



Statewatch Analysis

EU Reform Treaty Analysis no. 3.5:

Revised text of the Treaty establishing the European Community (TEC) External relations provisions

Prepared by
Professor Steve Peers, University of Essex
Version 2: 26 October 2007

Introduction

The following text sets out what will be the text of the new Part Five of the Treaty establishing the European Community (TEC) 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 TEC into the current TEU text. It is updated to include the agreed text of the draft Treaty following revision by legal experts and agreement by EU leaders in October 2007.

This analysis also includes the text of the current Part Four of the TEC (on association of overseas countries and territories), as it will be amended by the proposed Reform Treaty.

I have indicated by ~~strikeout~~ which provisions of the current TEC would be deleted, and by **bold** and underline which provisions would be added to the TEC. The provisions in *italics* amend what was agreed as part of the Constitutional Treaty.

It should be recalled that the TEC 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, and compares the text in detail to the text of the Constitutional Treaty (OJ 2004 C 310). The changes which stem from the Reform Treaty mandate are also discussed further in the commentary.

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. I have inserted the provisional new numbering of the Treaty provisions. However, these are potentially subject to change up until the final text of the Treaty is signed.

General Comments

The brief Part Four of the TEC/TFEU would be only marginally amended by the draft Reform Treaty. This analysis therefore focuses on Part Five of the Treaty, which would be a wholly new Part bringing together external relations provisions from various other Parts of the Treaty, many of them amended, along with some entirely new Articles.

Unlike the equivalent part of the Constitutional Treaty, this text does not include the detailed rules on EU foreign policy. Under the draft Reform Treaty, the foreign policy rules will remain, with amendments, in Title V of the Treaty on European Union (TEU).

The substantive amendments which the draft Reform Treaty would make to these provisions of the Treaty are as follows:

- a) 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);
- b) the Commission will have a monopoly making proposals relating to the associated territories, and the EP will have expanded powers (Article 187);
- c) there will be new basic principles on the EU's external relations (Article 188a);
- c) the existing Articles 132 and 134 TEC, dealing with aspects of commercial policy, will be deleted;
- d) 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);
- e) EU development policy will be more clearly focussed on poverty reduction and elimination (Article 188d);
- f) co-decision will apply to EU measures on cooperation with non-developing countries (Article 188h);
- g) there is a new 'legal base' for balance-of-payments support for non-EU countries (Article 188i);
- h) there is a new 'legal base' for humanitarian aid (Article 188j);
- i) there is a wider 'legal base' for sanctions against third countries, now including non-state entities and individuals (Article 188k);
- j) there is a new Article on the circumstances in which the EU can conclude international agreements (Article 188l);
- k) the Article on association agreements now applies to the current 'second pillar' and 'third pillar' of the EU (Article 188m);
- k) 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);
- l) the rules on relationships with other international organisations have been amended (Article 188p);
- m) there is a new clause on the EU's external delegations (Article 188q);
- n) there is a new clause on 'solidarity' between Member States in the event of terrorist attack or disaster (Article 188r).

All of these changes have been taken from the Constitutional Treaty. The sole substantive change in the Reform Treaty as compared to the Constitutional Treaty is that the accession of the EU to the European Convention on Human Rights (ECHR) will require unanimous voting and ratification by the Member States, not QMV as provided for in the Constitutional Treaty.

Part Four

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article 182 [198]
(III-286)

The Member States agree to associate with the ~~Community~~ Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the "countries and territories") are listed in Annex II ~~to this Treaty~~.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the ~~Community~~ Union as a whole.

In accordance with the principles set out in the ~~preambles to this Treaty~~ the Treaties, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 183 [199]
(III-287)

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to ~~this Treaty~~ the Treaties.
2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which it has special relations.
3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.
4. For investments financed by the ~~Community~~ Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.
5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 187.

Article 184 [200]
(III-288)

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of ~~this Treaty~~ the Treaties.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 25.

3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 185 [201]
(III-289)

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 184(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

Article 186 [202]
(III-290)

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be ~~governed by agreements to be concluded subsequently with the unanimous approval of Member States~~ regulated by acts adopted in conformity with Article 187.

The amendment changes the form of these measures, so that EU acts will be adopted instead of agreements between Member States. Note, however, that in accordance with Article 187, the voting rule is still unanimity.

