



Statewatch analysis

Reform Treaty Analysis no. 2.1:

Revised text of the Treaty establishing the European Union (TEU) (except for the foreign policy provisions)

Second version: prepared by
Professor Steve Peers, University of Essex
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Introduction

The following text sets out what will be the text of the Treaty on European Union (TEU) following the amendments to be agreed by the planned Reform Treaty. This text is based on the English text of the draft Reform Treaty, and incorporates the amendments which are proposed by this draft Treaty to the current Treaty on European Union (TEU) into the current TEU text.

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.

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 agreement upon it (planned for 18-19 October) and possibly even further changes could be made before signature of the Treaty - which is likely on 13 December (the planned date of an EU summit meeting), if the IGC concludes as planned in October.

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 new numbering of the Treaty in square brackets throughout. These provisional numbers could change if provisions are added or removed during negotiations.

The foreign policy provisions in Title V of the future TEU have been left out of this analysis. They will be included in a future analysis.

General comments

The draft Reform Treaty would amend or repeal every single provision of the existing Treaty on European Union (TEU). In place of the existing eight Titles of the Treaty (Title I on common provisions, Titles II to IV amending the Community Treaties, Title V on foreign policy, Title VI on policing and criminal law, Title VII on flexibility and Title VIII containing final provisions), there would be six Titles (Title I on common provisions, Title II on democratic provisions, Title III on the institutions, Title IV on flexibility, Title V on foreign policy and Title VI containing final provisions).

The structure of the Treaty, as revised, is vaguely comparable to Parts I and IV of the Constitutional Treaty, which contained basic and final provisions respectively, but there are many differences in detail. The TEU after the draft Reform Treaty would contain all the detailed rules on foreign policy, whereas Part I of the Constitutional Treaty would not. Also, Part I of the Constitutional Treaty contained detailed rules on EU legal acts and EU finances, which, under the draft Reform Treaty, are now found entirely in the TEC/TFEU; and most of the provisions of Part I of the Constitutional Treaty dealing with EU competences, many of the provisions in Part I dealing with the EU's democratic life', and a few of the provisions in Part I dealing with the EU institutions, have been moved to the TEC/TFEU.

Some provisions of Part I of the Constitutional Treaty (on the primacy of EU law and the EU's symbols) have been dropped entirely.

It should be emphasised that while there will still be two different core Treaties, the relationship between them will be closer than it is presently: see the new Article 39 of the TEU and the identical new Article 1 of the TEC/TFEU. All of the existing references to the separate Treaties will be replaced by a joint reference to the two Treaties. Since the revised TEU will contain the basic rules on the EU's competence and institutions, it will be impossible in future to read the TEC/TFEU without reference to the TEU (whereas at present, a 'first pillar' EC law specialist can probably get away with only reading Article 6(2) TEU, which concerns human rights as general principles of EU law).

This also means that the general and final provisions of the TEC/TFEU will apply to the current second and third pillars. For a list of the Articles particularly affected by this, see Statewatch Reform Treaty analysis 3.7.

As for the substance, the draft Reform Treaty makes substantive amendments to the existing Treaties as follows:

- a) the EU's pillar structure is abolished (Articles 1 and 39), while retaining different rules on decision-making and Court of Justice jurisdiction as regards foreign policy;
- b) a single express legal personality for the EU, subsuming the current express legal personality of the EC and the implied separate legal personality of the EU, is created (Articles 1 and 32);
- c) there are amendments to the 'values' of the EU (currently referred to as principles; see Article 2);
- d) there is a revised list of the EU's objectives (Article 3);
- e) the rules on relations between the EU and its Member States have been amended (Article 4);
- f) the basic rules on EU competence (now found in Article 5 TEC) have been clarified (Article 5);
- g) the EU Charter of Rights becomes binding (Article 6);
- h) the EU has an obligation to accede to the European Convention on Human Rights (Article 6);
- i) there is a new clause on the EU's neighbours (Article 7a);
- j) there are new provisions on the democratic foundations of the EU (Articles 8, 8a and 8b);
- k) there is a new clause on the role of national parliaments (Article 8c);

