



Statewatch Analysis

EU Reform Treaty Analysis no. 2.2:

Foreign policy provisions of the revised text of the Treaty on the European Union (TEU)

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Introduction

The following text sets out what will be the text of the foreign policy provisions of the Treaty on the European Union (TEU), following the amendments to be agreed by the planned Reform Treaty. This text is based on the draft Reform Treaty released on 23 July 2007, and incorporates the amendments which are proposed by this draft Treaty to the current TEU into the current TEU text. It is updated to include the text of the draft Treaty as amended by legal experts in October 2007, and then as agreed by EU leaders later that month.

The amendments to the rest of the TEU (ie the Articles not concerned with foreign policy) are the subject of Statewatch Reform Treaty Analysis 2.1.

I have indicated by ~~strikeout~~ which provisions of the current TEU would be deleted, and by **bold** and underline which provisions would be added to the TEU. The provisions in *italics* are amendments following from the Reform Treaty mandate for an intergovernmental conference (IGC) as agreed at the EU leaders' summit on 23 June 2007, which amend what was agreed as part of the Constitutional Treaty.

It should be recalled that the separate Treaty establishing the European Community (TEC), to which Articles in the TEU sometimes refer, will be renamed the 'Treaty on the Functioning of the European Union' (TFEU) by the Reform Treaty.

The commentary on the Articles gives more detail on which Treaty provisions would be amended. Unless indicated otherwise, all of the amendments which the draft Reform Treaty would make to the text of the existing Treaty are essentially identical to the text of the Constitutional Treaty (OJ 2004 C 310), to the extent that the Constitutional Treaty was different from the existing Treaty. The changes which would be made by the draft Reform Treaty mandate to the Constitutional Treaty text are clearly indicated.

Some further changes to the text are possible before the final signature of the Treaty - which is planned for 13 December 2007. This analysis will be updated in the event of changes to the text.

The draft Reform Treaty confirms that the Treaty Articles will be renumbered, but does not yet include the new numbering. I have inserted the likely new numbering of the Treaty provisions in square brackets throughout.

General comments

The current foreign policy Articles of the TEU are extensively amended by the draft Reform Treaty, mainly to provide for the role of the 'High Representative of the Union for Foreign Affairs and Security Policy' and to amend the rules relating to defence.

These amendments are essentially unchanged from the Constitutional Treaty, apart from an amendment to Article 11 TEU relating to the Court of Justice, a separate clause governing data protection within the context of foreign policy (see the new Article 24 TEU), the new name of the 'Union Minister of Foreign Affairs', and the exclusion of foreign policy from Article 308 of the TEC/TFEU, which gives 'residual powers' to the EU to act where there are no express powers in the Treaty (see Statewatch Reform Treaty analysis 3.7). There will also be some new declarations on the nature of the CFSP, agreed as part of the Reform Treaty mandate.

However, in accordance with the IGC Reform Treaty mandate, the provisions on the Common Foreign and Security Policy will remain in Title V of the TEU, except for the flexibility provisions and the rules on international agreements, which are integrated into the general rules of the TFEU on these subjects. This is different from the Constitutional Treaty, which would have included the foreign policy provisions in a new Part of the Treaty dealing with the EU's external action in all areas (ie including trade and development policies, among others). For analysis of the remaining text of the new external relations Part of the TEC/TFEU, see Statewatch Reform Treaty analysis 3.6.

The basic rules on the appointment and status of the High Representative are set out in the new institutional Title of the TEU, in the new Article 9e TEU (see Statewatch Reform Treaty analysis 2.1).

CHAPTER 1

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 10a [21] (III-292)

1. The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organisations, which share the principles referred to in the first sub-paragraph. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to:

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters;

(h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives listed in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and Part Five of the Treaty on the Functioning of the European Union and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the *High Representative of the Union for Foreign Affairs and Security Policy*, shall ensure that consistency and shall cooperate to that effect.

This Article is new; but it draws from the current Article 11(1) TEU and Articles 131, 177 and 181a TEC, which set out objectives in certain areas. Paragraph 3 (sub-para 1) is in part drawn from the current Article 178 TEC, which requires other EC measures to be consistent with development policy; and the consistency requirement (sub-para 2) is drawn from the current Article 3 TEU.

Article 10b [22]
(III-293)

1. On the basis of the principles and objectives set out in Article 10a, the European Council shall identify the strategic interests and objectives of the Union.

