



Statewatch analysis 5 EU Reform Treaty

Analysis of the amended text of the draft Reform Treaty

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Introduction

On October 5, 2007 the Portuguese Presidency of the EU Council released a revised text of the planned EU Reform Treaty, including all its Protocols and Declarations. This text will now be discussed by EU foreign ministers on 15 October 2007 and then by EU Prime Ministers and Presidents on 18/19 October 2007, with the intention of reaching agreement on the text of the Treaty at that time. If agreement is reached, the Treaty would likely be formally signed in December with the objective of ratifying it by early in 2009.

It is still possible that amendments will be made to the October draft in order to reach agreement, and furthermore additional amendments could always be made up until the signature of the Treaty in December (if this goes ahead as planned).

If agreement is reached next week, the previous Statewatch analyses of the Reform Treaty will be updated in light of the agreed text.

The following analysis addresses three issues:

- a) a comparison between the Reform Treaty (Oct. 2007 draft) and the Constitutional Treaty;
- b) a comparison between the Oct. 2007 and July 2007 drafts of the Reform Treaty;
- c) commentary on the three significant changes made in the October 2007 draft of the Reform Treaty, which concern the British, Irish and Danish opt-outs from Justice and Home Affairs (JHA) measures and the restriction of the Court of Justice's jurisdiction over policing and criminal law measures adopted before the Reform Treaty enters into force.

1) Comparing the Reform Treaty to the Constitutional Treaty

The question of the degree of similarity between the Reform Treaty and the Constitutional Treaty is highly contentious, particularly because of the argument over the question as to whether the UK, and perhaps also some other Member States, should hold a referendum upon the Reform Treaty.

The previous Statewatch analyses of the July draft of the Reform Treaty pointed out in exact detail which provisions of the draft Reform Treaty were based on the Constitutional Treaty, and which provisions were different.

The most recent and high-profile contribution to this debate is a report of the House of Commons Select Committee on European Scrutiny (35th report, 2006-07), it was concluded (in para. 45) that ‘the Reform Treaty will introduce into the existing Treaties all the "innovations" resulting from the 2004 IGC (apart from I-8 on symbols)’. **This conclusion is clearly false.**

This can be demonstrated by the following list, derived from the list in the various Statewatch analyses of the Reform Treaty, which states all of the substantive differences between the Constitutional Treaty and the Reform Treaty:

- a) the preamble to the Constitutional Treaty has essentially been dropped;
- b) the objectives clause has been amended, as regards competition and the definition of the area of ‘freedom, security and justice’;
- c) the competence clause has been amended;
- d) the clause on relations between the EU and Member States has been further amended;
- e) the Charter of Rights is not part of the Treaties (and a Protocol on the UK and Polish position under the Charter has been added); this also means that the procedure to amend the Charter is different (agreement between the EU institutions, under the draft Reform Treaty, as compared to the normal Treaty revision procedure, under the Constitutional Treaty);
- f) the Treaty clause on the symbols of the EU has been dropped;
- g) the Treaty clause on primacy of EU law has been dropped, although there will be a declaration on this issue;
- h) Article 8c on national parliaments is new;
- i) the changes to the rules on Council voting will be delayed for five years, with another 2.5 year transitional period afterward;
- j) the draft Decision on delaying Council voting where there is nearly a sufficient blocking minority to object to a measure has been amended;
- k) the threshold to start ‘enhanced cooperation’ is nine Member States, instead of one-third of them (Article 10 TEU);
- l) the restriction of the Court of Justice’s jurisdiction over foreign policy measures has been amended (Article 11 TEU);
- m) the ‘Copenhagen criteria’ have been added to the clause on accession to the EU;
- n) the new legal base concerning consular protection has been amended (to limit its scope): Article 20 TFEU;
- o) the data protection clause (Article 15a TFEU) has been amended to remove foreign policy data protection from its scope, and a separate Article has been drafted in the foreign policy provisions of the TEU to deal with this; this changes the decision-making as regards foreign policy data protection matters (so that the foreign policy decision-making rules will apply) and excludes the Court of Justice from jurisdiction over such measures;
- p) the new legal base relating to passports, ID cards, etc. has been transferred from the citizenship provisions to the JHA Title, where an opt-out for the UK, Ireland and Denmark will apply;
- q) the application of the ‘emergency brake’ which applies to the extension of QMV to social security for migrant workers and self-employed workers has been clarified (Article 42);