- l) there is an amendment to the maximum number of members which can be elected to the European Parliament, and there are now minimum and maximum numbers of MEPs for Member States (Article 9a);
- m) the European Council becomes an institution, with a full-time President (Article 9c);
- n) the voting rules for the Council are amended, the Council must meet in public when adopting or discussing legislation, and the Council has a team presidency (Article 9c);
- o) the number of Commissioners, and the procedure for appointment, are amended (Article 9d);
- p) there is a new post of foreign policy High Representative (Article 9e);
- q) there must be nine, not eight, Member States, to start 'enhanced cooperation' (Article 10);
- r) the current 'third pillar' (policing and criminal law) has been moved to the TEC/TFEU;
- s) the Court of Justice will have competence to interpret Title I of the Treaty, which it does not have under the current Article 46 TEU;
- t) the main procedure to amend the Treaties has been altered, and there are new simplified procedures for amendment (Article 33);
- u) there are amendments to the process of accession for new Member States (Article 34);
- v) there is a new clause on withdrawal from the EU (Article 35);
- w) the TEC provisions on territorial scope apply also to the TEU, which never previously contained a provision on its territorial scope (Article 37); and
- x) Member States may translate the treaty into other languages which are official languages on all or part of their territory (Article 41(2)).

While the draft Reform Treaty has, on the whole, taken over the text of the Constitutional Treaty, there are a number of differences between the two Treaties, which were agreed as part of the mandate to negotiate the Reform Treaty. As regards the main part of the amended TEU (ie the subject of this particular analysis), the differences are as follows:

- a) as noted above, the clauses on primacy of EU law and on EU symbols have been dropped;
- b) the preamble to the Constitutional Treaty has essentially been dropped;
- c) the objectives clause has been amended;
- d) the competence clause has been further clarified;
- e) the Charter of Rights is not part of the Treaties (and a Protocol on the UK opt-out from the Charter has been added), although it is legally binding; this also means that the procedure to amend the Charter is different (agreement between the EU institutions, under the draft Reform Treaty, as compared to the normal Treaty revision procedure, under the Constitutional Treaty);
- f) Article 8c on national parliaments is new;
- g) there is a delay in application of the new Council voting rules;
- h) the name of the 'Union Minister of Foreign Affairs' has changed;
- i) the threshold to start 'enhanced cooperation' is nine Member States, instead of one-third of them; and
- j) the 'Copenhagen criteria' have been added to the clause on accession to the EU.

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE CZECH REPUBLIC, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE REPUBLIC OF ESTONIA, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE ITALIAN REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF CYPRUS, THE PRESIDENT OF THE REPUBLIC OF LATVIA, THE PRESIDENT OF THE REPUBLIC OF LITHUANIA, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, THE PARLIAMENT OF THE REPUBLIC OF HUNGARY, THE PRESIDENT OF MALTA, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE FEDERAL PRESIDENT OF THE REPUBLIC OF AUSTRIA, THE PRESIDENT OF THE REPUBLIC OF POLAND, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF SLOVENIA, THE PRESIDENT OF THE SLOVAK REPUBLIC, THE PRESIDENT OF THE REPUBLIC OF FINLAND, THE GOVERNMENT OF THE KINGDOM OF SWEDEN, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, [*add Romania and Bulgaria*]

RESOLVED to mark a new stage in the process of European integration undertaken with the establishment of the European Communities,

DRAWING INSPIRATION from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law,

RECALLING the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe,

CONFIRMING their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,

CONFIRMING their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers,

DESIRING to deepen the solidarity between their peoples while respecting their history, their culture and their traditions,

DESIRING to enhance further the democratic and efficient functioning of the institutions so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them,

RESOLVED to achieve the strengthening and the convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of ~~this Treaty~~ **the Treaties**, a single and stable currency,

DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields,

RESOLVED to establish a citizenship common to nationals of their countries,

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 17, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

RESOLVED to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of ~~this Treaty~~ **the Treaties**,

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,
IN VIEW of further steps to be taken in order to advance European integration,
HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries:

The new addition to the preamble is taken from the preamble to the Constitutional Treaty. The references to the 'Treaty' are now references to both Treaties.

TITLE I: COMMON PROVISIONS

Article 1

Establishment of the Union

By this Treaty, the HIGH CONTRACTING PARTIES establish among themselves a EUROPEAN UNION, hereinafter called 'the Union', on which the Member States confer competences to attain objectives they have in common.

This Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

~~The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples.~~

The Union shall be founded on the present Treaty and on the Treaty on the functioning of the European Union. It shall replace and succeed the European Community.

The first addition is taken from Article I-1 of the Constitutional Treaty, while the replacement of the third paragraph is new; it reflects the different structure of the Treaties as agreed in the mandate to negotiate the Reform Treaty.

Article 2

Values of the Union

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

This clause is taken from Article I-2 of the Constitutional Treaty. Effectively it replaces the current Article 6(1) TEU, which reads as follows: The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States. The values/principles of the EU are a ground for admitting new Member States and the sole ground for suspending existing Member States (see Articles 7 and 49).

