipient.
2. The principles of Article [3] of the Charter³ are already included in the Convention on Human Rights and Biomedicine, adopted by the Council of Europe (ETS 164 and additional protocol ETS 168). The Charter does not set out to depart from those principles, and therefore prohibits only reproductive cloning. It neither authorises nor prohibits other forms of cloning. Thus it does not in any way prevent the legislature from prohibiting other forms of cloning.
3. The reference to eugenic practices, in particular those aiming at the selection of persons, relates to possible situations in which selection programmes are organised and implemented, involving campaigns for sterilisation, forced pregnancy, compulsory ethnic marriage among others, all acts deemed to be international crimes in the Statute of the International Criminal Court adopted in Rome on 17 July 1998 (see its Article 7(1)(g)).

Explanation on Article [II-64] - Prohibition of torture and inhuman or degrading treatment or punishment

The right in Article [4] is the right guaranteed by Article 3 of the ECHR, which has the same wording: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". By virtue of Article [52(3)] of the Charter⁴, it therefore has the same meaning and the same scope as the ECHR Article.

Explanation on Article [II-65] – Prohibition of slavery and forced labour

1. The right in Article [5]⁵ (1) and (2) corresponds to Article 4(1) and (2) of the ECHR, which has the same wording. It therefore has the same meaning and scope as the ECHR Article, by virtue of Article [52(3)] of the Charter⁶. Consequently:
 - no limitation may legitimately affect the right provided for in paragraph 1;

³ Article [II-63].

⁴ Article [II-112(3)].

⁵ Article [II-65].

⁶ Article [II-112(3)].

- in paragraph 2, "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) of the ECHR:

"For the purpose of this article the term "forced or compulsory labour" shall not include:

- (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
- (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
- (d) any work or service which forms part of normal civic obligations."

2. Paragraph 3 stems directly from human dignity and takes account of recent developments in organised crime, such as the organisation of lucrative illegal immigration or sexual exploitation networks. The Annex to the Europol Convention contains the following definition which refers to trafficking for the purpose of sexual exploitation: "traffic in human beings: means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children". Chapter VI of the Convention implementing the Schengen Agreement, which has been integrated into the Union's acquis, in which the United Kingdom and Ireland participate, contains the following wording in Article 27(1) which refers to illegal immigration networks: "The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens." On 19 July 2002, the Council adopted a framework decision on combating trafficking in human beings (OJ L 203/1) whose Article 1 defines in detail the offences concerning trafficking in human beings for the purposes of labour exploitation or sexual exploitation, which the Member States must make punishable by virtue of that framework decision.

TITLE II – FREEDOMS

Explanation on Article [II-66] – Right to liberty and security

The rights in Article [6] are the rights guaranteed by Article 5 of the ECHR, and in accordance with Article [52(3)] of the Charter⁷, they have the same meaning and scope. Consequently, the limitations which may legitimately be imposed on them may not exceed those permitted by the ECHR, in the wording of Article 5:

- "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
 - (a) the lawful detention of a person after conviction by a competent court;
 - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
 - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
 - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
 - (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
 - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

⁷ Article [II-112(3)].

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

The rights enshrined in Article [6]⁸ must be respected particularly when the European Parliament and the Council adopt legislative acts in the area of judicial cooperation in criminal matters, on the basis of Articles [III-270, III-271 and III-273] of the Treaty on the Functioning of the Union, notably to define common minimum provisions as regards the categorisation of offences and punishments and certain aspects of procedural law.

Explanation on Article [II-67] – Respect for private and family life

The rights guaranteed in Article 7 correspond to those guaranteed by Article 8 of the ECHR. To take account of developments in technology the word "correspondence" has been replaced by "communications".

In accordance with Article [52(3)]⁹, the meaning and scope of this right are the same as those of the corresponding article of the ECHR. Consequently, the limitations which may legitimately be imposed on this right are the same as those allowed by Article 8 of the ECHR:

- "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Explanation on Article [II-68] – Protection of personal data

This Article has been based on Article 286 of the Treaty establishing the European Community and Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995) as well as on Article 8 of the ECHR and on the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has been ratified by all the Member States. Article 286 of the EC Treaty is now replaced by Article [I-51] of the Treaty on the Functioning of the Union and Article [24] of the Treaty on European Union. Reference is also made to Regulation No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001). The abovementioned Directive and Regulation contain conditions and limitations for the exercise of the right to the protection of personal data.

⁸ Article [II-66].

⁹ Article [II-112(3)].

Explanation on Article [II-69] – Right to marry and right to found a family

This Article is based on Article 12 of the ECHR, which reads as follows: "Men and women of marriageable age have the right to marry and to found a family according to the national laws governing the exercising of this right." The wording of the Article has been modernised to cover cases in which national legislation recognises arrangements other than marriage for founding a family. This Article neither prohibits nor imposes the granting of the status of marriage to unions between people of the same sex. This right is thus similar to that afforded by the ECHR, but its scope may be wider when national legislation so provides.

Explanation on Article [II-70] – Freedom of thought, conscience and religion

The right guaranteed in paragraph 1 corresponds to the right guaranteed in Article 9 of the ECHR and, in accordance with Article [52(3)] of the Charter¹⁰, has the same meaning and scope. Limitations must therefore respect Article 9(2) of the Convention, which reads as follows: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

The right guaranteed in paragraph 2 corresponds to national constitutional traditions and to the development of national legislation on this issue.

Explanation on Article [II-71] – Freedom of expression and information

1. Article [11]¹¹ corresponds to Article 10 of the European Convention on Human Rights, which reads as follows:

- "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

¹⁰ Article [II-112(3)].

¹¹ Article [II-71].

Pursuant to Article [52(3)] of the Charter¹², the meaning and scope of this right are the same as those guaranteed by the ECHR. The limitations which may be imposed on it may therefore not exceed those provided for in Article 10(2) of the Convention, without prejudice to any restrictions which competition law of the Union may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR.

2. Paragraph 2 of this Article spells out the consequences of paragraph 1 regarding freedom of the media. It is based in particular on Court of Justice case law regarding television, particularly in case C-288/89 (judgment of 25 July 1991, Stichting Collectieve Antennevoorziening Gouda and others [1991] ECR I-4007), and on the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty and now to the Treaties, and on Council Directive 89/552/EC (particularly its seventeenth recital).