Article 187 [203]
(III-291)

The Council, acting unanimously on a proposal from the Commission, shall, on the basis of the experience acquired under the association of the countries and territories with the ~~Community~~ Union and of the principles set out in ~~this Treaty~~ the Treaties, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the ~~Community~~ Union. Where the provisions in question are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after consulting the European Parliament.

The first substantive amendment requires the Council to act on a Commission proposal (ie it applies the Commission's usual monopoly of initiative). In fact, in practice in this area the Council acts on the basis of Commission proposals anyway. The second substantive amendment requires consultation of the EP (which usually takes place in practice anyway) where an act takes legislative form; but this Article does not specify when acts must (or must not) take such form.

Article 188 [204]

The provisions of Articles 182 to 187 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to ~~this Treaty~~ the Treaties.

This clause is retained; the Constitutional Treaty would have dropped it.

Part Five

EXTERNAL ACTION BY THE UNION

TITLE I GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 188a [205]

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

This new clause links the TEC/TFEU external policies with the clauses on the general principles of EU external relations and on the adoption of strategic decisions covering all aspects of EU external relations (ie the current 'Common Strategies'), which appear in Articles III-292 and III-293 of the Constitutional Treaty, and which are inserted into Articles 10a and 10b of the revised TEU.

TITLE II COMMON COMMERCIAL POLICY

Article 188b (ex-131) [206]
(Article III-314)

~~By establishing a customs union between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers.~~

By establishing a customs union in accordance with Articles 23 to 27, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

~~The common commercial policy shall take into account the favourable effect which the abolition of customs duties between Member States may have on the increase in the competitive strength of undertakings in those States.~~

The amended version of Article 131 EC refers to direct investment, states that the Union (rather than the Member States) has created the customs union, and deletes a reference to the corresponding abolition of internal customs duties.

Article 132

~~1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.~~

~~On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.~~

~~2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, in so far as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.~~

The current Article 132 TEC will be repealed.

Article 188c (ex-133) [207]
(Article III-315)

~~1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.~~

~~2. The Commission shall submit proposals to the Council for implementing the common commercial policy.~~

~~3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.~~

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

~~The relevant provisions of Article 300 shall apply.~~

~~4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.~~

~~5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.~~

~~By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.~~

~~The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.~~

~~This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.~~

~~6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.~~

~~In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the~~

~~Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.~~

~~The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.~~

~~7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.~~

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

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated and concluded, Article 188n shall apply, subject to the special provisions of this Article.

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

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

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

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

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

- a) in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity;

- b) in the field of social, educational and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the possibility of Member States to deliver them.

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Section 7 of Chapter III of Part III and Article 188n.

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

The amendments to Article 133: update the scope in para. 1 (including both WTO measures already within the scope, and foreign direct investment generally, which is not); change the decision-making process for adoption of internal legislation to co-decision for the EP (currently there is no EP role); require reports to the EP on negotiations; provide implicitly for exclusive EC competence for all aspects of CCP (see also the new Article 3 TEC/TFEU); reduce the cases in which unanimous voting is required; delete the Council's power to extend the CCP to other aspects of intellectual property; and apparently extend the EU's CCP power to include internal legislation concerning external trade in services, intellectual property and direct investment. The reference to the transport Title in paragraph 5 should instead read 'Title V of Part Three', and the reference to the 'Constitution' in paragraph 6 should instead read 'the Treaties'.

Article 134

~~In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.~~

~~In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.~~

~~In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.~~

Article 134 TEC has been deleted. In practice, following the completion of the abolition of internal borders on goods in 1994, this Article has not been used at all.

TITLE III

COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

CHAPTER 1 DEVELOPMENT COOPERATION

*Article 188d (ex-177) [208]
(Article III-316)*

~~1. Community policy in the sphere of development cooperation, which shall be complementary to the policies pursued by the Member States, shall foster:~~

- ~~- the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them,~~
- ~~- the smooth and gradual integration of the developing countries into the world economy,~~
- ~~- the campaign against poverty in the developing countries.~~

~~2. Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to that of respecting human rights and fundamental freedoms.~~

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

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

~~3.—~~2. The Community Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Parts of Art. 177 have been moved to the new clause on the general principles of EU external relations in the TEU (Article 10a). Note the amendment to give priority to poverty reduction and eradication. The last sentence of the new paragraph 1 takes over the current Article 178 TEC (see below).