Article 3 (ex 2)
Objectives of the Union

The Union shall set itself the following objectives:

- ~~– to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;~~
- ~~– to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17;~~
- ~~– to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;~~
- ~~– to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;~~
- ~~– to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.~~

~~The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.~~

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.

3. The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. The Union shall establish an economic and monetary union whose currency is the euro.

5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.

6. The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.

Much of this Article is taken from Article 1-3 of the Constitutional Treaty, amended in accordance with the Reform Treaty mandate to delete a reference to competition, to include a reference to monetary union and the euro, and to define the area of 'freedom, security and justice'. The latter two amendments are taken (retained) from the text of the current Article 2 TEU.

The draft Reform Treaty also includes the text of a Protocol on the internal market and competition, agreed as part of the IGC mandate.

Article 4 (ex 3)

Relations between the Union and the Member States

~~The Union shall be served by a single institutional framework which shall ensure the consistency and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.~~

~~The Union shall in particular ensure the consistency of its external activities as a whole in the context of its external relations, security, economic and development policies. The Council and the Commission shall be responsible for ensuring such consistency and shall cooperate to this end. They shall ensure the implementation of these policies, each in accordance with its respective powers.~~

1. In accordance with Article [5], competences not conferred upon the Union in the Treaties remain with the Member States.

2. The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

3. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Treaties or resulting from the Union Institutions' acts.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives.

The current Article 3 TEU is effectively subsumed within the institutional provisions of the Treaty.

The text of the replacement Article 3 (which will be renumbered Article 4) is taken from Article 1-5 of the Constitutional Treaty, amended to add a new first paragraph (I have updated the cross-reference) and a new line to the end of paragraph 2, as agreed in the Reform Treaty IGC mandate. The first paragraph is identical to the second line of Article 5(2) TEU (as revised by the Reform Treaty).

Paragraph 2 could be regarded as the successor to the current Article 6(3) TEU, which provides

that, 'The Union shall respect the national identities of its Member States.'

Paragraph 3, second and third sub-paragraphs, take over the content of Article 10 of the current EC Treaty (which will be replaced by a provision dealing with a different issue). Sub-paragraph 1 is new, but reflects the case law of the Court of Justice. Although the current Article 10 TEC currently only applies to the 'first pillar', a similar rule applies to the 'second pillar' (foreign policy) as set out in the current Article 11 TEU, and the Court of Justice has ruled that a similar rule applies to the current 'third pillar' (policing and criminal law): see the judgment in Case C-105/03 Pupino.

Article 1-4 of the Constitutional Treaty, concerning fundamental (internal market) freedoms and non-discrimination, will not be inserted into the TEU. The TEC/TFEU will continue to contain provisions on these issues.

Article 5 (ex 4)

Fundamental principles governing competences

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out in the Treaties. Competences not conferred upon the Union in the Treaties remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

This Article is taken from Article 1-11 of the Constitutional Treaty, which is itself an amended version of the current Article 5 of the TEC, which will be repealed. The Reform Treaty IGC mandate agreed to add the word 'only' to paragraph 2. The mandate also agreed to make changes to the Protocol on subsidiarity and proportionality, to increase the role of national parliaments. The current Article 5 TEC reads as follows:

The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein.

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty.

Articles 1-12 to 1-18 of the Constitutional Treaty, which also concern competences of the EU, have been (re-)inserted into the TEC/TFEU (into Part One of that Treaty and Article 308 of that Treaty, as amended).

Article 5

~~The European Parliament, the Council, the Commission, the Court of Justice and the Court of Auditors shall exercise their powers under the conditions and for the purposes provided for, on the one hand, by the provisions of the Treaties establishing the European Communities and of the subsequent Treaties and Acts modifying and supplementing them and, on the other hand, by the other provisions of this Treaty.~~

The current Article 5 TEU will be repealed. This provision could be regarded as subsumed within the institutional Title.

Article 6

Fundamental Rights

~~1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.~~

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of 7 December 2000, as adapted on [... 2007], which shall have the same legal value as the Treaties.

The provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties.

The rights, freedoms and principles in the Charter shall be interpreted in accordance with the general provisions in Title VII of the Charter governing its interpretation and application and with due regard to the explanations referred to in the Charter, that set out the sources of those provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union's competences as defined in the Treaties.