Decisions of the European Council on the strategic interests and objectives of the Union relate to the common foreign and security policy and to other areas of the external action of the Union. Such decisions may concern the relations of the Union with a specific country or region or may be thematic in approach. They shall define their duration, and the means to be made available by the Union and the Member States.

The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area. The decisions of the European Council shall be implemented in accordance with the procedures provided for in the Treaties.

2. *The High Representative of the Union for Foreign Affairs and Security Policy*, for the field of common foreign and security policy, and the Commission, for other fields of external action, may submit joint proposals to the Council.

Paragraph 1 is based on the current Article 13(2) and (3), sub-para 2 TEU on 'common strategies'; note that the renaming of these acts as 'decisions' makes clear that they are binding (this point is not clear at present). It is made explicitly clear that these measures can cover all of the current three pillars (which confirms current practice), and there is an explicit reference to thematic common strategies (the common strategies adopted to date have all been geographic, but the current Treaty does not rule out the adoption of thematic common strategies).

CHAPTER 2
SPECIFIC PROVISIONS ON THE
COMMON FOREIGN AND SECURITY POLICY

Article 10c [23]

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of and be conducted in accordance with, the general provisions laid down in Chapter 1.

This article has been inserted, pursuant to the Reform Treaty mandate.

Article 11 [24]
(III-294)

~~1. The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy, the objectives of which shall be:~~

- ~~- to safeguard the common values, fundamental interests, independence and integrity of the Union in conformity with the principles of the United Nations~~

Charter,

- ~~to strengthen the security of the Union in all ways,~~
- ~~to preserve peace and strengthen international security, in accordance with the principles of the United Nations Charter, as well as the principles of the Helsinki Final Act and the objectives of the Paris Charter, including those on external borders,~~
- ~~to promote international cooperation,~~
- ~~to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.~~

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

The common foreign and security policy is subject to specific procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor the compliance with Article 25 and to review the legality of certain decisions as provided for by the second paragraph of Article 240a of the Treaty on the Functioning of the European Union.

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

~~2.~~ **3. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.**

The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.

The Council and the High Representative shall ensure that these principles are complied with.

Para 1 has been replaced as set out in the Reform Treaty IGC mandate; this provision is based on parts of Articles I-16 and I-40 of the Constitutional Treaty. Para. 2 first appeared in the draft Reform Treaty; it is based on Article I-40(1) of the Constitutional Treaty. The CFSP objectives have been moved, with amendments, from Article 11 TEU to Article 10a TEU. Also a reference to the High Representative has been added, in accordance with the Constitutional Treaty. The

exclusion of the Court of Justice's jurisdiction over foreign policy (ie exclusion from jurisdiction over 'these provisions') in this Article of the draft Reform Treaty is arguably wider than under the Constitutional Treaty, where the Court's jurisdiction was only excluded in respect of certain Articles, rather than all foreign policy matters (with the exception of sanctions against individuals and the dividing line between foreign policy and other policy): see Article III-376 of that Treaty.

Article 12 [25]
(III-294(3))

The Union shall pursue the objectives set out in Article 11 by:

- ~~defining the principles of and general guidelines for the common foreign and security policy,~~
- ~~deciding on common strategies,~~
- ~~adopting joint actions,~~
- ~~adopting common positions,~~
- ~~strengthening systematic cooperation between Member States in the conduct of policy.~~

The Union shall conduct the common foreign and security policy by:

(a) defining the general guidelines;

(b) adopting decisions defining:

(i) actions to be taken by the Union;

(ii) positions to be taken by the Union;

(iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);

(c) strengthening systematic cooperation between Member States in the conduct of policy.

The replacement text is obviously very similar to the current Article 12 TEU, as well as to Article III-294(3) of the Constitutional Treaty.

Article 13 [26]
(I-40(4) and III-295)

1. The European Council shall ~~define the principles of and general guidelines for~~ **identify the strategic interests, determine the objectives of and define general guidelines for** the common foreign and security policy, including for matters with defence implications.

If international developments so require, the President of the European Council shall convene an extraordinary meeting of the European Council in order to define the strategic lines of the Union's policy in the face of such developments.