Article 178

~~The Community shall take account of the objectives referred to in Article 177 in the policies that it implements which are likely to affect developing countries.~~

This Article has been subsumed into Article 188d (ex-177), without amendments.

Article 188e (ex-179) [209]

(III-317)

~~1. Without prejudice to the other provisions of this Treaty, the Council, acting in accordance with the procedure referred to in Article 251, shall adopt the measures necessary to further the objectives referred to in Article 177. Such measures may take the form of multiannual programmes.~~

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 10a of the Treaty on European Union and Article 188d of this Treaty.

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

~~2. **3.** The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.~~

~~3. The provisions of this Article shall not affect cooperation with the African, Caribbean and Pacific countries in the framework of the ACP-EC Convention.~~

The revised paragraph 1 makes a reference to programmes with a thematic approach; this is new (but reflects practice). The new paragraph 2 is taken from the current Article 181 TEC. The current paragraph 3, specifying that cooperation with ACP countries within the ACP-EC Convention is separate, would be deleted.

*Article 188f (ex-180) [210]
(Article III-318(1) and (2))*

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

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

The reference to complementarity and efficiency is new.

Article 188g (ex-181) [211]
(Article III-318(3))

Within their respective spheres of competence, the ~~Community~~ **Union** and the Member States shall cooperate with third countries and the competent international organisations. ~~The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties~~

~~concerned, which shall be negotiated and concluded in accordance with Article 300.~~

~~The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.~~

Most of this Article has been moved to Article 179 (new Article 188e), without substantive amendments. The Constitutional Treaty merged the remaining sentence with the text of the current Article 180, but the draft Reform Treaty keeps these provisions separate.

CHAPTER 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

*Article 188h (ex-181a) [212]
(III-319)*

~~1. Without prejudice to the other provisions of this Treaty, and in particular those of Title XX, the Community shall carry out, within its spheres of competence, economic, financial and technical cooperation measures with third countries. Such measures shall be complementary to those carried out by the Member States and consistent with the development policy of the Community.~~

~~Community policy in this area shall contribute to the general objective of developing and consolidating democracy and the rule of law, and to the objective of respecting human rights and fundamental freedoms.~~

1. Without prejudice to the other provisions of the Treaties, and in particular those of Articles 188d to 188g, the Union shall carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's measures and those of the Member States shall complement and reinforce each other.

~~2. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, shall adopt the measures necessary for the implementation of paragraph 1. The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union.~~

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Community Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Community Union cooperation may be the subject of agreements between the Community Union and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

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

The amendments to the first paragraph are modest, considering that the reference to human rights is now subsumed by to a reference to the general EU external objectives, which include human rights (see Article 10a of the TEU). The amended paragraph 2 changes the decision-making procedure for internal measures to 'co-decision'. The reference to unanimous voting for accession candidates and as regards association agreements has been moved to Article 188n(8).

Article 188i [213]
(III-320)

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

This is an entirely new Article. The current practice is to use the 'residual powers' clause in Article 308 EC (unanimous vote in Council, consultation of EP) for balance-of-payments measures. The new Article is subject to qualified majority voting, with no role for the EP.

CHAPTER 3 **HUMANITARIAN AID**

Article 188j [214]
(III-321)

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

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

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in Article 10a of the Treaty on European Union.

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

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian aid actions of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall determine the rules and procedures for the operation of the Corps.

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

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

This Article is entirely new. The current practice is to adopt humanitarian aid rules as part of development policy.

TITLE IV RESTRICTIVE MEASURES

Article 188k (ex 301) [215]
(III-322)

~~Where it is provided, in a common position or in a joint action adopted according to the provisions of the Treaty on European Union relating to the common foreign and security policy, for an action by the Community to interrupt or to reduce, in part or completely, economic relations with one or more third countries, the Council shall take the necessary urgent measures. The Council shall act by a qualified majority on a proposal from the Commission.~~

1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the *High Representative of the Union for Foreign Affairs and Security Policy* and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the same procedure against natural or legal persons and groups or non-state entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.

Paragraph 1 has amended Article 301 EC to include information for the EP and a requirement of a joint proposal of the Commission and the High Representative. This provision also incorporates the current EC power to impose financial sanctions as provided for in the current Art. 60 EC; the possibility referred to in

the current Art. 60 of national financial sanctions, which could then be overturned by the Council, is dropped (see the text of the current Article 60 below).