- r) the new Article concerning competence to adopt financial sanctions on domestic ‘terrorists’ (ie groups or individuals based within the EU who are designated as ‘terrorist’ by the EU or, perhaps by the United Nations) has been moved from the free movement of capital section to Title IV of Part Three (the JHA Title); this means that the British, Irish and Danish opt-outs from JHA measures will now apply to this legislation;
- s) there is a new clause (Article 66a) concerning Member States’ internal security cooperation with each other;
- t) national parliaments have control over the extension of QMV and co-decision to family law (Article 69d(3));
- u) the ‘emergency brakes’ relating to aspects of criminal law have been clarified;
- v) new provisions expediting the use of the ‘enhanced cooperation’ rules in the event of a veto of proposals concerning the European Public Prosecutor or aspects of police cooperation have been added;
- w) the restructuring of the Treaty Titles and sections dealing with internal policies has been dropped; this restructuring could have meant a different interpretation of the Treaty provisions because, for instance, agriculture and transport policy would have been separated from the internal market; also without this restructuring, certain provisions (Articles 296-298 TEC) will remain outside the scope of the rules on simplified Treaty amendment;
- x) the power to take emergency economic measures has been amended to address energy issues (Article 100);
- y) the new powers over public health emergencies have been limited, so that they cannot entail amendment of national laws (Article 152);
- z) the new powers over space have been limited, so that they cannot entail amendment of national laws (Article 172a);
- aa) there is a new reference to climate change in the environmental title (Article 174);
- bb) the approval of EU accession to the ECHR will be by means of unanimous voting and national ratification, not QMV;
- cc) the approval of rules on jurisdiction over intellectual property disputes for the Court of Justice will be adopted by means of unanimous voting and national ratification, not QMV (Article 229a);
- dd) the ‘residual powers’ clause (Article 308) will not apply to foreign policy;
- ee) there are new Protocols on public services, competition, EU competence and the effect of the EU Charter of Fundamental Rights in the UK and Poland;
- ff) the Protocol regarding the UK and Irish opt-out from immigration, asylum and civil law has been enlarged to include policing and criminal law, and to clarify the position if the UK or Ireland opt out of amendments to measures which they have already opted in to;
- gg) the Schengen protocol has been amended to permit the UK and Ireland to opt out of measures building on aspects of the Schengen acquis which they have already opted into;
- hh) the protocol regarding Denmark’s exclusion from JHA matters has been amended to clarify Denmark’s ability to opt out of measures amending JHA measures (other than Schengen-related measures) to which it is already bound;
- ii) the Protocol on national parliaments has been amended as regards the procedure for examining draft legislation for compliance with the subsidiarity principle; and
- jj) the transitional protocol has been amended to exclude the application of the Court of Justice’s normal jurisdiction to pre-existing policing and

criminal law measures for a five year period after the entry into force of the new Treaty, and to provide at that point for the UK to refuse to accept the Court's jurisdiction.

This adds up to 35 amendments to the Constitutional Treaty. For the sake of comparison, Appendix 1 to this analysis lists all of the substantive changes which the Reform Treaty would make to the existing Treaties. While it is clear from that much longer list that the Reform Treaty retains a large majority of the provisions of the Constitutional Treaty, the above list shows that it is not accurate to say that the Reform Treaty introduces all of the changes of the Constitutional Treaty except one. Furthermore, in light of the above list, the Committee's assertion that the Reform Treaty is 'substantially equivalent' to the Constitutional Treaty is not accurate either, since this phrase is understood to mean that the two Treaties are essentially identical in substance. Clearly they are not.

2) Comparing the October 2007 and July 2007 drafts of the Reform Treaty

The October draft of the Reform Treaty contains three significant changes relating to the Court of Justice's jurisdiction over policing and criminal law and the opt-outs of the UK, Ireland and Denmark from JHA matters. They are further discussed below.

Otherwise there are a number of detailed technical amendments. Unfortunately the October draft does not indicate in any way what those amendments are. However, I have nonetheless compiled a (hopefully) complete list of them (see Appendix 2). Many of the amendments correct technical errors that were pointed out in the Statewatch analyses of the Reform Treaty.

3) Commentary on the three significant changes in the October 2007 draft Reform Treaty

a) Court of Justice

The first significant amendment is a new Article 10 to the Protocol on transitional provisions, which restricts the jurisdiction of the Court of Justice over pre-existing policing and criminal law measures. It should be reiterated that there was no such restriction in the Constitutional Treaty, and in fact there was no mention of this issue in the June 2007 IGC mandate.

Article 10 first of all provides that the current Court of Justice jurisdiction over policing and criminal law matters will be retained for pre-existing measures for five years after the Reform Treaty enters into force. This will likely take us to some time in early 2014. This is important because the current Court jurisdiction is limited compared to its normal jurisdiction, which will apply to all new measures on policing and criminal law adopted after the Treaty enters into force.