~~2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.~~

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

~~3. The Union shall respect the national identities of its Member States.~~

~~4. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.~~

The current Article 6(1) TEU has been moved to the new Article 2 TEU, with amendments. The current Article 6(2) TEU is retained as Article 6(3) TEU, with a different wording but no

significant change in substance. The current Article 6(3) TEU has been moved to the future Article 4 TEU, with amendments. The current Article 6(4) TEU has been moved to the financial provisions of the TEC/TFEU (Article 269 TEC/TFEU).

This text of the new version of Article 6 TEU is taken from Article I-9 of the Constitutional Treaty. Paragraphs 2 and 3 are unchanged as compared to Article I-9, while paragraph 1 of Article I-9 read as follows: 'The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II'.

The IGC mandate for the Reform Treaty negotiations amended the text of para 1, agreed a Protocol exempting the Charter from having any effect on the UK (Ireland and Poland may join in), and also agreed on some connected declarations. This Protocol will not exclude the application of the EU's accession to the ECHR, or the general principles of EU law, from any Member State.

Paragraph 2 of this Article gives the EU competence (and apparently an obligation) to accede to the ECHR. This alters the current position, under which the EC has no competence to accede to the ECHR (Opinion 2/94 of the Court of Justice, [1996] ECR I-1759). The Constitutional Treaty also included a Protocol and Declarations relating to this accession; these will be maintained. The IGC mandate for the Reform Treaty specifies that the EU's accession to the ECHR must be agreed unanimously, and with national ratification; this changes the position as compared to the Constitutional Treaty, which had provided for a qualified majority vote on this issue.

Paragraph 3 of this Article replaces the current Article 6(2) TEU, which provides as follows: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.' The change in wording does not appear to change the meaning. The general principles have been established and developed by the Court of Justice since the early 1970s.

The provisions of the Constitutional Treaty concerning the primacy of EU law (Article I-6) and the symbols of the EU (Article I-8) will not be inserted into the TEU, according to the Reform Treaty mandate and the draft Reform Treaty. There will be a declaration on primacy instead. Article I-7 of the Constitutional Treaty, concerning the EU's legal personality, will be inserted into the final provisions (Article 32 in Title VI).

Article I-10 of the Constitutional Treaty, concerning EU citizenship, will not be inserted into the TEU. The citizenship provisions will be left in the TEC/TFEU instead (Arts. 17b to 21a TEC/TFEU; see Statewatch reform Treaty analysis 3.2).

Article 7

Suspension of certain rights resulting from Union membership

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council, acting by a majority of four fifths of its members, after obtaining the ~~assent~~ consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of ~~principles mentioned in Article 6(1)~~ the values referred to in Article 2 and ~~address appropriate recommendations to that State.~~ Before making such a determination, the Council shall hear the Member State in question and may address appropriate recommendations to that State, acting in accordance with the same procedure.; ~~may call on independent persons to submit within a reasonable time limit a report on the situation in the Member State in question.~~

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

~~2. The Council, meeting in the composition of the Heads of State or Government and The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the assent consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of principles mentioned in Article 6(1) the values referred to in Article 2, after inviting the government of the Member State in question to submit its observations.~~

3. Where such a determination has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of ~~this Treaty~~ the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under ~~this Treaty~~ the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 2 in response to changes in the situation which led to their being imposed.

~~5. For the purposes of this Article, the Council shall act without taking into account the vote of the representative of the government of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 1. A qualified majority shall be defined as the same proportion of the weighted votes of the members of the Council concerned as laid down in Article 205(2) of the Treaty establishing the European Community.~~

~~This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 2.~~

~~6. For the purposes of this Article, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its members.~~

5. The voting rules which apply to the European Parliament, the European Council and the Council for the purposes of this Article are set out in Article 309 of the Treaty on the Functioning of the Union.

The Reform Treaty would amend Article 7 TEU in order to introduce some minor amendments made by the Constitutional Treaty (see Article 1-59 of that Treaty), such as decision-making by the European Council, rather than the Council made up of heads of government (this is a distinction without a difference). Two paragraphs of Article 7 TEU would be moved to into Article 309 TEC/TFEU.

Article 7a [8]

The Union and its neighbours

1. The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For this purpose, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

This clause is taken from Article 1-56 of the Constitutional Treaty. It is new as compared to the current Treaties, although paragraph 2 reflects long-standing practice (see the current Article

310 TEC, which will become Article 188m TFEU without amendment), and a 'neighbourhood policy' in the sense of paragraph 1 has been developed since 2003.

Title II

Article 8

~~deleted~~

The current Article 8 TEU contains the text of amendments to the TEC made by the original version of the Treaty on European Union in 1993. Article 1(11) of the draft Reform Treaty simply states that these amendments are inserted into the TEC/TFEU.