2. ~~The European Council shall decide on common strategies to be implemented by the Union in areas where the Member States have important interests in common.~~

~~Common strategies shall set out their objectives, duration and the means to be made available by the Union and the Member States.~~

~~3. 2. The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.~~

The Council shall frame the common foreign and security policy and take the decisions necessary for defining and implementing it, on the basis of the general guidelines and strategic lines defined by the European Council.

~~The Council shall recommend common strategies to the European Council and shall implement them, in particular by adopting joint actions and common positions.~~

The Council **and the High Representative of the Union for Foreign Affairs and Security Policy** shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

The addition to para. 1 comes from Art. III-295(1) of the Constitutional Treaty. Para. 2 and the second sub-para of para 3 have been moved, with amendments, to Art. 10b TEU. The addition to the renumbered para. 2 is based on Article III-295(2) of the Constitutional Treaty. The new paragraph 3 comes from Article I-40(4) of the Constitutional Treaty.

Article 13a [27]
(III-296)

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his or her proposals towards the preparation of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He or she shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his or her mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

This is a new provision, copied from the Constitutional Treaty with a change of name for the 'High Representative', replacing the 'Union Minister for Foreign

Affairs'. This Article replaces the current Article 18 TEU (representation) and the current Article 26 TEU (current High Representative).

Article 14 [28]
(III-297)

1. ~~The Council shall adopt joint actions. Joint actions shall address specific situations where operational action by the Union is deemed to be required. Where the international situation requires operational action by the Union, the Council shall adopt the necessary decisions.~~ They shall lay down their objectives, scope, the means to be made available to the Union, if necessary their duration, and the conditions for their implementation.

2. If there is a change in circumstances having a substantial effect on a question subject to ~~joint action~~ a decision as referred to in paragraph 1, the Council shall review the principles and objectives of that ~~action~~ that decision and take the necessary decisions. ~~As long as the Council has not acted, the joint action shall stand.~~

3. ~~Joint actions~~ Decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

4. ~~The Council may request the Commission to submit to it any appropriate proposals relating to the common foreign and security policy to ensure the implementation of a joint action.~~

5. ~~4.~~ Whenever there is any plan to adopt a national position or take national action pursuant to a ~~joint action~~ decision as referred to in paragraph 1, information shall be provided by the Member State concerned in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to measures which are merely a national transposition of Council decisions.

6. ~~5.~~ In cases of imperative need arising from changes in the situation and failing a ~~Council decision~~ the review of a Council decision as referred to in paragraph 1, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of the ~~joint action~~ that decision. The Member State concerned shall inform the Council immediately of any such measures.

7. ~~6.~~ Should there be any major difficulties in implementing a ~~joint action~~ decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the ~~joint action~~ decision referred to in paragraph 1 or impair its effectiveness.

'Joint Actions' have been replaced by 'Decisions', but otherwise there is no substantive change.

Article 15 [29]
(III-298)

The Council shall adopt ~~common positions~~. ~~Common Positions shall~~ decisions which shall define the approach of the Union to a particular matter of a

geographical or thematic nature. Member States shall ensure that their national policies conform to the ~~common positions~~ Union positions.

Common Positions have been renamed 'decisions', but otherwise there is no substantive change.

Article 16 (ex-22) [30]
(III-299)

1. ~~Any Member State or the Commission may refer to the Council~~ Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support may refer to the Council any question relating to the common foreign and security policy and may ~~submit proposals to the Council~~ submit to it initiatives or proposals as appropriate.

2. In cases requiring a rapid decision, ~~the Presidency, of its own motion~~ the High Representative, of his or her own motion, ~~or at the request of the Commission or a Member State,~~ or at the request of a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

The current Art. 16 EU has been moved to Art. 17a, with amendments. Art. 22 EU is amended to give the Council Presidency and Commission powers to the High Representative, in accordance with the Constitutional Treaty. Member States still have powers to propose initiatives in this area, however.

Article 17 (ex-23) [31]
(III-300)

1. ~~Decisions under this title shall be taken by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.~~

Decisions referred to in this Chapter shall be adopted by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts is excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. ~~If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) of the Treaty establishing the European Community, the decision shall not be adopted.~~ If the members of the Council qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

- ~~when adopting joint actions, common positions or taking any other decision on the basis of a common strategy,~~
- when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to Article 10b(1);
- when adopting a decision defining a Union action or position, on a proposal which the *High Representative of the Union for Foreign Affairs and Security Policy* has put to it following a specific request to him or her from the European Council, made on its own initiative or that of the High Representative;
- ~~when adopting any decision implementing a joint action or a common position~~ a decision defining a Union action or position,
- when appointing a special representative in accordance with Article 18(5).