Explanation on Article [II-72] – Freedom of assembly and of association

1. Paragraph 1 of this Article corresponds to Article 11 of the ECHR, which reads as follows:
 - "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State."

The meaning of the provisions of paragraph 1 of this Article [12]¹³ is the same as that of the ECHR, but their scope is wider since they apply at all levels including European level. In accordance with Article [52(3)] of the Charter¹⁴, limitations on that right may not exceed those considered legitimate by virtue of Article 11(2) of the ECHR.

2. This right is also based on Article 11 of the Community Charter of the Fundamental Social Rights of Workers.

¹² Article [II-112(3)].

¹³ Article [II-72].

¹⁴ Article [II-112(3)].

3. Paragraph 2 of this Article corresponds to Article [I-46(4)] of the Treaty on European Union.

Explanation on Article [II-73] – Freedom of the arts and sciences

This right is deduced primarily from the right to freedom of thought and expression. It is to be exercised having regard to Article [1]¹⁵ and may be subject to the limitations authorised by Article 10 of the ECHR.

Explanation on Article [II-74] – Right to education

1. This Article is based on the common constitutional traditions of Member States and on Article 2 of the Protocol to the ECHR, which reads as follows:

"No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

It was considered useful to extend this Article to access to vocational and continuing training (see point 15 of the Community Charter of the Fundamental Social Rights of Workers and Article 10 of the Social Charter) and to add the principle of free compulsory education. As it is worded, the latter principle merely implies that as regards compulsory education, each child has the possibility of attending an establishment which offers free education. It does not require all establishments which provide education or vocational and continuing training, in particular private ones, to be free of charge. Nor does it exclude certain specific forms of education having to be paid for, if the State takes measures to grant financial compensation. Insofar as the Charter applies to the Union, this means that in its training policies the Union must respect free compulsory education, but this does not, of course, create new powers. Regarding the right of parents, it must be interpreted in conjunction with the provisions of Article [24]¹⁶.

2. Freedom to found public or private educational establishments is guaranteed as one of the aspects of freedom to conduct a business but it is limited by respect for democratic principles and is exercised in accordance with the arrangements defined by national legislation.

¹⁵ Article [II-61].

¹⁶ Article [II-84].

Explanation on Article [II-75] – Freedom to choose an occupation and right to engage in work

Freedom to choose an occupation, as enshrined in Article 15(1), is recognised in Court of Justice case law (see inter alia judgment of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraphs 12 to 14 of the grounds; judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 8 October 1986, Case 234/85 Keller [1986] ECR 2897, paragraph 8 of the grounds).

This paragraph also draws upon Article 1(2) of the European Social Charter, which was signed on 18 October 1961 and has been ratified by all the Member States, and on point 4 of the Community Charter of the Fundamental Social Rights of Workers of 9 December 1989. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.

Paragraph 2 deals with the three freedoms guaranteed by Articles [I-4 and III-133, III-137 and III-144] of the Treaty on the Functioning of the Union, namely freedom of movement for workers, freedom of establishment and freedom to provide services.

Paragraph 3 has been based on Article [137(1)(g)] of the Treaty on the Functioning of the Union, and on Article 19(4) of the European Social Charter signed on 18 October 1961 and ratified by all the Member States. Article [52(2)] of the Charter¹⁷ is therefore applicable. The question of recruitment of seamen having the nationality of third States for the crews of vessels flying the flag of a Member State of the Union is governed by Union law and national legislation and practice.

Explanation on Article [II-76] – Freedom to conduct a business

This Article is based on Court of Justice case law which has recognised freedom to exercise an economic or commercial activity (see judgments of 14 May 1974, Case 4/73 Nold [1974] ECR 491, paragraph 14 of the grounds, and of 27 September 1979, Case 230-78 SPA Eridiana and others [1979] ECR 2749, paragraphs 20 and 31 of the grounds) and freedom of contract (see inter alia Sukkerfabriken Nykøbing judgment, Case 151/78 [1979] ECR 1, paragraph 19 of the grounds, and judgment of 5 October 1999, C-240/97 Spain v. Commission, [1999] ECR I-6571, paragraph 99 of the grounds) and Article [97b(1) and (3)] of the Treaty on the Functioning of the Union, which recognises free competition. Of course, this right is to be exercised with respect for Union law and national legislation. It may be subject to the limitations provided for in Article [52(1)] of the Charter¹⁸.

¹⁷ Article [II-112(2)].

¹⁸ Article [II-112(1)].

Explanation on Article [II-77] – Right to property

This Article is based on Article 1 of the Protocol to the ECHR:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

This is a fundamental right common to all national constitutions. It has been recognised on numerous occasions by the case law of the Court of Justice, initially in the Hauer judgment (13 December 1979, ECR [1979] 3727). The wording has been updated but, in accordance with Article [52(3)]¹⁹, the meaning and scope of the right are the same as those of the right guaranteed by the ECHR and the limitations may not exceed those provided for there.

Protection of intellectual property, one aspect of the right of property, is explicitly mentioned in paragraph 2 because of its growing importance and Community secondary legislation. Intellectual property covers not only literary and artistic property but also inter alia patent and trademark rights and associated rights. The guarantees laid down in paragraph 1 shall apply as appropriate to intellectual property.

Explanation on Article [II-78] – Right to asylum

The text of the Article has been based on TEC Article 63, now replaced by Article [III-266] of the Treaty on the Functioning of the Union, which requires the Union to respect the Geneva Convention on refugees. Reference should be made to the Protocols relating to the United Kingdom and Ireland annexed to the Treaties and to Denmark to determine the extent to which those Member States implement Union law in this area and the extent to which this Article is applicable to them. This Article is in line with the Protocol on Asylum annexed to the Treaties.

Explanation on Article [II-79] – Protection in the event of removal, expulsion or extradition

Paragraph 1 of this Article has the same meaning and scope as Article 4 of Protocol No 4 to the ECHR concerning collective expulsion. Its purpose is to guarantee that every decision is based on a specific examination and that no single measure can be taken to expel all persons having the nationality of a particular State (see also Article 13 of the Covenant on Civil and Political Rights).

¹⁹ Article [II-112(3)].

Paragraph 2 incorporates the relevant case law from the European Court of Human Rights regarding Article 3 of the ECHR (see *Ahmed v. Austria*, judgment of 17 December 1996, [1996] ECR VI 2206 and *Soering*, judgment of 7 July 1989).