TITLE II:

Provisions on democratic principles

Article 8 [9]

The principle of democratic equality

In all its activities, the Union shall observe the principle of the equality of citizens, who shall receive equal attention from its institutions, bodies, offices and agencies.

This is a new Article. The text is taken from Article I-45 of the Constitutional Treaty.

Article 8a [10]

The principle of representative democracy

- 1. The working of the Union shall be founded on representative democracy.**
- 2. Citizens are directly represented at Union level in the European Parliament.**

Member States are represented in the European Council by their Heads of State and Government and in the Council by their governments, themselves democratically accountable either to their national parliaments, or to their citizens.

- 3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.**

- 4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.**

This is a new Article, except that the reference to taking decisions as openly and closely as possible appears in the current Article 1 TEU (and the draft Reform Treaty leaves this reference in Article 1 as well). The text is taken from Article I-46 of the Constitutional Treaty.

Article 8b [11]

The principle of participatory democracy

- 1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.**
- 2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.**

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and the conditions required for the presentation of such an initiative shall be set out in conformity with Article [I-47(4)] of the Treaty on the Functioning of the Union.

This text is taken from Article I-47 of the Constitutional Treaty. The 'legal base' for the adoption of legislation on this issue is to be inserted into Article 21 of the TEC/TFEU. The new sentence in the final paragraph (not found in the Constitutional Treaty) reflects this.

The remaining provisions of the 'democratic life' Title of the Constitutional Treaty (Articles I-48 to I-52) have been moved into various parts of the TEC/TFEU.

Article 8c [12]

The role of national Parliaments

National Parliaments shall contribute actively to the good functioning of the Union:

a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the European Union;

b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article [III-260] of the Treaty on the Functioning of the Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles [III-276 and III-273] of that Treaty;

d) by taking part in the revision procedures of the Treaties, in accordance with Article 33 of this Treaty;

e) by being notified of applications for accession to the Union, in accordance with Article [49] of this Treaty;

f) by taking part in the interparliamentary cooperation between national parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments.

This is a new provision, which was agreed as part of the IGC mandate.

TITLE III

PROVISIONS ON THE INSTITUTIONS

The current Title III of the TEU (Article 9), which sets out amendments to the European Coal and Steel (ECSC) Treaty, will be repealed. It should be recalled that the ECSC Treaty expired in 2002.

Article 9 [13]

The institutions of the Union

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The institutions of the Union are:

- the European Parliament,
- the European Council,
- the Council,
- the European Commission (hereinafter referred to as the 'Commission'),
- the Court of Justice of the European Union,
- the European Central Bank,
- the Court of Auditors.

2. Each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures and conditions set out in them. The institutions shall practice mutual sincere cooperation.

3. The provisions relevant to the European Central Bank and the Court of Auditors are set out in the Treaty on the Functioning of the Union.

This text is based on Article I-19 of the Constitutional Treaty. It is derived from Articles 5 TEU and 7(1) TEC. Both provisions will be repealed. The third paragraph has been added by the draft Reform Treaty; it reflects the fact that provisions on these bodies appear in the TEC/TFEU, rather than in this Treaty.

Article 9a [14]

The European Parliament

1. The European Parliament shall, jointly with the Council, exercise legislative and budgetary functions. It shall exercise functions of political control and consultation as laid down in the Treaties. It shall elect the President of the Commission.

2. The European Parliament shall consist of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number. Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats.

The European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out in the first paragraph above.

3. The members of the European Parliament shall be elected for a term of five years by direct universal suffrage in a free and secret ballot.

4. The European Parliament shall elect its President and its officers from among its members.

This is Article I-20 of the Constitutional Treaty, and is based on Articles 189 and 190 TEC provisions, with amendments. The June 2007 summit conclusions call for the European Parliament to propose the decision referred to in para. 2 by October 2007 at the latest.

Article 9b [15]

The European Council and its President

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The *High Representative of the Union for Foreign Affairs and Security Policy* shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, the members of the European Council may decide each to be assisted by a minister and, in the case of the President of the Commission, by a member of the Commission. When the situation so requires, the President shall convene a special meeting of the European Council.
4. Except where the Treaties provide otherwise, decisions of the European Council shall be taken by consensus.
5. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.
6. The President of the European Council:
 - (a) shall chair it and drive forward its work,
 - (b) shall ensure its preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
 - (c) shall endeavour to facilitate cohesion and consensus within the European Council,
 - (d) shall present a report to the European Parliament after each of the meetings of the European Council.