If a member of the Council declares that, for ~~important~~ vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. ~~The Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.~~ The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

~~The votes of the members of the Council shall be weighted in accordance with Article 205(2) of the Treaty establishing the European Community. For their adoption, decisions shall require at least 62 votes in favour, cast by at least 10 members.~~

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2 of this Article.

4. This paragraph Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

~~3-~~ 5. For procedural questions, the Council shall act by a majority of its members.

The current Article 17 TEU has been moved to Article 27, with amendments. The amendments to the new Article 17 (ex-23) are: the revised threshold for abstainers blocking a decision (para. 1, sub-para. 2); the prospect of QMV following a proposal from the High Representative, in certain conditions (para 2(b)); the renaming of acts; the application of the 'emergency brake' where vital reasons, rather than important reasons, of national policy are at stake; the mediating role of the High Representative when the brake is pulled; and the power of the European Council to extend QMV (para. 3), but note this does not apply to defence (para. 4). Note that unlike the extensions of QMV under the general 'passerelle' provision of Article 33 TEU, this extension is not subject to control by national parliaments (although a Member State could always require the consent of its national parliament as a condition for its positive vote) or the European Parliament.

The exclusion of legislative acts has been added by the draft Reform Treaty, but this is repetitive of Article 11(1) TEU as amended by the draft Reform Treaty. Note that in all cases an 'emergency brake' (still) applies to QMV, and if a Member State maintains its objections to a draft measure, a dispute can only be resolved by EU leaders by unanimity; this point is often overlooked in public discussions of applying QMV to EU foreign policy.

Article 17a (ex-16) [32]
(I-40(5) and III-301)

Member States shall inform and consult one another within the Council and the European Council on any matter of foreign and security policy of general interest in order to ensure that the Union's influence is exerted as effectively as possible by means of concerted and convergent action in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

When the European Council or the Council has defined a common approach within the meaning of the first sub-paragraph, the *High Representative of the Union for Foreign Affairs and Security Policy* and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

The diplomatic missions of the Member States and the delegations of the Union shall cooperate in third countries and in international organisations and shall contribute to formulating and implementing the common approach.

There are substantial amendments to this Article, in particular the obligation of prior consultation (taken from Article I-40 of the Constitutional Treaty). The final paragraph has been taken and adapted from the current Article 20 TEU (see below).

Article 18 [33]
(III-302)

~~1. The Presidency shall represent the Union in matters coming within the common foreign and security policy.~~

~~2. The Presidency shall be responsible for the implementation of decisions taken under this title; in that capacity it shall in principle express the position of the Union in international organisations and international conferences.~~

~~3. The Presidency shall be assisted by the Secretary-General of the Council who shall exercise the function of High Representative for the common foreign and security policy.~~

~~4. The Commission shall be fully associated in the tasks referred to in paragraphs 1 and 2. The Presidency shall be assisted in those tasks if need be by the next Member State to hold the Presidency.~~

5.—The Council may, ~~whenever it deems it necessary~~, appoint a special representative, on the initiative of the High Representative of the Union for Foreign Affairs and Security Policy, with a mandate in relation to particular policy issues. The special representative shall carry out his or her mandate under the authority of the High Representative.

The first four paragraphs have been replaced by Article 13a, which has transferred to the High Representative the role of representing the EU. The remaining paragraph bolsters the role of the High Representative as regards special envoys, although in fact this new wording confirms the status quo.

Article 19 [34]
(III-305)

1. Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the ~~common positions~~ Union's positions in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination.

In international organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the common positions.

2. ~~Without prejudice to paragraph 1 and Article 14(3),~~ In accordance with Article 11(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the High Representative, informed of any matter of common interest.

Member States which are also members of the United Nations Security Council will concert and keep the other Member States as well as the High Representative fully informed. Member States which are permanent members of the Security Council will, in the execution of their functions, ~~ensure the defence of~~ defend the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.

When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be asked to present the Union's position.

The amendments to this Article confer powers on the High Representative to organise the coordination and (more controversially) to require Member States with a seat on the Security Council to request that he/she speak on the EU's behalf, where the EU has defined a common policy.