TITLE III – EQUALITY

Explanation on Article [II-80] – Equality before the law

This Article corresponds to a general principle of law which is included in all European constitutions and has also been recognised by the Court of Justice as a basic principle of Community law (judgment of 13 November 1984, Case 283/83 *Racke* [1984] ECR 3791, judgment of 17 April 1997, Case 15/95 *EARL* [1997] ECR I-1961, and judgment of 13 April 2000, Case 292/97 *Karlsson* [2000] ECR 2737).

Explanation on Article [II-81] – Non-discrimination

Paragraph 1 draws on Article 13 of the EC Treaty, now replaced by Article [III-124] of the Treaty on the Functioning of the Union, Article 14 of the ECHR and Article 11 of the Convention on Human Rights and Biomedicine as regards genetic heritage. Insofar as this corresponds to Article 14 of the ECHR, it applies in compliance with it.

There is no contradiction or incompatibility between paragraph 1 and Article [III-124] of the Treaty on the Functioning of the Union which has a different scope and purpose: Article [III-124] confers power on the Union to adopt legislative acts, including harmonisation of the Member States' laws and regulations, to combat certain forms of discrimination, listed exhaustively in that Article. Such legislation may cover action of Member State authorities (as well as relations between private individuals) in any area within the limits of the Union's powers. In contrast, the provision in paragraph 1 of Article [21]²⁰ does not create any power to enact anti-discrimination laws in these areas of Member State or private action, nor does it lay down a sweeping ban of discrimination in such wide-ranging areas. Instead, it only addresses discriminations by the institutions and bodies of the Union themselves, when exercising powers conferred under the Treaties, and by Member States only when they are implementing Union law. Paragraph 1 therefore does not alter the extent of powers granted under Article [III-124] nor the interpretation given to that Article.

Paragraph 2 corresponds to Article [I-4(2)] of the Treaty on the Functioning of the Union and must be applied in compliance with that Article.

²⁰ Article [II-81].

Explanation on Article [II-82] – Cultural, religious and linguistic diversity

This Article has been based on Article 6 of the Treaty on European Union and on Article 151(1) and (4) of the EC Treaty, now replaced by Article [III-280(1) and (4)] of the Treaty on the Functioning of the Union, concerning culture. Respect for cultural and linguistic diversity is now also laid down in Article [I-3(3)] of the Treaty on European Union. The Article is also inspired by Declaration No 11 to the Final Act of the Amsterdam Treaty on the status of churches and non-confessional organisations, now taken over in Article [I-52] of the Treaty on the Functioning of the Union.

Explanation on Article [II-83] – Equality between women and men

The first paragraph has been based on Articles 2 and 3(2) of the EC Treaty, now replaced by Article [I-3] of the Treaty on European Union and Article [III-116] of the Treaty on the Functioning of the Union which impose the objective of promoting equality between men and women on the Union, and on Article [141(1)] of the Treaty on the Functioning of the Union. It draws on Article 20 of the revised European Social Charter of 3 May 1996 and on point 16 of the Community Charter on the rights of workers.

It is also based on Article [141(3)] of the Treaty on the Functioning of the Union and Article 2(4) of Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

The second paragraph takes over in shorter form Article [III-214(4)] of the Treaty on the Functioning of the Union which provides that the principle of equal treatment does not prevent the maintenance or adoption of measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. In accordance with Article [52(2)]²¹, the present paragraph does not amend Article [III-214(4)].

Explanation on Article [II-84] – The rights of the child

This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

²¹ Article [II-112(2)].

Paragraph 3 takes account of the fact that, as part of the establishment of an area of freedom, security and justice, Union legislation on civil matters having cross-border implications, for which Article [III-269] of the Treaty on the Functioning of the Union confers power, may include notably visiting rights ensuring that children can maintain on a regular basis a personal and direct contact with both his or her parents.

Explanation on Article [II-85] – The rights of the elderly

This Article draws on Article 23 of the revised European Social Charter and Articles 24 and 25 of the Community Charter of the Fundamental Social Rights of Workers. Of course, participation in social and cultural life also covers participation in political life.

Explanation on Article [II-86] – Integration of persons with disabilities

The principle set out in this Article is based on Article 15 of the European Social Charter and also draws on point 26 of the Community Charter of the Fundamental Social Rights of Workers.

TITLE IV – SOLIDARITY

Explanation on Article [II-87] – Workers' right to information and consultation within the undertaking

This Article appears in the revised European Social Charter (Article 21) and in the Community Charter on the rights of workers (points 17 and 18). It applies under the conditions laid down by Union law and by national laws. The reference to appropriate levels refers to the levels laid down by Union law or by national laws and practices, which might include the European level when Union legislation so provides. There is a considerable Union *acquis* in this field: Articles [III-211 and III-212] of the Treaty on the Functioning of the Union, and Directives 2002/14/EC (general framework for informing and consulting employees in the European Community), 98/59/EC (collective redundancies), 2001/23/EC (transfers of undertakings) and 94/45/EC (European works councils).

Explanation on Article [II-88] – Right of collective bargaining and action

This Article is based on Article 6 of the European Social Charter and on the Community Charter of the Fundamental Social Rights of Workers (points 12 to 14). The right of collective action was recognised by the European Court of Human Rights as one of the elements of trade union rights laid down by Article 11 of the ECHR. As regards the appropriate levels at which collective negotiation might take place, see the explanation given for the above Article. The modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States.

Explanation on Article [II-89] – Right of access to placement services

This Article is based on Article 1(3) of the European Social Charter and point 13 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article [II-90] – Protection in the event of unjustified dismissal

This Article draws on Article 24 of the revised Social Charter. See also Directive 2001/23/EC on the safeguarding of employees' rights in the event of transfers of undertakings, and Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, as amended by Directive 2002/74/EC.

Explanation on Article [II-91] – Fair and just working conditions

1. Paragraph 1 of this Article is based on Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It also draws on Article 3 of the Social Charter and point 19 of the Community Charter on the rights of workers, and, as regards dignity at work, on Article 26 of the revised Social Charter. The expression "working conditions" is to be understood in the sense of Article [III-213] of the Treaty on the Functioning of the Union.
2. Paragraph 2 is based on Directive 93/104/EC concerning certain aspects of the organisation of working time, Article 2 of the European Social Charter and point 8 of the Community Charter on the rights of workers.