Paragraph 2 is new; such measures are now adopted in practice using Article 308 EC, but this has been challenged in cases before the EU courts (the practice has been upheld several times by the Court of First Instance, but those judgments are on appeal to the Court of Justice).

Paragraph 3 is also new. The question of legal safeguards has already been litigated several times before the EU courts, which have held that the EU does not have to guarantee safeguards if the persons or groups in question have been named by the Security Council as 'terrorists', but conversely failed (at least initially) to observe sufficient safeguards when it decided by itself that certain persons or groups were 'terrorists'. So the new paragraph confirms the case law regarding the latter category of persons, and arguably requires a rethink of the case law regarding the former category.

The current Article 60 TEC reads as follows:

1. If, in the cases envisaged in Article 301, action by the Community is deemed necessary, the Council may, in accordance with the procedure provided for in Article 301, take the necessary urgent measures on the movement of capital and on payments as regards the third countries concerned.

2. Without prejudice to Article 297 and as long as the Council has not taken measures pursuant to paragraph 1, a Member State may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments. The Commission and the other Member States shall be informed of such measures by the date of their entry into force at the latest.

The Council may, acting by a qualified majority on a proposal from the Commission, decide that the Member State concerned shall amend or abolish such measures. The President of the Council shall inform the European Parliament of any such decision taken by the Council.

TITLE V INTERNATIONAL AGREEMENTS

This Title will be applicable to the EU's foreign policy.

Article 188I [216] (III-323)

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

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

Paragraph 1 is new, but attempts to summarise the current case law regarding the existence of external competence within EC law (the first pillar). These principles will now apply to all three 'pillars', including foreign policy. Paragraph 2 is taken from the current Article 300(7) TEC and the current Article 24(6) TEU (which governs foreign policy treaties), but the latter does not specify that agreements are binding on the Member States. This clause does not concern the nature of EU international agreements, ie whether competence in area is exclusive to the EU or shared between the EU and Member States; on this point, see the new Article 3(2) TEC/TFEU.

Article 188m (ex-310) [217]
(III-324)

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

See also the new Article 7a TEU, on the EU's neighbours. This Article now applies to the second and third pillar, although in practice EU association agreements have for years included provisions on EU foreign policy and policing/criminal law matters.

Article 188n (ex-300) [218]
(III-325)

~~1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.~~

~~In exercising the powers conferred upon it by this paragraph, the Council shall act by a qualified majority, except in the cases where the first subparagraph of paragraph 2 provides that the Council shall act unanimously.~~

~~2. Subject to the powers vested in the Commission in this field, the signing, which may be accompanied by a decision on provisional application before entry into force, and the conclusion of the agreements shall be decided on by the Council, acting by a qualified majority on a proposal from the Commission. The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules and for the agreements referred to in Article 310.~~

~~By way of derogation from the rules laid down in paragraph 3, the same procedures shall apply for a decision to suspend the application of an agreement, and for the purpose of establishing the positions to be adopted on behalf of the Community in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.~~

~~The European Parliament shall be immediately and fully informed of any decision under this paragraph concerning the provisional application or the suspension of agreements, or the establishment of the Community position in a body set up by an agreement.~~

~~3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 133(3), including cases where the agreement covers a field for which the procedure referred to in Article 251 or that referred to in Article 252 is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time limit, the Council may act.~~

~~By way of derogation from the previous subparagraph, agreements referred to in Article 310, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 251 shall be concluded after the assent of the European Parliament has been obtained.~~

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

~~4. When concluding an agreement, the Council may, by way of derogation from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.~~

~~5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article 48 of the Treaty on European Union.~~

~~6. The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.~~

~~7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.~~

1. Without prejudice to the specific provisions laid down in Article 188c, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the *High Representative of the Union for Foreign Affairs and Security Policy* where the agreement relates exclusively or principally to the common foreign and security policy, shall submit

recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal from the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

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

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

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

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

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

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

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

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 188h with the states which are candidates for accession. *The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision*

concluding this agreement shall not come into force until it has been approved by Member States in accordance with their respective constitutional requirements.