Article 20 [35]
(III-306)]

The diplomatic and consular missions of the Member States and the ~~Commission~~ Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the ~~common positions and joint actions adopted by the Council~~ decisions relating to

Union positions and actions adopted pursuant to this Chapter are complied with and implemented.

They shall step up cooperation by exchanging information, and carrying out joint assessments and contributing to the implementation of the provisions referred to in Article 20 of the Treaty establishing the European Community.

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 17b(2) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 20 of that Treaty.

The amendments refer to Union delegations instead of Commission delegations, and update the cross-reference to EU citizens' consular protection rights (the obligation of Member States to negotiate agreements on this issue in the current Art. 20 TEC would be replaced by a power to adopt measures in this area, by Council QMV and consultation of the EP). This power was in turn amended by the IGC mandate (see Statewatch Reform Treaty analysis 3.2).

Article 21 [36]
(III-304)

~~The Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. The European Parliament shall be kept regularly informed by the Presidency and the Commission of the development of the Union's foreign and security policy.~~

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult and inform the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He or she shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

The European Parliament may ask questions of the Council or make recommendations to it and the High Representative of the Union. ~~It shall hold an annual debate~~ Twice a year it shall hold a debate on progress in implementing the common foreign and security policy, including the common security and defence policy.

The amendments here add a reference to the High Representative (who replaces the Council Presidency as interlocutor with the EP), add possibility of special representatives contacting the EP and require a twice-annual (rather than annual) debate.

Article 22 (ex-24) [37]
(III-303)

~~1. When it is necessary to conclude an agreement with one or more States or international organisations in implementation of this title, the Council may authorise the Presidency, assisted by the Commission as appropriate, to open~~

~~negotiations to that effect. Such agreements shall be concluded by the Council on a recommendation from the Presidency.~~

~~2. The Council shall act unanimously when the agreement covers an issue for which unanimity is required for the adoption of internal decisions.~~

~~3. When the agreement is envisaged in order to implement a joint action or common position, the Council shall act by a qualified majority in accordance with Article 23(2).~~

~~4. The provisions of this Article shall also apply to matters falling under Title VI. When the agreement covers an issue for which a qualified majority is required for the adoption of internal decisions or measures, the Council shall act by a qualified majority in accordance with Article 34(3).~~

~~5. No agreement shall be binding on a Member State whose representative in the Council states that it has to comply with the requirements of its own constitutional procedure; the other members of the Council may agree that the agreement shall nevertheless apply provisionally.~~

~~6. Agreements concluded under the conditions set out by this Article shall be binding on the institutions of the Union.~~

The Union may conclude agreements with one or more States or international organisations in areas covered by this Chapter.

The current Article 22 TEU has been moved to Article 16. The procedural details regarding the negotiation and conclusion of these treaties have been moved to the general clause in the TEC/TFEU on conclusion of treaties (Article 188n). Note that there is no longer reference to treaties which are 'necessary' or which 'implement' the CFSP Title.

Article 23 (ex-25) [38]
(III-307)

Without prejudice to Article 207 of the Treaty establishing the European Community **on the functioning of the European Union**, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council **or of the High Representative of the Union for Foreign Affairs and Security Policy** or on its own initiative. It shall also monitor the implementation of agreed policies, ~~without prejudice to the responsibility of the Presidency and the Commission~~ **without prejudice to the powers of the High Representative**.

~~Within the scope of this title, this Committee shall exercise, under the responsibility of the Council, political control and strategic direction of crisis management operations.~~

Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, political control and strategic direction of crisis management operations referred to in Article 28.

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant decisions concerning the political control and strategic direction of the operation, without prejudice to Article 47.

The current Article 22 TEU has been moved to Article 17. The amendments to Article 25 TEU include references to the High Representative and updated references to EU defence policy. Although the reference to Article 47 EU has been deleted, see the successor clause (new Article 25 TEU).

Article 24 [39]
(I-51)

In accordance with Article 15a of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall establish rules relating to the protection of individuals with regard to the processing of personal data by Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

This is a new clause as compared to the existing Treaty, and as compared to the Constitutional Treaty. The IGC mandate called for a new legal base dealing specifically with data protection within the scope of the foreign policy provisions, which will be kept distinct from the general legal base dealing with this issue as regards all other areas of EU law (the general legal base is currently Article 286 TEC, which is to be replaced by the new Article 15a TEC/TFEU to be added by the draft Reform Treaty. That new Article is in accordance with Article I-51 of the Constitutional Treaty, except for the creation of this separate foreign policy legal base). The new Article 24 TEU will instead be subject to the normal foreign policy decision-making rules, and the exclusion of the jurisdiction of the Court of Justice.