The principal differences are twofold. First of all, under the current Treaty, Member States are not automatically bound by the Court's jurisdiction over references on the interpretation of EU law from national courts. Rather they have the power to opt in or out of that jurisdiction, and just over half (fourteen) Member States have opted in. Those Member States are twelve of the first fifteen Member States (the exceptions are the UK, Ireland and Denmark), and then

subsequently the Czech Republic and Hungary. Moreover, the Member States which have opted in can choose to limit the Court's jurisdiction to references from final courts only, rather than all courts and tribunals. Spain and Hungary have used this power.

So thirteen Member States, including the UK, will be able to maintain for five years the existing position that their national Court cannot send references to the Court of Justice over pre-existing third pillar matters. It will still be open to those States to give the Court jurisdiction before the Reform Treaty enters into force - obviously it is unlikely that the UK, at least, will do so.

The second difference is that under the current Treaty, there is no way in which the Commission can use 'infringement' actions to sue Member States for violation of policing and criminal law measures. Instead, there is a provision (never yet used) for Member States to bring dispute settlement proceedings against each other before the Court, or for the Commission to bring a dispute settlement proceeding against a Member State. But the Commission only has this power in respect of Conventions, and Conventions have fallen into disuse. The jurisdiction over infringement actions will also be inapplicable for five years.

However, during the period of five years, the Court's 'normal' jurisdiction will apply as soon as a pre-existing act is amended. There might be a dispute in some cases as to what precisely constitutes an amended act. And it should be recalled that the UK, Ireland and Denmark will have an opt-out over amended acts - subject to certain conditions which have been inserted into other Protocols.

After five years, the Court's normal jurisdiction applies, except that the UK (and no other Member State) could refuse to accept it - in which case all third pillar legislation which pre-existed the Reform Treaty, and which has not been amended in the meantime, will cease to apply to the UK. The Council has the power to decide on transitional rules (for example, the validity of European arrest warrants issued by the UK, or issued by other Member States which the UK might execute) as well as on the financial consequences for the UK.

The UK would then be able in turn to apply to opt back in to some of the measures it has been excluded from, although at the price of accepting the Court's normal jurisdiction. This is subject to the approval of the Council or the Commission (depending on the applicable rules), although they are obliged to seek the widest possible participation of the UK, subject to the principle of coherence. This provision means that the UK could, if it wished, 'escape' from all its obligations under pre-existing third pillar acts, and then opt back in to only certain of them - subject (as regards the opt in) to the Council's approval.

b) Title IV protocol: amending measures

The second amendment is to the 'Title IV' Protocol of the UK and Ireland, which allows them to opt out of all JHA matters (for the text and analysis of the Protocol, see Statewatch Reform Treaty analysis no 4). This amendment deals with the issue of opting out of amendments to JHA legislation from which the UK or Ireland have already opted in.

The amendment (a new Article 4a in the Protocol) confirms that the UK or Ireland can opt out of amendments to legislation from which they have already opted in. (In fact, they have done so already under the existing Protocol). However, the

Council can 'urge' the UK or Ireland to opt in to such a measure if it considers that the UK's non-participation would make the existing measure (as amended) 'inoperable' for the EU or the Member States. If the UK or Ireland does not then opt in to a proposed measure at around the time the measure is adopted, then the existing measure will no longer apply to the UK or Ireland. The Council may also decide to charge the UK with the financial consequences of this disapplication. This will operate as an incentive to opt in, although the UK and Ireland might in some cases wish to be rid of their existing obligation. The UK or Ireland are also free to opt back in to the legislation later. An identical amendment has also been added to the Protocol on Danish participation in JHA measures.

It should also be recalled that the process is not automatic, as the Council may decide *not* to urge the UK or Ireland to opt in to an amendment (or its decision might be successfully challenged before the Court of Justice) if the amendment is sufficiently severable from the original legislation. For example, if an amendment to the European Arrest Warrant simply takes away some grounds for non-execution of warrants, it should still prove possible for the UK to participate in the relevant legislation with a wider list of grounds for non-execution of warrants. After all, the EU has agreed a treaty to this effect with Norway and Iceland.

c) Schengen acquis: amendments

The final amendment concerns the UK's and Ireland's opt in to the Schengen acquis. At present a Protocol provides for the UK and Ireland to apply to opt in to part or whole of the Schengen acquis (see further Statewatch Reform Treaty analysis 4). Both have opted in to part of the Schengen acquis, and the Council Decision to this effect obliges both Member States to opt in to all measures building upon the parts of the Schengen acquis which they have opted into.