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

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

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

The new clause merges the current Article 300 TEC with the current Article 24 TEU, which concerns foreign policy treaties (and in effect also Article 38 TEU, which concerns criminal law and policing treaties). There are still separate rules within this article for second pillar treaties, but third pillar treaty rules would now be covered by the first pillar rules (the current Article 37 TEU on third pillar representation during international conferences would also be deleted). Negotiating mandates and signature and conclusion of treaties would be adopted in the form of normal 'decisions' (confirming the case law permitting these measures to be subject to the jurisdiction of the Court of Justice). The EP would have assent power whenever the co-decision procedure or assent procedure apply to internal legislation (not just where legislation adopted by co-decision would have to be amended) and for accession to the ECHR, and would have information rights throughout. The Council must be unanimous to agree accession to the ECHR (and the accession treaty must also be ratified by Member States), whereas in the Constitutional Treaty, QMV applied. Due to the expansion of co-decision and QMV as regards internal EU policies, the assent power of the EP and the use of QMV to negotiate and conclude EU agreements will also increase.

Article 188o (ex-111 (1) to (3) and (5)) [219]
(III-326)

~~1. — By way of derogation from Article 300, the Council, acting unanimously on a recommendation from the ECB or from the Commission, and after consulting the ECB in an endeavour to reach a consensus consistent with the objective of price stability, after consulting the European Parliament, in accordance with the procedure laid down in paragraph 3 for determining the arrangements, may conclude formal agreements on a system of exchange rates for the ecu in relation to non-Community currencies.~~

1. By way of derogation from Article 188n, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability,

may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3,

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

2. In the absence of an exchange-rate system in relation to one or more ~~non-Community currencies~~ currencies of third States as referred to in paragraph 1, the Council, acting ~~by a qualified majority~~ either on a recommendation from the Commission and after consulting the ~~ECB~~ European Central Bank, or on a recommendation from the ~~ECB~~ European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ECSB to maintain price stability.

3. By way of derogation from Article ~~300~~ 188n, where agreements concerning monetary or foreign-exchange regime matters need to be negotiated by the ~~Community~~ Union and one or more ~~States~~ third States or international organisations, the Council, acting ~~by a qualified majority~~ on a recommendation from the Commission and after consulting the ~~ECB~~ European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the ~~Community~~ Union expresses a single position. The Commission shall be fully associated with the negotiations.

~~Agreements concluded in accordance with this paragraph shall be binding on the institutions of the Community, on the ECB and on Member States.~~

~~5.~~ 4. Without prejudice to ~~Community~~ Union competence and ~~Community~~ Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

The amendments to these four paragraphs of the current Article 111 TEC are not substantive; the deleted sub-paragraph is subsumed into Article 188(2). However, there would be substantive amendments to the current Article 111(4) on international positions and external representation, which has been kept in the monetary policy section of the TEC/TFEU (see the new Article 115a TEC/TFEU, in Statewatch Reform Treaty analysis 3.4).

TITLE VI

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

This Title will also apply to EU foreign policy.

Article 188p (ex-302 to 304) [220]
(III-327)

Article 302

~~It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations and of its specialised agencies.~~

~~The Commission shall also maintain such relations as are appropriate with all international organisations.~~

Article 303

~~The Community shall establish all appropriate forms of cooperation with the Council of Europe.~~

Article 304

~~The Community shall establish close cooperation with the Organisation for Economic Cooperation and Development, the details of which shall be determined by common accord.~~

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

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

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

Compared to the existing provisions, the replacement clause would apply to all three pillars, and would include a role for the High Representative as regards foreign policy alongside the Commission. A reference to the OSCE would also be added.

Article 188q [221]
(III-328)

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

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

This is a new clause; in practice the Commission has delegations which represent

the Community and are subject to the Commission's authority. See also the new Article 13a(3) of the TEU, on the EU external action service.

TITLE VII

SOLIDARITY CLAUSE

Article 188r [222]
(I-43 and III-329)

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) - prevent the terrorist threat in the territory of the Member States;

- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) - assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the *High Representative of the Union for Foreign Affairs and Security Policy*. The Council shall act in accordance with Article 17(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 207, the Council shall be assisted by the Political and Security Committee, with the support of the structures developed in the context of the common security and defence policy, and by the Committee provided for in Article 65; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

This is a new clause as compared to the current Treaties. It merges together two clauses from the Constitutional Treaty, which respectively set out the basic principle and then provided for implementation of the principle. The Committee in Article 65 is the standing [JHA] committee on internal security.