Explanation on Article [II-92] – Prohibition of child labour and protection of young people at work

This Article is based on Directive 94/33/EC on the protection of young people at work, Article 7 of the European Social Charter and points 20 to 23 of the Community Charter of the Fundamental Social Rights of Workers.

Explanation on Article [II-93] – Family and professional life

Article [33(1)]²² is based on Article 16 of the European Social Charter.

The second paragraph draws on Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding and Directive 96/34/EC on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC. It is also based on Article 8 (protection of maternity) of the European Social Charter and draws on Article 27 (right of workers with family responsibilities to equal opportunities and equal treatment) of the revised Social Charter. "Maternity" covers the period from conception to weaning.

Explanation on Article [II-94] – Social security and social assistance

The principle set out in Article [34(1)]²³ is based on Articles 137 and 140 of the Treaty on the Functioning of the Union, Article 12 of the European Social Charter and point 10 of the Community Charter on the rights of workers. The Union must respect it when exercising the powers conferred on it by Articles [III-210 and III-213] of the Treaty on the Functioning of the Union. The reference to social services relates to cases in which such services have been introduced to provide certain advantages but does not imply that such services must be created where they do not exist. "Maternity" must be understood in the same sense as in the preceding Article.

Paragraph 2 is based on Articles 12(4) and 13(4) of the European Social Charter and point 2 of the Community Charter of the Fundamental Social Rights of Workers and reflects the rules arising from Regulation No 1408/71 and Regulation No 1612/68.

Paragraph 3 draws on Article 13 of the European Social Charter and Articles 30 and 31 of the revised Social Charter and point 10 of the Community Charter. The Union must respect it in the context of policies based on Article [III-210] of the Treaty on the Functioning of the Union.

²² Article [II-93].

²³ Article [II-94].

Explanation on Article [II-95] – Health care

The principles set out in this Article are based on Article 152 of the EC Treaty, now replaced by Article [III-278] of the Treaty on the Functioning of the Union, and on Articles 11 and 13 of the European Social Charter. The second sentence of the Article takes over Article III-278(1).

Explanation on Article [II-96] – Access to services of general economic interest

This Article is fully in line with Article [III-122] of the Treaty on the Functioning of the Union and does not create any new right. It merely sets out the principle of respect by the Union for the access to services of general economic interest as provided for by national provisions, when those provisions are compatible with Union law.

Explanation on Article [II-97] – Environmental protection

The principles set out in this Article have been based on Articles 2, 6 and 174 of the EC Treaty, which have now been replaced by Article [I-3(3)] of the Treaty on European Union and Articles [III-119 and III-233] of the Treaty on the Functioning of the Union.

It also draws on the provisions of some national constitutions.

Explanation on Article [II-98] – Consumer protection

The principles set out in this Article have been based on Article [153] of the Treaty on the Functioning of the Union.

TITLE V – CITIZENS' RIGHTS

Explanation on Article [II-99] – Right to vote and to stand as a candidate at elections to the European Parliament

Article [39]²⁴ applies under the conditions laid down in the Treaties, in accordance with Article 52(2) of the Charter²⁵. Article 39(1) corresponds to the right guaranteed in Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right) and Article 39(2) corresponds to Article [I-20(2)] of the Treaty on European Union. Article 39(2) takes over the basic principles of the electoral system in a democratic State.

²⁴ Article [II-99].

²⁵ Article [II-112(2)].

Explanation on Article [II-100] – Right to vote and to stand as a candidate at municipal elections

This Article corresponds to the right guaranteed by Article [I-10(2)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-126] of the Treaty on the Functioning of the Union for the adoption of detailed arrangements for the exercise of that right). In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these Articles in the Treaties.

Explanation on Article [II-101] – Right to good administration

Article [41]²⁶ is based on the existence of the Union as subject to the rule of law whose characteristics were developed in the case law which enshrined inter alia good administration as a general principle of law (see inter alia Court of Justice judgment of 31 March 1992 in Case C-255/90 P, *Burban* [1992] ECR I-2253, and Court of First Instance judgments of 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-2589, and 9 July 1999 in Case T-231/97 *New Europe Consulting and others* [1999] ECR II-2403). The wording for that right in the first two paragraphs results from the case law (Court of Justice judgment of 15 October 1987 in Case 222/86 *Heylens* [1987] ECR 4097, paragraph 15 of the grounds, judgment of 18 October 1989 in Case 374/87 *Orkem* [1989] ECR 3283, judgment of 21 November 1991 in Case C-269/90 *TU München* [1991] ECR I-5469, and Court of First Instance judgments of 6 December 1994 in Case T-450/93 *Lisrestal* [1994] ECR II-1177, 18 September 1995 in Case T-167/94 *Nölle* [1995] ECR II-258) and the wording regarding the obligation to give reasons comes from Article [253] of the Treaty on the Functioning of the Union (cf. also the legal base in Article [III-398] of the Treaty on the Functioning of the Union for the adoption of legislation in the interest of an open, efficient and independent European administration).

Paragraph 3 reproduces the right now guaranteed by Article [III-431] of the Treaty on the Functioning of the Union. Paragraph 4 reproduces the right now guaranteed by Articles [I-10(2)(d)] and [III-129] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter²⁷, those rights are to be applied under the conditions and within the limits defined by the Treaties.

The right to an effective remedy, which is an important aspect of this question, is guaranteed in Article [47] of this Charter²⁸.

²⁶ Article [II-101].

²⁷ Article [II-112(2)].

²⁸ Article [II-107].

Explanation on Article [II-102] – Right of access to documents

The right guaranteed in this Article has been taken over from Article 255 of the EC Treaty, on the basis of which Regulation No 1049/2001 has subsequently been adopted. The European Convention has extended this right to documents of institutions, bodies and agencies generally, regardless of their form, see Article [I-50(3)] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter²⁹, the right of access to documents is exercised under the conditions and within the limits for which provision is made in Articles [I-50(3) and III-399] of the Treaty on the Functioning of the Union.

Explanation on Article [II-103] – European Ombudsman

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-335] of the Treaty on the Functioning of the Union. In accordance with Article [52(2)] of the Charter³⁰, it applies under the conditions defined in these two Articles.