The Protocol would now be amended to give the UK and Ireland a right to opt out of such measures. This would therefore be a new right which they do not enjoy at present. However, there would be a procedure for the Council, or the European Council or the Commission to decide possibly on the partial disapplication of the UK's or Ireland's participation in the existing Schengen acquis, if the UK's or Ireland's non-participation in the amending measure makes it inoperable or incoherent. This would not always be the case though - in particular since the UK and Ireland do not participate in the core provisions of the Schengen acquis (common external border controls and visa policy, abolition of internal border controls). Again, the UK or Ireland might even welcome the change to escape from their existing obligations in some cases.

Appendix 1

Substantive changes to the existing Treaties resulting from the Reform Treaty

A) Treaty on European Union:

- a) the EU's pillar structure is abolished (Article 1), while retaining different rules on decision-making and Court of Justice jurisdiction as regards foreign policy;
- b) a single express legal personality for the EU, subsuming the current express legal personality of the EC and the implied separate legal personality of the EU, is created (Articles 1 and 32);
- c) there are amendments to the 'values' of the EU (currently referred to as principles; see Article 2);
- d) there is a revised list of the EU's objectives (Article 3);
- e) the rules on relations between the EU and its Member States have been amended (Article 4);
- f) the basic rules on EU competence (now found in Article 5 TEC) have been clarified (Article 5), and there is a revised protocol on subsidiarity;
- g) the EU Charter of Rights becomes binding (Article 6), and there is a separate protocol on the application of the Charter to the UK and Poland;
- h) the EU has an obligation to accede to the European Convention on Human Rights (Article 6);
- i) there is a new clause on the EU's neighbours (Article 7a);
- j) there are new provisions on the democratic foundations of the EU (Articles 8, 8a and 8b);
- k) there is a new clause on the role of national parliaments (Article 8c), and a revised protocol on this issue;
- l) there is an amendment to the maximum number of members which can be elected to the European Parliament, and there are now minimum and maximum numbers of MEPs for Member States (Article 9a);
- m) the European Council becomes an institution, with a full-time President (Article 9c);
- n) the voting rules for the Council are amended, the Council must meet in public when adopting or discussing legislation, and the Council has a team presidency (Article 9c);
- o) the number of Commissioners, and the procedure for appointment, are amended (Article 9d);
- p) there is a new post of foreign policy High Representative (Article 9e);
- q) there must be nine, not eight, Member States, to start 'enhanced cooperation' (Article 10);
- r) there are detailed new rules on defence policy;
- s) the Court of Justice will have jurisdiction over foreign policy sanctions affecting individuals;
- t) there will be an extension of the prospect of QMV to adopt foreign policy measures;
- u) the current 'third pillar' (policing and criminal law) has been moved to the TEC/TFEU;
- v) the Court of Justice will have competence to interpret Title I of the Treaty, which it does not have under the current Article 46 TEU;
- w) the main procedure to amend the Treaties has been altered, and there are new simplified procedures for amendment (Article 33);
- x) there are amendments to the process of accession for new Member States

- (Article 34);
- y) there is a new clause on withdrawal from the EU (Article 35);
 - z) the TEC provisions on territorial scope apply also to the TEU, which never previously contained a provision on its territorial scope (Article 37); and
 - aa) Member States may translate the treaty into other languages which are official languages on all or part of their territory (Article 40(2)).

B) Treaty establishing the European Community (to be renamed Treaty on the Functioning of the European Union):

- 1) the TFEU will contain detailed rules on the nature of EU competence (Articles 2-6), as well as a Protocol on this issue;
- 2) the general and final provisions of the Treaty, as well as a number of the institutional provisions, now apply to all three of the current 'pillars';
- 3) there is a revised general provision on the consistency of EU policies (Article 7);
- 4) there are new general provisions on social issues, non-discrimination and the status of churches and comparable bodies (Articles 9, 10 and 15b);
- 5) the Protocol on animal welfare has been amended and inserted into the Treaty (Article 13);
- 6) there is a 'legal base' for the adoption of public services legislation (Article 14), as well as a Protocol on this issue;
- 7) there are changes to the rules on access to documents, which also now include an obligation to hold open meetings (Article 15);
- 8) the scope of the Article on data protection rules is wider (Article 15a);
- 9) the EP has consent powers, rather than consultation powers, over non-discrimination legislation (Article 17a);
- 10) there is a new 'legal base' for legislation concerning social benefits in relation to the free movement of citizens (Article 18(3));
- 11) there is a new 'legal base' for legislation relating to protection by diplomatic and consular authorities (Article 20);
- 12) there is a 'legal base' for adopting legislation to implement the new TEU Article providing for the possibility of 'citizens' initiatives' (Article 21);
- 13) the European Parliament has the power of consent, instead of consultation, as regards the extension of citizenship rights (Article 22);
- 14) co-decision is introduced for the basic rules governing agriculture and fisheries (Article 37);
- 15) qualified majority voting (QMV), with an 'emergency brake', will apply to social security for migrant workers, and for self-employed migrants (Article 42); co-decision will apply to the adoption of legislation on exceptions from the right of establishment (Article 45);
- 16) QMV will apply to all aspects of decision-making regarding free movement of self-employed persons (Article 47);
- 17) co-decision will apply to legislation on the provision of services by resident third-country nationals resident in the Community (Article 49);
- 18) co-decision will apply to legislation on the provision of services (Article 52);
- 19) co-decision will apply to legislation on the free movement of capital to and from third countries, while consultation will apply to legislation making such free movement more restrictive (Article 57);
- 20) there is a new procedure permitting the authorization of national restrictions on the movement of capital to and from third countries (new Article 58(4));