Article 25 (ex-47) [40]
(III-308)

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union's competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers laid down by the Treaties for the exercise of the Union competences under this Chapter.

This clause is new, but amounts to a successor clause to the current Art. 47 EU (which has been repealed), which protects the first pillar (EC law) from encroachment by the other pillars. The new clause would protect other EU policies from encroachment by the foreign policy rules, and the foreign policy rules from encroachment from by other EU policies.

Article 26

~~The Secretary-General of the Council, High Representative for the common foreign and security policy, shall assist the Council in matters coming within the scope of the common foreign and security policy, in particular through contributing to the formulation, preparation and implementation of policy decisions, and, when appropriate and acting on behalf of the Council at the request of the Presidency, through conducting political dialogue with third parties.~~

This Article is obsolete in light of the role of the High Representative (Article 13a).

Article 27

~~The Commission shall be fully associated with the work carried out in the common foreign and security policy field.~~

This Article is obsolete in light of the status of the High Representative (Article 9e).

Article 27a

~~1. Enhanced cooperation in any of the areas referred to in this title shall be aimed at safeguarding the values and serving the interests of the Union as a whole by asserting its identity as a coherent force on the international scene. It shall respect:~~

- ~~- the principles, objectives, general guidelines and consistency of the common foreign and security policy and the decisions taken within the framework of that policy,~~
- ~~- the powers of the European Community, and~~
- ~~- consistency between all the Union's policies and its external activities.~~

~~2. Articles 11 to 27 and Articles 27b to 28 shall apply to the enhanced cooperation provided for in this article, save as otherwise provided in Article 27c and Articles 43 to 45.~~

The following five Articles are repealed, because the issue of flexibility in foreign policy will be dealt with in the new Article 10 TEU and the new Articles 280a to 280g TEC/TFEU.

Article 27b

~~Enhanced cooperation pursuant to this title shall relate to implementation of a joint action or a common position. It shall not relate to matters having military or defence implications.~~

Article 27c

~~Member States which intend to establish enhanced cooperation between themselves under Article 27b shall address a request to the Council to that effect.~~

~~The request shall be forwarded to the Commission and, for information, to the European Parliament. The Commission shall give its opinion particularly on whether the enhanced cooperation proposed is consistent with Union policies. Authorisation~~

~~shall be granted by the Council, acting in accordance with the second and third subparagraphs of Article 23(2) and in compliance with Articles 43 to 45.~~

~~Article 27d~~

~~Without prejudice to the powers of the Presidency and of the Commission, the Secretary-General of the Council, High Representative for the common foreign and security policy, shall in particular ensure that the European Parliament and all members of the Council are kept fully informed of the implementation of enhanced cooperation in the field of the common foreign and security policy.~~

~~Article 27e~~

~~Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 27c shall notify its intention to the Council and inform the Commission. The Commission shall give an opinion to the Council within three months of the date of receipt of that notification. Within four months of the date of receipt of that notification, the Council shall take a decision on the request and on such specific arrangements as it may deem necessary. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.~~

~~For the purposes of this Article, the Council shall act by a qualified majority. The qualified majority shall be defined as the same proportion of the weighted votes and the same proportion of the number of the members of the Council concerned as those laid down in the third subparagraph of Article 23(2).~~

~~Article 26 (ex-28) [41] (III-313)~~

~~1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.~~

~~2.— 1. Administrative expenditure which the provisions relating to the areas referred to in this title entail to which the implementation of this Chapter gives rise for the institutions shall be charged to the budget of the European Communities Union budget.~~

~~3.— 2. Operating expenditure to which the implementation of those provisions the implementation of this Chapter gives rise shall also be charged to the budget of the European Communities Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.~~

~~In cases where expenditure is not charged to the budget of the European Communities Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(4) 17(1), second subparagraph, shall not be obliged to contribute to the financing thereof.~~

~~4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.~~

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in Articles 27(1) and 28. It shall act after consulting the European Parliament.