Explanation on Article [II-104] – Right to petition

The right guaranteed in this Article is the right guaranteed by Articles [I-10 and III-334] of the Treaty on the Functioning of the Union. In accordance with Article 52(2) of the Charter, it applies under the conditions defined in these two Articles.

Explanation on Article [II-105] – Freedom of movement and of residence

The right guaranteed by paragraph 1 is the right guaranteed by Article [I-10(2)(a)] of the Treaty on the Functioning of the Union (cf. also the legal base in Article III-125; and the judgment of the Court of Justice of 17 September 2002, C-413/99 Baumbast, [2002] ECR 709). In accordance with Article [52(2)] of the Charter³¹, those rights are to be applied under the conditions and within the limits defined by the Treaties.

Paragraph 2 refers to the power granted to the Union by Articles [III-265 to III-267] of the Treaty on the Functioning of the Union. Consequently, the granting of this right depends on the institutions exercising that power.

Explanation on Article [II-106] – Diplomatic and consular protection

The right guaranteed in this Article is the right guaranteed by Article [I-10] of the Treaty on the Functioning of the Union. (cf. also the legal base in Article [III-127]). In accordance with Article [52(2)] of the Charter³², it applies under the conditions defined in these two Articles.

²⁹ Article [II-112(2)].

³⁰ Article [II-112(2)].

³¹ Article [II-112(2)].

³² Article [II-112(2)].

TITLE VI – JUSTICE

Explanation on Article [II-107] – Right to an effective remedy and to a fair trial

The first paragraph is based on Article 13 of the ECHR:

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

However, in Union law the protection is more extensive since it guarantees the right to an effective remedy before a court. The Court of Justice enshrined that right in its judgment of 15 May 1986 as a general principle of Union law (Case 222/84 Johnston [1986] ECR 1651; see also judgment of 15 October 1987, Case 222/86 Heylens [1987] ECR 4097 and judgment of 3 December 1992, Case C-97/91 Borelli [1992] ECR I-6313). According to the Court, that general principle of Union law also applies to the Member States when they are implementing Union law. The inclusion of this precedent in the Charter has not been intended to change the system of judicial review laid down by the Treaties, and particularly the rules relating to admissibility for direct actions before the Court of Justice of the European Union. The European Convention has considered the Union's system of judicial review including the rules on admissibility, and confirmed them while amending them as to certain aspects, as reflected in Articles [III-353 to III-381] of the Treaty on the Functioning of the Union, and in particular in Article III-365(4). Article [47]³³ applies to the institutions of the Union and of Member States when they are implementing Union law and does so for all rights guaranteed by Union law.

The second paragraph corresponds to Article 6(1) of the ECHR which reads as follows:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

In Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in Case 294/83, "Les Verts" v. European Parliament (judgment of 23 April 1986, [1988] ECR 1339). Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union.

³³ Article [II-107].

With regard to the third paragraph, it should be noted that in accordance with the case law of the European Court of Human Rights, provision should be made for legal aid where the absence of such aid would make it impossible to ensure an effective remedy (ECHR Judgment of 9.10.1979, Airey, Series A, Volume 32, 11). There is also a system of legal assistance for cases before the Court of Justice of the European Union.

Explanation on Article [II-108] – Presumption of innocence and right of defence

Article 48 is the same as Article 6(2) and (3) of the ECHR, which reads as follows:

- "2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

In accordance with Article 52(3)³⁴, this right has the same meaning and scope as the right guaranteed by the ECHR.

Explanation on Article [II-109] – Principles of legality and proportionality of criminal offences and penalties

This Article follows the traditional rule of the non-retroactivity of laws and criminal sanctions. There has been added the rule of the retroactivity of a more lenient penal law, which exists in a number of Member States and which features in Article 15 of the Covenant on Civil and Political Rights.

³⁴ Article [II-112(2)].

Article 7 of the ECHR is worded as follows:

- "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."

In paragraph 2, the reference to "civilised" nations has been deleted; this does not change the meaning of this paragraph, which refers to crimes against humanity in particular. In accordance with Article 52(3)³⁵, the right guaranteed here therefore has the same meaning and scope as the right guaranteed by the ECHR.

Paragraph 3 states the general principle of proportionality between penalties and criminal offences which is enshrined in the common constitutional traditions of the Member States and in the case law of the Court of Justice of the Communities.

Explanation on Article [II-110] – Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Article 4 of Protocol No 7 to the ECHR reads as follows:

- "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.
2. The provisions of the preceding paragraph shall not prevent the reopening of the case in accordance with the law and the penal procedure of the State concerned, if there is evidence of new or newly discovered facts, or if there has been a fundamental defect in the previous proceedings, which could affect the outcome of the case.
3. No derogation from this Article shall be made under Article 15 of the Convention."

The "non bis in idem" rule applies in Union law (see, among the many precedents, the judgment of 5 May 1966, Cases 18/65 and 35/65, *Gutmann v. Commission* [1966] ECR 103 and a recent case, the decision of the Court of First Instance of 20 April 1999, *Joined Cases T-305/94 and others, Limburgse Vinyl Maatschappij NV v. Commission* [1999] ECR II-931). The rule prohibiting cumulation refers to cumulation of two penalties of the same kind, that is to say criminal law penalties.

³⁵ Article [II-112(2)].

In accordance with Article [50]³⁶, the "non bis in idem" rule applies not only within the jurisdiction of one State but also between the jurisdictions of several Member States. That corresponds to the *acquis* in Union law; see Articles 54 to 58 of the Schengen Convention and the judgment of the Court of Justice of 11 February 2003, C-187/01 Gözütok (not yet published), Article 7 of the Convention on the Protection of the European Communities' Financial Interests and Article 10 of the Convention on the fight against corruption. The very limited exceptions in those Conventions permitting the Member States to derogate from the "non bis in idem" rule are covered by the horizontal clause in Article 52(1)³⁷ of the Charter concerning limitations. As regards the situations referred to by Article 4 of Protocol No 7, namely the application of the principle within the same Member State, the guaranteed right has the same meaning and the same scope as the corresponding right in the ECHR.

TITLE VII – GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Explanation on Article [II-111] – Field of application

The aim of Article [51]³⁸ is to determine the scope of the Charter. It seeks to establish clearly that the Charter applies primarily to the institutions and bodies of the Union, in compliance with the principle of subsidiarity. This provision was drafted in keeping with Article [6(2)] of the Treaty on European Union, which required the Union to respect fundamental rights, and with the mandate issued by Cologne European Council. The term "institutions" is enshrined in the Treaties. The expression "bodies, offices and agencies" is commonly used in the Treaties to refer to all the authorities set up by the Treaties or by secondary legislation (see, e.g., Articles [I-50 or I-51] of the Treaty on the Functioning of the Union).