The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the powers of the *High Representative of the Union for Foreign Affairs and Security Policy*.

The President of the European Council may not hold a national mandate.

This is Articles 1-21 and 1-22 of the Constitutional Treaty, redrafted to form a single Article in accordance with the Reform Treaty IGC mandate, and to change the name of the 'Union Minister for Foreign Affairs'. It can be compared to the current Article 4 TEU (see above).

Article 9c [16]

The Council, its Presidency and the definition of a qualified majority

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions, as laid down in the Treaties.
2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.
3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union.

A blocking minority must include at least four Council members, failing which the qualified majority shall be deemed attained.

The other arrangements governing the qualified majority are set out in Article 205 of the Treaty on the Functioning of the Union.

5. The transitional provisions relating to the definition of the qualified majority voting which shall be applicable until 1 November 2014, as well as those which will be applicable between 1 November 2014 and 31 March 2017 are set out in the Protocol on transitional provisions.

6. The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 201b of the Treaty on the Functioning of the Union.

The General Affairs Council shall ensure consistency in the work of the different Council configurations. It shall prepare and ensure the follow-up to meetings of the European Council, in liaison with the President of the European Council and the Commission.

The Foreign Affairs Council shall elaborate the Union's external action on the basis of strategic guidelines laid down by the European Council and ensure that the Union's action is consistent.

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

8. The Council shall meet in public when it deliberates and votes on a draft legislative act. To this end, each Council meeting shall be divided into two parts, dealing respectively with deliberations on Union legislative acts and non-legislative activities.

9. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 201b of the Treaty on the Functioning of the Union.

This text is based on Articles I-23 to I-25 of the Constitutional Treaty, which were based on current Articles 202, 203, 205 and 207(1) TEC, with amendments. It does not include several provisions which the Reform Treaty IGC mandate specified would be (re-)inserted into the TEC/TFEU: the rules on QMV in the European Council, the legal bases for adopting the list of Council configurations, and on the Presidency of these configurations, and an exceptional rule on qualified majority voting when the Council does not act on a Commission proposal. These rules can be found in the revised Article 205 of the TEC/TFEU and the new Articles 201a and 201b of that Treaty. This Article has also been redrafted for conciseness, as the IGC mandate required.

The provisions in italics reflect the delay in the application of the new rules on Council voting, agreed as part of the IGC mandate.

Article 9d [17]

The European Commission and its President

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall implement the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The Members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 9e(2), the members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty modifying the Treaty on European Union and the Treaty establishing the European Community and 31 October 2014 shall consist of one national of each Member State, including its President and the *High Representative of the Union for Foreign Affairs and Security Policy* who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the *High Representative of the Union for Foreign Affairs and Security Policy*, corresponding to two-thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of equal rotation between the Member States. *This system shall be established unanimously by the European Council in accordance with Article 211 of the Treaty on the Functioning of the Union.*

6. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out in *Article 201 of the Treaty on the Functioning of the Union*, the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the *High Representative of the Union for Foreign Affairs and Security Policy* shall resign from the duties that he or she carries out in the Commission.

7. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

(c) appoint Vice-Presidents, other than the *High Representative of the Union for Foreign Affairs and Security Policy*, from among the Members of the Commission.

A Member of the Commission shall resign if the President so requests. The *High Representative of the Union for Foreign Affairs and Security Policy* shall resign, in accordance with the procedure set out in Article 9e(1), if the President so requests.

8. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in [paragraph 3, second sub-paragraph, and paragraph 5, second sub-paragraph.]

The President, the *High Representative of the Union for Foreign Affairs and Security Policy* and the other Members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this approval the Commission shall be appointed by the European Council, acting by a qualified majority.

This is based on Articles I-26 and I-27 of the Constitutional Treaty, which are based Articles 211, 213, 214 and 217 TEC, with amendments. It excludes the provision on the legal base for adopting the rules on rotation of the Commission, which has been inserted into Article 211 of the TEC/TFEU in accordance with the IGC Reform Treaty mandate. It has also been redrafted for conciseness, as the IGC Reform Treaty mandate suggests.

Article 9e [18]

The High Representative of the Union for Foreign Affairs and Security Policy

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the *High Representative of the Union for Foreign Affairs and Security Policy*. The European Council may end his or her term of office by the same procedure.

2. The *High Representative* shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The *High Representative* shall preside over the Foreign Affairs Council.

4. The *High Representative* shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the *High Representative* shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

This is Article I-27 of the Constitutional Treaty, amended to change the title of the 'Union Minister for Foreign Affairs'.