- 21) the current Article 60, concerning financial sanctions on third countries, has been amended (but also moved into the new Part Five of the Treaty, on external relations);
- 22) the provisions concerning Justice and Home Affairs (JHA) have been amended to apply qualified majority voting and co-decision to legal migration and most criminal law and policing measures;
- 23) EU competence concerning most aspects of JHA has been amended;
- 24) the Court of Justice has its full jurisdiction (except for an exception relating to policing activities and a transitional period for pre-existing police and criminal law measures) over JHA measures;
- 25) the Commission has a greater (though not fully exclusive) right of initiative as regards policing and criminal law proposals;
- 26) an exception providing for unanimity in exceptional cases as regards the common transport policy has been deleted (Article 71);
- 27) there are new provisions for the potential repeal of exceptions to the transport and state aids rules which concern the historic division of Germany (Articles 78 and 87);
- 28) there is a clarification of the relationship between Articles 94 and 95 of the Treaty (the general internal market powers);
- 29) co-decision is extended to the adoption of legislation governing distortion of competition (Article 96);
- 30) there is a new 'legal base' for the adoption of legislation concerning EU-wide intellectual property rights (QMV and co-decision, except languages aspects are subject to unanimity and consultation): Article 97a;
- 31) the Commission can warn a Member State that its economic policies are in breach of EU guidelines (Article 99);
- 32) a Member State will not be able to vote in its own case as regards an alleged breach of EU guidelines (Article 99);
- 33) the co-decision procedure will apply to the adoption of rules on EU economic guidelines (Article 99);
- 34) the power to take emergency economic measures has been amended to address energy issues (Article 100);
- 35) the EP's powers have been downgraded from 'co-operation' to 'consultation' in four Articles (Articles 101-103 and 106) and from 'assent' to 'consultation' in one Article (Article 105);
- 36) the Commission has power to issue a warning, and to make a proposal instead of a recommendation, as regards aspects of possible sanctions against Member State for excessive deficits (Article 104);
- 37) co-decision and (to an extent) QMV have been extended to measures amending aspects of the ECB Statute (Article 107);
- 38) there is a wider power, now also subject to co-decision, to adopt legislation relating to the use of the euro as the single currency (new Article 111);
- 39) there is a new power to adopt legislation concerning surveillance and excessive deficits for eurozone Member States only (new Article 114);
- 40) there is a reference to the 'Eurogroup' (Article 115), as well as a Protocol on this issue;
- 41) there is a wider power to adopt measures concerning international aspects of monetary union (new Article 115a);
- 42) the eurozone Member States can adopt a recommendation on whether a new Member State should join the eurozone (Article 117);
- 43) the European Parliament (EP) will be informed of agreements between social partners (Article 139);
- 44) there is a new 'legal base' on sport (Article 149);
- 45) QMV will apply to cultural matters (Article 151);