As regards the Member States, it follows unambiguously from the case law of the Court of Justice that the requirement to respect fundamental rights defined in a Union context is only binding on the Member States when they act in the scope of Union law (judgment of 13 July 1989, Case 5/88 Wachauf [1989] ECR 2609; judgment of 18 June 1991, ERT [1991] ECR I-2925; judgment of 18 December 1997, C-309/96 Annibaldi [1997] ECR I-7493). The Court of Justice confirmed this case law in the following terms: "In addition, it should be remembered that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules ..." (judgment of 13 April 2000, Case C-292/97, [2000] ECR 2737, paragraph 37 of the grounds). Of course this rule, as enshrined in this Charter, applies to the central authorities as well as to regional or local bodies, and to public organisations, when they are implementing Union law.

³⁶ Article [II-110].

³⁷ Article [II-112(2)].

³⁸ Article [II-111].

Paragraph 2, together with the second sentence of paragraph 1, confirms that the Charter may not have the effect of extending the competences and tasks which the Treaties confer on the Union. Explicit mention is made here of the logical consequences of the principle of subsidiarity and of the fact that the Union only has those powers which have been conferred upon it. The fundamental rights as guaranteed in the Union do not have any effect other than in the context of the powers determined by the Treaties. Consequently, an obligation, pursuant to the second sentence of paragraph 1, for the Union's institutions to promote principles laid down in the Charter may arise only within the limits of these same powers.

Paragraph 2 also confirms that the Charter may not have the effect of extending the field of application of Union law beyond the powers of the Union as established in the Treaties. The Court of Justice has already established this rule with respect to the fundamental rights recognised as part of Union law (judgment of 17 February 1998, C-249/96 Grant, 1998 ECR I-621, paragraph 45 of the grounds). In accordance with this rule, it goes without saying that the reference to the Charter in Article [I-9] of the Treaty on European Union cannot be understood as extending by itself the range of Member State action considered to be "implementation of Union law" (within the meaning of paragraph 1 and the above-mentioned case law).

Explanation on Article [II-112] – Scope and interpretation of rights and principles

The purpose of Article [52]³⁹ is to set the scope of the rights and principles of the Charter, and to lay down rules for their interpretation. Paragraph 1 deals with the arrangements for the limitation of rights. The wording is based on the case law of the Court of Justice: "... it is well established in the case law of the Court that restrictions may be imposed on the exercise of fundamental rights, in particular in the context of a common organisation of the market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (judgment of 13 April 2000, Case C-292/97, paragraph 45 of the grounds). The reference to general interests recognised by the Union covers both the objectives mentioned in Article [I-2] of the Treaty on European Union and other interests protected by specific provisions of the Treaties such as Article [I-5(1)] of the Treaty on European Union and Articles III-133(3), III-154 and III-436 of the Treaty on the Functioning of the Union.

Paragraph 2 refers to rights which were already expressly guaranteed in the Treaty establishing the European Community and have been recognised in the Charter, and which are now found in the Treaties (notably the rights derived from Union citizenship). It clarifies that such rights remain subject to the conditions and limits applicable to the Union law on which they are based, and for which provision is made in the Treaties. The Charter does not alter the system of rights conferred by the EC Treaty and taken over by the Treaties.

³⁹ Article [II-112].

Paragraph 3 is intended to ensure the necessary consistency between the Charter and the ECHR by establishing the rule that, insofar as the rights in the present Charter also correspond to rights guaranteed by the ECHR, the meaning and scope of those rights, including authorised limitations, are the same as those laid down by the ECHR. This means in particular that the legislator, in laying down limitations to those rights, must comply with the same standards as are fixed by the detailed limitation arrangements laid down in the ECHR, which are thus made applicable for the rights covered by this paragraph, without thereby adversely affecting the autonomy of Union law and of that of the Court of Justice of the European Union.

The reference to the ECHR covers both the Convention and the Protocols to it. The meaning and the scope of the guaranteed rights are determined not only by the text of those instruments, but also by the case law of the European Court of Human Rights and by the Court of Justice of the European Union. The last sentence of the paragraph is designed to allow the Union to guarantee more extensive protection. In any event, the level of protection afforded by the Charter may never be lower than that guaranteed by the ECHR.

The Charter does not affect the possibilities of Member States to avail themselves of Article 15 ECHR, allowing derogations from ECHR rights in the event of war or of other public dangers threatening the life of the nation, when they take action in the areas of national defence in the event of war and of the maintenance of law and order, in accordance with their responsibilities recognised in Article [I-5 (1)] of the Treaty on European Union and in Articles III-131 and III-262 of the Treaty on the Functioning of the Union.

The list of rights which may at the present stage, without precluding developments in the law, legislation and the Treaties, be regarded as corresponding to rights in the ECHR within the meaning of the present paragraph is given hereafter. It does not include rights additional to those in the ECHR.

1. Articles of the Charter where both the meaning and the scope are the same as the corresponding Articles of the ECHR:
 - Article [2]⁴⁰ corresponds to Article 2 of the ECHR
 - Article [4]⁴¹ corresponds to Article 3 of the ECHR
 - Article [5]⁴²(1) and (2) corresponds to Article 4 of the ECHR

⁴⁰ Article [II-62].

⁴¹ Article [II-64].

⁴² Article [II-65].

- Article [6]⁴³ corresponds to Article 5 of the ECHR
 - Article [7]⁴⁴ corresponds to Article 8 of the ECHR
 - Article [10]⁴⁵(1) corresponds to Article 9 of the ECHR
 - Article [11]⁴⁶ corresponds to Article 10 of the ECHR without prejudice to any restrictions which Union law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR
 - Article [17]⁴⁷ corresponds to Article 1 of the Protocol to the ECHR
 - Article [19]⁴⁸ (1) corresponds to Article 4 of Protocol No 4
 - Article [19](2) corresponds to Article 3 of the ECHR as interpreted by the European Court of Human Rights
 - Article [48]⁴⁹ corresponds to Article 6(2) and(3) of the ECHR
 - Article [49]⁵⁰(1) (with the exception of the last sentence) and (2) correspond to Article 7 of the ECHR
2. Articles where the meaning is the same as the corresponding Articles of the ECHR, but where the scope is wider:
- Article [9]⁵¹ covers the same field as Article 12 of the ECHR, but its scope may be extended to other forms of marriage if these are established by national legislation
 - Article [12]⁵²(1) corresponds to Article 11 of the ECHR, but its scope is extended to European Union level

⁴³ Article [II-66].