Article 9f [19]

The Court of Justice of the European Union

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure that in the interpretation and application of the *Treaties*, the law is observed.

Member States shall ensure remedies sufficient to ensure effective legal protection in the fields covered by Union law.

2. The Court of Justice shall consist of one judge from each Member State. It shall be assisted by Advocates-General.

The General Court shall include at least one judge per Member State.

The judges and the Advocates-General of the Court of Justice and the judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 223 and 224 of the Treaty on the Functioning of the Union. They shall be appointed by common accord of the governments of the Member States for a term of six years. Retiring judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall in accordance with the *Treaties*:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) rule in other cases provided for in the *Treaties*.

This is Article I-29 of the Constitutional Treaty, incorporating the current Article 220 TEC and aspects of the current Article 221 TEC. The Court of First Instance has been renamed the 'General Court', as set out in the Constitutional Treaty.

Title IV:

Provisions on Enhanced cooperation

The current Title IV of the TEU (Article 10), which sets out amendments to the Euratom Treaty dating from the original Treaty on European Union, will be inserted into the Euratom Treaty.

Article 10 [20]

Enhanced cooperation

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the *Treaties*, subject to the limits and in accordance with the procedures laid down in this Article and in Articles 280a to 280i of the *Treaty on the Functioning of the Union*.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 280c of the *Treaty on the Functioning of the Union*.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least *nine* of the Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 280d of the Treaty on the Functioning of the Union.

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The modalities of voting are set out in Article 280e of the Treaty on the Functioning of the Union.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating States. They shall not be regarded as part of the *acquis* which has to be accepted by candidates for accession to the Union.

This takes over Article I-44 of the Constitutional Treaty, as set out in the IGC Reform Treaty mandate, except that the provisions on voting have been placed in the TEC/TFEU as agreed in the Reform Treaty mandate. A substantive change from the Constitutional Treaty, agreed as part of the Reform treaty mandate, is the threshold of nine Member States (rather than one-third). The current threshold is eight Member States.

TITLE V

General provisions on the Union's External Action and specific provisions on the Common Foreign and Security Policy

See Statewatch analysis 2.2

The current Title IV of the TEU (third pillar) is transferred to the TEC/TFEU.

The current Title VII of the TEU (flexibility) is transferred to Title IV of the TEU (see above).

TITLE VIII-VI:

Final Provisions

Article 46

~~The provisions of the Treaty establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community concerning the powers of the Court of Justice of the European Communities and the exercise of those powers shall apply only to the following provisions of this Treaty:~~

- ~~(a) - provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community;~~
- ~~(b) - provisions of Title VI, under the conditions provided for by Article 35;~~
- ~~(c) - provisions of Title VII, under the conditions provided for by Articles 11 and 11a of the Treaty establishing the European Community and Article 40 of this Treaty;~~
- ~~(d) - Article 6(2) with regard to action of the institutions, in so far as the Court has jurisdiction under the Treaties establishing the European Communities and under this Treaty;~~
- ~~(e) - the purely procedural stipulations in Article 7, with the Court acting at the request of the Member State concerned within one month from the date of the determination by the Council provided for in that Article;~~
- ~~(f) - Articles 46 to 53.~~

This clause will be deleted, in accordance with the IGC mandate. It sets out restrictions on the jurisdiction of the Court of Justice as regards the current TEU. It will be replaced by a specific restriction regarding foreign policy in Article 11 TEU, to be amended by the Reform Treaty, as well as specific restrictions concerning foreign policy, Article 7 TEU (on suspension of Member States) and aspects of criminal law and policing, to be inserted into the TEC/TFEU (see Articles 235 bis, 240 bis and 240ter TEC/TFEU, which would be inserted into the TEC/TFEU by the draft Reform Treaty). These specific restrictions take over provisions of the Constitutional Treaty (Articles III-371, 376 and 377).

Article 47

~~Subject to the provisions amending the Treaty establishing the European Economic Community with a view to establishing the European Community, the Treaty establishing the European Coal and Steel Community and the Treaty establishing the European Atomic Energy Community, and to these final provisions, nothing in this Treaty shall affect the Treaties establishing the European Communities or the subsequent Treaties and Acts modifying or supplementing them.~~

This clause is moved to Article 25 TEU and amended, in accordance with the IGC mandate. It concerns the distinctions between the three pillars. The new text concerns the distinctions between foreign policy measures on the one hand, and other EU measures on the other hand, and is based on Article III-308 of the Constitutional Treaty.