- 46) the EU's public health powers will apply to medical products and devices, and its incentive powers and overall competence as regards public health have been clarified (Article 152);
- 47) the EP has the power of co-decision, instead of assent, over cohesion fund measures (Article 161);
- 48) there is a new 'legal base' relating to the European research area (Article 166(5));
- 49) there is a new 'legal base' concerning space policy (Article 172a);
- 50) there is a reference to climate change in the environment Title (Article 174), although this not really a substantive amendment since existing EU environmental powers can address climate change issues;
- 51) any extension of QMV to the environmental measures still subject to unanimous voting will entail an extension of co-decision as well (Article 175);
- 52) there is a new 'legal base' on energy (Article 176a);
- 53) there is a new 'legal base' on tourism (Article 176b);
- 54) there is a new 'legal base' on civil protection (Article 176c);
- 55) there is a new 'legal base' on administrative cooperation (Article 176d);
- 56) the type of any acts which might be adopted relating to free movement to and from the associated territories of Member States has changed (Article 186);
- 57) the Commission will have a monopoly making proposals relating to the associated territories, and the EP will have expanded powers (Article 187);
- 58) there will be new basic principles on the EU's external relations (Article 188a);
- 59) the existing Articles 132 and 134 TEC, dealing with aspects of commercial policy, will be deleted;
- 60) the scope of the EU's common commercial policy will be expanded, and the decision-making relating to that policy will include more qualified majority voting (QMV) and co-decision for the European Parliament (Article 188c);
- 61) EU development policy will be more clearly focussed on poverty reduction and elimination (Article 188d);
- 62) co-decision will apply to EU measures on cooperation with non-developing countries (Article 188h);
- 63) there is a new 'legal base' for balance-of-payments support for non-EU countries (Article 188i);
- 64) there is a new 'legal base' for humanitarian aid (Article 188j);
- 65) there is a wider 'legal base' for sanctions against third countries, now including non-state entities and individuals (Article 188k);
- 66) there is a new Article on the circumstances in which the EU can conclude international agreements (Article 188l);
- 67) the Article on association agreements now applies to the current 'second pillar' and 'third pillar' of the EU (Article 188m);
- 68) the rules on the negotiation and conclusion of agreements now apply the first pillar rules to third pillar treaties, amend the rules on second pillar treaties, and extend the EP's power to give consent to these treaties (Article 188n);
- 69) the rules on relationships with other international organisations have been amended (Article 188p);
- 70) there is a new clause on the EU's external delegations (Article 188q);
- 71) there is a new clause on 'solidarity' between Member States in the event of terrorist attack or disaster (Article 188r);
- 72) there is a new panel to scrutinize appointments to the Court of Justice (Article 224a);

- 73) QMV and co-decision will apply to decisions amending the Court's Statute or creating new specialised courts (Articles 225a and 245);
- 74) there is greater possibility to impose fines on Member States which breach EU law (Articles 226 and 228);
- 75) the rules on annulment action liberalise 'standing' requirements for natural or legal persons, and also the Committee of the Regions, and also clarify the admissibility of actions against EU agencies and similar bodies (Article 230);
- 76) the executive members of the European Central Bank will be appointed by QMV (Article 245a);
- 77) the definition of 'decision' has been altered (Article 249);
- 78) there will be a new procedure allowing the Commission to adopt 'delegated' acts (Article 249b);
- 79) future rules concerning 'comitology' will be adopted by QMV and co-decision, instead of consultation and unanimity (Article 249c);
- 80) there is an express 'legal base' for the adoption of 'inter-institutional agreements' (Article 252);
- 81) there is a new legal base for the adoption of an EU administrative law code (Article 254a);
- 82) the rules on the Committee of the Regions and the Economic and Social Committee have been revised (Articles 256a to 265);
- 83) the Statute on the European Investment Bank can be amended without Treaty amendment (Article 266);
- 84) measures implementing the decisions on the EU's own resources (sources of income) could be adopted by QMV (Article 269);
- 85) the Treaty will include provisions for adopting the EU's 'financial framework' (multi-year agreements on spending): Article 270a;
- 86) the annual budget procedure has been substantially amended (Articles 272 and 273);
- 87) the rules on implementation of the budget have been amended slightly (Articles 274 to 276);
- 88) aspects of the EU's financial regulations will be adopted by co-decision, and QMV will apply to the aspects not already subject to it (Article 279);
- 89) the criminal law exceptions to the EU powers on customs cooperation and fraud will be removed (Articles 27a and 280);
- 90) the rules on 'enhanced cooperation' will be amended (Articles 280a to 280h), to expand the scope of enhanced cooperation as regards foreign policy (making authorisation subject to unanimous approval), to give the EP assent power over approval of any decision on enhanced cooperation (other than in the area of foreign policy), to abolish the distinct rules relating to enhanced cooperation over policing and criminal law, and to permit Member States participating in enhanced cooperation to alter the applicable decision-making rules;
- 91) the staff regulations will be adopted by the co-decision procedure (Article 283);
- 92) the special provision for Member States to agree treaties on issues like civil cooperation and tax coordination will be abolished;
- 93) the residual powers clause (Article 308) will be revised to clarify its scope, and to give the EP power of consent; and
- 94) there will be a possibility of amending the status of some overseas territories of Member States (Article 313(6)).