⁴⁴ Article [II-67].

⁴⁵ Article [II-70].

⁴⁶ Article [II-71].

⁴⁷ Article [II-77].

⁴⁸ Article [II-79].

⁴⁹ Article [II-108].

⁵⁰ Article [II-109].

⁵¹ Article [II-69].

⁵² Article [II-72].

- Article [14]⁵³(1) corresponds to Article 2 of the Protocol to the ECHR, but its scope is extended to cover access to vocational and continuing training
- Article [14](3) corresponds to Article 2 of the Protocol to the ECHR as regards the rights of parents
- Article [47]⁵⁴(2) and (3) corresponds to Article 6(1) of the ECHR, but the limitation to the determination of civil rights and obligations or criminal charges does not apply as regards Union law and its implementation
- Article [50]⁵⁵ corresponds to Article 4 of Protocol No 7 to the ECHR, but its scope is extended to European Union level between the Courts of the Member States.
- Finally, citizens of the European Union may not be considered as aliens in the scope of the application of Union law, because of the prohibition of any discrimination on grounds of nationality. The limitations provided for by Article 16 of the ECHR as regards the rights of aliens therefore do not apply to them in this context.

The rule of interpretation contained in paragraph 4 has been based on the wording of Article [6(2)] [I-9(3)] of the Treaty on European Union and takes due account of the approach to common constitutional traditions followed by the Court of Justice (e.g., judgment of 13 December 1979, Case 44/79 Hauer [1979] ECR 3727; judgment of 18 May 1982, Case 155/79, AM&S, [1982] ECR 1575). Under that rule, rather than following a rigid approach of "a lowest common denominator", the Charter rights concerned should be interpreted in a way offering a high standard of protection which is adequate for the law of the Union and in harmony with the common constitutional traditions.

⁵³ Article [II-74].

⁵⁴ Article [II-107].

⁵⁵ Article [II-110].

Paragraph 5 clarifies the distinction between "rights" and "principles" set out in the Charter. According to that distinction, subjective rights shall be respected, whereas principles shall be observed (Article 51(1)⁵⁶). Principles may be implemented through legislative or executive acts (adopted by the Union in accordance with its powers, and by the Member States only when they implement Union law); accordingly, they become significant for the Courts only when such acts are interpreted or reviewed. They do not however give rise to direct claims for positive action by the Union's institutions or Member States authorities. This is consistent both with case law of the Court of Justice (cf. notably case law on the "precautionary principle" in Article [174(2)] of the Treaty on the Functioning of the Union: judgment of the CFI of 11 September 2002, T-13/99, Pfizer vs. Council, with numerous references to earlier case law; and a series of judgments on Article 33 (ex-39) on the principles of agricultural law, e.g. judgment of the Court of Justice C-265/85, Van den Berg, 1987 ECR 1155: scrutiny of the principle of market stabilisation and of reasonable expectations) and with the approach of the Member States' constitutional systems to "principles" particularly in the field of social law. For illustration, examples for principles, recognised in the Charter include e.g. Articles 25, 26 and 37⁵⁷. In some cases, an Article of the Charter may contain both elements of a right and of a principle, e.g. Articles 23, 33 and 34⁵⁸.

Paragraph 6 refers to the various Articles in the Charter which, in the spirit of subsidiarity, make reference to national laws and practices.

Explanation on Article [II-113] – Level of protection

This provision is intended to maintain the level of protection currently afforded within their respective scope by Union law, national law and international law. Owing to its importance, mention is made of the ECHR.

Explanation on Article [II-114] – Prohibition of abuse of rights

This Article corresponds to Article 17 of the ECHR:

"Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention."

⁵⁶ Article [II-111].

⁵⁷ Articles [II-85, II-86 and II-97].

⁵⁸ Articles [II-83, II-93 and II-94].

13. Declaration on Article [III-116]

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

14. Declaration on Articles [III-136 and III-267]

The Conference considers that in the event that a draft legislative act based on Article [III-267(2)] would affect fundamental aspects of the social security system of a Member State, including its scope, cost or financial structure, or would affect the financial balance of that system as set out in Article [III-136(2)], the interests of that Member State will be duly taken into account.

15. Declaration on Articles [III-160 and III-322]

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

16. Declaration on Article [III-167(2)(c)]

The Conference notes that Article [III-167(2)(c)] shall be interpreted in accordance with the existing case law of the Court of Justice of the European Communities and of the Court of First Instance regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

17. Declaration on Article [III-184]

With regard to Article [III-184], the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Treaties and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudge the future debate on the Stability and Growth Pact.

18. Declaration on Article [III-213]

The Conference confirms that the policies described in Article [III-213] fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

This Declaration is without prejudice to the provisions of the Treaties conferring competence on the Union, including in social matters.

19. Declaration on Article [III-220]

The Conference considers that the reference in Article [III-220] to island regions can include island States in their entirety, subject to the necessary criteria being met.

20. Declaration on Article [III-243]

The Conference notes that the provisions of Article [III-243] shall be applied in accordance with the current practice. The terms "such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division" shall be interpreted in accordance with the existing case law of the Court of Justice of the European Communities and of the Court of First Instance.

21. Declaration on Article [III-248]

The Conference agrees that the Union's action in the area of research and technological development will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

22. Declaration on Article [III-256]

The Conference believes that Article [III-256] does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article [III-131].

23. Declaration on Article [III-273(1), second subparagraph] of the Treaty on the Functioning of the Union

The Conference considers that the regulations referred to in [the second subparagraph of Article III-273(1)] of the Treaty on the Functioning of the Union should take into account national rules and practices relating to the initiation of criminal investigations.

24. Declaration on Article [III-296]

The Conference declares that, as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

25. Declaration on Article [III-325] concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Chapters 3, 4 and 5 of Title IV of Part Three insofar as such agreements comply with Union law.