Preparatory activities for tasks as referred to in Articles 27(1) and 28 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

The Council shall adopt by a qualified majority, on a proposal from the *High Representative of the Union for Foreign Affairs and Security Policy*, decisions establishing:

- (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
- (b) the procedures for administering the start-up fund;
- (c) the financial control procedures.

When the task planned in accordance with Articles 27(1) and 28 cannot be charged to the Union's budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

Article 28(1) is deleted in light of the merger of the pillars; all TEC/TFEU Articles now apply to the CFSP unless excluded expressly or by necessary implication. Para. 1 and 2 are Art. 27(2) and (3) EU, without amendment. This existing para 4 has been deleted, presumably because it is no longer necessary following restructuring of the Treaties. Para. 3 is new.

SECTION 2
PROVISIONS CONCERNING
THE COMMON SECURITY AND DEFENCE POLICY

Article 27 (ex-17) [42]
(1-41)

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civil and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

~~1. 2. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.~~

The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

~~The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments.~~

~~2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.~~

~~3. Decisions having defence implications dealt with under this Article shall be taken without prejudice to the policies and obligations referred to in paragraph 1, second subparagraph.~~

~~4. The provisions of this Article shall not prevent the development of closer cooperation between two or more Member States on a bilateral level, in the framework of the Western European Union (WEU) and NATO, provided such cooperation does not run counter to or impede that provided for in this title.~~

~~5. With a view to furthering the objectives of this Article, the provisions of this Article will be reviewed in accordance with Article 48.~~

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the *High Representative of the Union for Foreign Affairs and Security Policy* or an initiative from a Member State. The *High Representative* may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 29.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 31. It shall not affect the provisions of Article 28.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

The new para. 1 is taken from Article I-41(1) of the Constitutional Treaty. The changes to the current para. 1 (new para. 2) are taken from Article I-41(2) of the Constitutional Treaty. The remaining new paras. are taken from Article I-41(2) to (7) of the Constitutional Treaty. The 'Petersberg tasks' in the current Art. 17(2) TEU have been moved, with amendments, to the new Article 28(1) TEU. The protection for Member States' distinct defence policies (ie neutrality) and for

participation of many Member States in NATO is retained in para. 2, and even strengthened in the new para. 7. A possible shift to a 'common defence' (ie a military alliance) is still subject to ratification by Member States.

Article 28 (new) [43]
(III-309)

1. The tasks referred to in Article 27, in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking, and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

2. The Council shall adopt decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The High Representative of the Union for Foreign Affairs and Security Policy, acting under the authority of the Council and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

The current Article 28 has been moved to Article 26. Para. 1 updates the so-called 'Petersberg tasks' in Art. 17(2) EU (changes are in shadow). The separate decision-making provision of para. 2 is new.

Article 29 (new) [44]
(III-310)

1. Within the framework of the decisions adopted in accordance with Article 28, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability to undertake the task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

2. Member States participating in the task shall keep the Council regularly informed on its progress on their own initiative or at the request of another Member State. Those States shall inform the Council immediately should the completion of the task involve major consequences or require amendment of the objective, scope and conditions determined for the task in the decisions referred to in paragraph 1. In such cases, the Council shall adopt the necessary decisions.

The current Article 29, which concerns the third pillar, has been moved to the TEC/TFEU. This is a new clause. Note that the current Article 27b EU rules out application of enhanced cooperation to defence matters.

Article 30 (new) [45]
(III-311)

1. The European Defence Agency referred to in Article 27(3), subject to the authority of the Council, shall have as its task to:

(a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;

(b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;

(c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;

(d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;

(e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

The current Article 30, which concerns the third pillar, has been moved to the TEC/TFEU, with amendments. This is a new clause; but note that the EU established such an agency in 2004, in advance of the Constitutional Treaty being signed. Although the Council acts by QMV to adopt measures concerning the Agency, Member States' participation is clearly voluntary.

Article 31 (new) [46]
(III-312)

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 27(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation, shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205 (3) (a) of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 205 (3) (a) of the Treaty on the Functioning of the European Union.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

The current Article 31, which concerns the third pillar, has been moved to the TEC/TFEU. This is a new clause; note that the current Article 27b EU rules out application of enhanced cooperation to defence matters. While QMV applies to the decisions to launch structured cooperation and to admit or expel Member States from that cooperation, it is clear that initial or continued participation in that cooperation is voluntary, and that decisions on the actual operations must be unanimous.