Appendix 2

Amendments to the Reform Treaty in the October 2007 draft

Treaty on European Union

- the October version adds a couple of amendments to the preamble to the TEU
- in the October version, the TEU will NOT contain titles for any of the Articles (the July version contained titles for most articles, taken over from the Constitutional Treaty)
- in the October version, para. 3 of Article 1 TEU is different
- the basic provisions on citizenship of the EU have been added to Article 8
- Article 9(3) is amended and there is a new 9(4)
- the paragraphs in Article 9d have been re-ordered - so that the censure clause is now the final paragraph
- Article 11(1) TEU now refers also to 'rules', and the wording regarding the Court's jurisdiction has reverted back to the wording of the IGC mandate ('these provisions')
- there is a minor amendment re the new Article 13(2), adding a reference to the High Representative
- there is a minor technical amendment to Article 14(6)
- in Article 17(1), the words 'except where this Chapter provides otherwise' have been added
- there is a minor amendment to Article 20, first paragraph
- Article 24 now specifies that the Council shall 'adopt a decision' laying down the rules on CFSP data protection
- the paragraph of Article 33 are renumbered
- the new Article 39 has been dropped - presumably because it has been incorporated into paragraph 3 of Article 1
- the proposed amendments to the current Article 51 and 52 have been dropped
- the numbering of the cross-references has been corrected, and the cross-references to the 'Treaty on the Functioning of the European Union' have been corrected (in the July version, most or all references were to the 'Treaty on the Functioning of the Union').

Treaty on the Functioning of the European Union

- the numbering of the cross-references has been corrected throughout
- there are changes to the horizontal amendments (points 3(b), 5, 7, 8)
- Article 1(1): 'scope' is changed to 'delimitation'
- the current Article 11a is expressly repealed - this was obviously an oversight in the July draft
- Article 14, the public services clause, will require regulations to be used
- the access to documents clause will appear in Title I, the general provisions, as Art 15, rather than in Title II, non-discrimination and citizenship, as Article 21a; it will be specified that regulations must be adopted
- the data protection clause will appear in Title I, the general provisions, as Art 15a, rather than in Title II, non-discrimination and citizenship, as Article 21b
- the clause on churches, etc. will consequentially be renumbered 15b, not 15 [the numbering will all ultimately be consolidated, of course]
- in Article 17(1), the word 'complement' shall be changed to 'be additional to' national citizenship
- the words 'inter alia' are added before the list of citizens' rights in the new Article 17(2)
- there is a technical amendment to Article 20

- the new paragraph in Article 21 concerning the citizens' initiative requires the use of regulations
- the amendment to Article 22 is entirely different
- the amendment to Article 22b (ex-15) is altered
- an entirely new amendment to Article 23 is added
- the amendments to Article 32, 36 and 37 are altered (this corrects a major error regarding Article 37, which in the July draft maintained in force two different decision-making procedures for the adoption of the basic CAP and CFP rules)
- there is an entirely new amendment to Article 39(3)(d)
- there is a wholly new amendment to Article 53
- the second paragraph of Article 66 becomes Article 66a. This will affect the renumbering of the Treaty from hereon.
- Article 67a requires the use of regulations
- Article 69d(4) becomes part of Article 69d(3)
- there is a further technical amendment to Article 70
- the amendment to Article 72 is corrected to confirm that this is not a legislative procedure -- this was a technical error in the July draft
- there are two further amendments to Article 75
- there are two further technical amendments to Article ex-95
- the amendment to Article 99(6) now requires the use of regulations
- Article 102(1) will no longer be numbered
- Article 105 is further amended as regards the acronym for the ESCB and the requirement to use regulations
- one of the amendments to Article 107 has been dropped - probably due to the amendment to Article 105 regarding the acronym for the ESCB
- it is expressly specified that the current Article 111(4) has been moved to Article 115a, with amendments [this makes it clearer that Article 115a is not an entirely new clause]
- the amendments to Article 117 have been altered (see points (a)(iv) and (b) (i) and (ii))
- the amendments to Article 118 have been altered (see points (a) and (b))
- the amendments to Article 120 have been altered (see point (b))
- the remaining parts of Article 121 have been repealed -- rather than left in the Treaty (as they are redundant)
- there is a wholly new amendment to Article 125
- there is a wholly new amendment to Article 148
- the amendments to Article 152 now include a reference to mental health, and to MS competence over the management of health care
- there is a wholly new amendment to Article 159
- there is a further amendment to Article 174 (point b)
- there are changes and additions to the amendments to Article 175
- tourism is now Article 176b, not 176g
- civil protection is now Article 176c, not 176h
- administrative cooperation is now Article 176d, not 176h
- education stays as Article 149, not 176b, but is now in a separate title from social policy
- vocational training is still Article 150, not 176c, but, with education, is now in a separate title from social policy
- culture is still Article 151, not 176d
- public health is still Article 152, not 176e
- industry is still Article 153, not 176f
- there is no separate Title on supplementary competences; tourism, civil protection and administrative cooperation now have their own Title numbers; culture, public health and industry remain separate Titles