26. Declaration on Article [III-419]

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article [III-422] providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

27. Declaration on [Article IV-440(7)]

The High Contracting Parties agree that the European Council, pursuant to Article [IV-440(7)], will take a decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article [IV-440(2)] and Article [III-424], when the French authorities notify the European Council and the Commission that the evolution currently underway in the internal status of the island so allows.

28. Declaration on [Article IV-448(2)]

The Conference considers that the possibility of producing translations of the Treaties in the languages mentioned in Article [IV-448(2)] contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in [the fourth subparagraph of Article I-3(3)]. In this context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages.

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in Article [IV-448(2)] communicate to the Council, within six months from the date of the signature of the Treaty amending the Treaty on European Union and the Treaty on the Functioning of the Union, the language or languages into which translations of the Treaties will be made.

29. Declaration concerning primacy

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.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

*"Opinion of the Council Legal Service
of 22 June 2007*

It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (Costa/ENEL, 15 July 1964, Case 6/64¹) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice."

30. 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 and the Treaty on the Functioning of the Union, competences not conferred upon the Union in the Treaties remain with the 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 better to ensure constant respect for the principles of subsidiarity and proportionality. The Council may, at the initiative of one or several of its members (representatives of Member States) and in accordance with Article 208 of the Treaty on the Functioning of the Union, request the Commission to submit proposals for repealing a legislative act.

¹ *"It follows (...) that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question."*

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, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

31. Declaration concerning the Charter of Fundamental Rights

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.

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.

32. Declaration concerning the common foreign and security policy

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.

33. Declaration concerning the common foreign and security policy

In addition to the specific procedures referred to in [paragraph 1 of Article 11] of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the 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 the Common Foreign and Security Policy 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.

34. Declaration concerning the legal personality of the European Union

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.

35. Declaration on the second paragraph of Article 42 of the Treaty on the Functioning of the Union

The Conference recalls that in that case, in accordance with Article [I-21(4)], the European Council acts by consensus.

36. Declaration on the protection of personal data in the field of police and judicial cooperation in criminal matters

The Conference acknowledges that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation may prove necessary because of the specific nature of these fields.

37. Declaration on Article [152(1)(c)] of the Treaty on the Functioning of the Union

The Conference declares that the measures to be adopted pursuant to Article [III-278(4)(c)] must meet common safety concerns and aim to set high standards of quality where national standards affecting the internal market would otherwise prevent a high level of human health protection being achieved.

38. Declaration on Article [I-18] of the Treaty on the Functioning of the Union

The Conference declares that the reference in Article [I-18] of the Treaty on the Functioning of the Union to objectives of the Union refers to the objectives as set out in Article [I-3(2) and (3)] of the Treaty on European Union and to the objectives of Articles [I-3(4)] with respect to external action under Part III, Title V of that Treaty. It is therefore excluded that an action based on Article [I-18] of the Treaty on the Functioning of the Union would only pursue objectives set out in Article [I-3(1)] of the Treaty on European Union. In this connection, the Conference notes that in accordance with Article [I-40(6)] of the Treaty on European Union, legislative acts may not be adopted in the area of the Common Foreign and Security Policy.

39. Declaration on Article [I-18] of the Treaty on the Functioning of the Union

The Conference underlines that, in accordance with the settled case law of the Court of Justice of the European Union, Article [I-18] of the Treaty on the Functioning of the Union, 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, this Article 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.

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B. DECLARATIONS CONCERNING PROTOCOLS ANNEXED TO THE TREATIES

40. Declaration concerning the Protocol on the position of Denmark

The Conference notes that with respect to legal acts to be adopted by the Council acting alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on the position of Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference notes that on the basis of the Declaration by the Conference on Articles [I-43 and III-329], Denmark declares that Danish participation in actions or legal acts pursuant to Articles [I-43 and III-329] will take place in accordance with Part I and Part II of the Protocol on the position of Denmark.

41. Declaration concerning Italy

The Conference notes that the Protocol on Italy annexed in 1957 to the Treaty establishing the European Economic Community, as amended upon adoption of the Treaty on European Union, stated that:

"THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Italy,

HAVE AGREED UPON the following provisions, which shall be annexed to this Treaty:

THE MEMBER STATES OF THE COMMUNITY

TAKE NOTE of the fact that the Italian Government is carrying out a ten-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in Southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;

RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;

RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;

AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;

ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;

RECOGNISE that in the event of Articles 109h and 109i being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population."

C. DECLARATIONS BY MEMBER STATES

Furthermore, the Conference has noted the declarations listed hereafter and annexed to this Final Act:

42. Declaration by the Kingdom of the Netherlands on Article [I-55] of the Treaty on the Functioning of the Union

The Kingdom of the Netherlands will agree to a decision as referred to in Article [I-55(4)] of the Treaty on the Functioning of the Union once a revision of the European regulation referred to in [Article I-54(3)] of that Treaty has provided the Netherlands with a satisfactory solution for its excessive negative net payment position vis-à-vis the Union budget.

43. Declaration by the Kingdom of the Netherlands on Article [IV-440]

The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article [IV-440(7)] aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

44. Declaration by the Federal Republic of Germany, Ireland and the Republic of Austria

Germany, Ireland and Austria note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

45. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland

The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

46. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"

In respect of the Treaties and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term "nationals" with the exception that the reference to "British Dependent Territories Citizens" shall be read as meaning "British overseas territories citizens".

47. Declaration by the Kingdom of Spain on the definition of the term "nationals"

Spain notes that, under Article [I-10] of the Treaty on the Functioning of the Union, every national of a Member State shall be a citizen of the Union. Spain also notes that, under the current state of European integration reflected in the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, only nationals of Member States are entitled to the specific rights of European citizenship unless Union law expressly provides otherwise. In that respect, Spain notes, finally, that under Articles [I-20 and I-46] of the Treaty on European Union, the European Parliament currently represents the citizens of the Union.

48. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

The United Kingdom notes that Article [I-20] and other provisions of the Treaties are not intended to change the basis for the franchise for elections to the European Parliament.

49. Declaration by the Kingdom of Belgium on national Parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

50. Declaration by the Republic of Latvia and the Republic of Hungary
on the spelling of the name of the single currency
in the Treaties

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaties as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaties, has no effect on the existing rules of the Latvian and the Hungarian languages.

51. Declaration by Poland on the Charter of Fundamental Rights

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.