- Article 187 now makes clear that there would be a special legislative procedure
- there are further amendments to Article 188o (ex-111)
- Part Six (ex-Five) of the Treaty will have a different title
- the amendments to Article 190 have been altered
- Article 191 will require acting by means of regulations
- there is a minor change to the amendments to Article 192
- there is a requirement to act by regulations re Articles 194 and 195, and some other minor amendments to Article 195
- the 4th para of Article 224 will not now be deleted
- the amendment to Article 225 is slightly different
- there are changes to the amendments to Article 225a
- the amendments to Article 229a are corrected to specify that the Council will still act unanimously
- there are very minor changes to the amendments to Article 230
- a comma is added to Article 232
- there is a wholly new amendment to Article 235
- Article 240a uses different wording for the Court's exclusion from CFSP provisions
- consistently with the Reform Treaty mandate
- the amendments to Article 245b (ex-112) are altered
- the amendment to Article 246 is altered
- there is a grammatical clarification re Article 248
- Article 249a(2) is worded a bit differently and there is a new art 249a(4)
- Article 249b(1) now includes the words 'of general application'
- Article 249c(3) requires the use of regulations (re the general comitology rules)
- Article 254a requires the use of regulations
- Article first sub-para of art 256a(5) has been deleted
- the amendments to Article 265 are altered
- the amendments to Article 269 are changed to alter the type of acts to be used
- the amendments to Article 275 are corrected to include the addition of a new para
- there is a minor change to the amendments to Article 279
- the amendments to Article 280 are altered
- Article 310 to 312 are not to be repealed
- there is a minor amendment to the changes to Article 283
- there is a wholly new amendment to Article 290
- the amendments to Article 299 are altered
- the new version of Article 308 is amended to make it clear that the Council will in some cases be adopting legislative acts
- Article 308a is corrected, so as to refer to four measures, not seven
- Article 314 makes a different cross-reference to the TEU

Protocols

- the competition protocol has different wording, but this is- not a substantive change
- charter - words 'devolving'
- in the transitional protocol, there is a new paragraph Article 2, on the EP
- in the same protocol, Article 1 has been added - the definition of 'treaties' includes the Euratom Treaty
- in the same protocol, in the clause on the Council - a reference to Article 201a TFEU is added
- in the same protocol, in Article 9, there is a more general reference to prior TEU acts

- protocol 10 - the power to amend protocols is dropped (point 2)
- point 3a to this protocol - the amendment does not apply to the cohesion protocol
- the protocol on seats of the institutions will also be annexed to the Euratom treaty
- there are new points 5 and 6 to this protocol - with further changes to references to 'this Treaty'
- in point 10a) to protocol 10, there is a different amendment re the ECJ Statute
- in protocol 10, point 11a), there is a new point re the ESCB Statute; see also 11b), 11c), 11f), 11g) new 11p)
- in protocol 10, point 12e) re the EIB is different; also points 12p)i) and iv) are added; ditto q) i)
- in protocol 10, point 14c) re privileges is new
- UK/Ireland Title IV protocol - an Article 6a is also added providing for an opt-out concerning data protection
- protocol on denmark - art 2 of protocol is revised
- Article 5a is revised re data protection - to match the UK/Ireland protocol
- in protocol 10, point 23)b) vi) re cohesion is new
- in protocol 10, point 27) is new - re the Article 141 protocol
- in protocol 10, point 28) is new - re the Greenland protocol
- protocol 12 - arts 9 and 11 are dropped

Declarations

- the previous declaration 11, which constituted the text of the Charter to be proclaimed when the Treaty was signed, has been dropped
- so has declaration 12, the explanations on the text of the Charter
- declaration 31 on the Charter (now 29) has however been maintained
- declaration 38, on the position if the Treaty enters into force after 1.1.2009, is new
- so is declaration 39, on the issue of Member States not participating in JHA measures

Declarations on protocols

- 39a is new: this encourages the adoption of measures replacing pre-existing third pillar acts
- 39b to 39e are all new - they all concern the revised text of the Schengen acquis Protocol
- two Member States have (re)joined declaration 44, calling for an IGC to amend the Euratom Treaty
- a new declaration 52 indicates that the UK will opt in to measures concerning domestic terrorist sanctions
- a new declaration 53 declares the support of Poland for social rights, despite its participation in the Protocol which seeks to limit the legal effect of the Charter and the specific provision on social rights in that Protocol.

For full background documentation please see:

Statewatch Observatory on the EU Constitution and the Reform Treaty
<http://www.statewatch.org/euconstitution.htm>

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