Article 32 [47]

Legal personality

(I-7)

The Union shall have legal personality.

This clause has been taken from the Constitutional Treaty, as referred to in the IGC mandate.

Article 48

~~The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.~~

~~If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.~~

~~The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.~~

Article 33 [48]

(IV-443 to 445)

The treaties may be modified in accordance with an ordinary procedure. They may also be amended in accordance with simplified revision procedures.

Normal revision procedure

1. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may serve either to increase or reduce the competences conferred on the Union in the

Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments of the Member States shall be notified.

If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in the fourth subparagraph.

The European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.

A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

If, two years after the signature of the treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Simplified revision procedures

2. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the Union on the internal policies of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of of the Treaty on the Functioning of the Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph may not increase the competences conferred on the Union in the Treaties.

3. Where the Treaty on the Functioning of the Union or Title V of this Treaty provide for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.

Where the Treaty on the Functioning of the Union provides for legislative acts to be adopted by the Council according to a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

Any initiative taken by the European Council on the basis of the first or second subparagraph shall be notified to the national Parliaments of the Member States. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in the first or second sub-paragraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the decisions referred to in the first and second subparagraphs, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

This clause replaces the current Article 48 TEU, providing for a revised ‘normal’ approach to amending the Treaties as set out in the Constitutional Treaty, along with the new procedures for simplified revision as set out in the Constitutional Treaty (see Articles IV-443 to IV-445), consolidated into one Article as provided for by the IGC mandate.

The second line of Article 33(1) is new as compared to the Constitutional Treaty. It was agreed as part of the IGC mandate for the Reform Treaty.

It should be pointed out also that, in contrast with the Constitutional Treaty, these rules do not apply to the revision of the Charter of Fundamental Rights. The Charter will presumably still be revised by agreement between the Council, Commission and European Parliament.

Article 34 (ex-49) [49]

Conditions of eligibility and procedure for accession to the Union

(I-58)

Any European State which respects the principles set out in Article 6(1) the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. ~~‡~~ The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the ~~assent~~ consent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

Following the IGC Reform Treaty mandate, paragraph 1 is amended in accordance with the Constitutional Treaty. The IGC Reform Treaty mandate also added a final line to this paragraph, reflecting the ‘Copenhagen criteria’ for EU membership.

Article 35 [50]

Voluntary withdrawal from the Union

(I-60)

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 188n of the Treaty on the Functioning of the Union; it shall be concluded on behalf of the Union by the Council, acting

by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

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

5. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 34.

This is a new clause, taken from the Constitutional Treaty, as referred to in the IGC mandate.

Article 36 [51]
Protocols and Annexes
(IV-442)

The Protocols and Annexes to the Treaties shall form an integral part thereof.

This is a new clause in the TEU; it extends the application of the identical clause in the current Article 311 TEC, which will be repealed.

Article 37 [52]
Territorial scope
(IV-440(1))

1. The Treaties shall apply to the Kingdom of Belgium, Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland.

2. The territorial scope of the Treaties is specified in Article 299 on the Treaty on the Functioning of the Union.

This is a new clause in the TEU; it extends the application of the current Article 299 TEC, which contains further details on territorial scope, and which will be amended in accordance with the Constitutional Treaty (Article IV-440(2) to (7)).

Article 50

~~1. Articles 2 to 7 and 10 to 19 of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Brussels on 8 April 1965, are hereby repealed.~~

~~2. Article 2, Article 3(2) and Title III of the Single European Act signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 are hereby repealed.~~

The draft Reform Treaty proposes to delete this Article, but this appears to be a technical error. Repealing this Article would bring back into force redundant provisions of the Single European Act (para 2). However, it would not bring back the Merger Treaty (para 1), since that was fully repealed by the Treaty of Amsterdam.

Article **38** (ex-51) [53]

Duration

~~This Treaty is~~ **The Treaties are** concluded for an unlimited period.

This Article has been consolidated with the identical provision of the TEC (Article 312), which will be repealed.

Article **39** [54]

Relationship between this Treaty and the Treaty on the Functioning of the Union

This Treaty and the Treaty on the Functioning of the Union constitute the Treaties on which the Union is founded. These two treaties, which have the same legal value, shall be referred to as 'the Treaties'.

A new clause, not found in the current Treaties or (obviously) in the Constitutional Treaty.

Article **40** (ex-52) [55]

Ratification and entry into force
(IV-447)

1. ~~This Treaty~~ **The Treaties** shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. ~~This Treaty~~ **The Treaties** shall enter into force on 1 January 1993, ~~provided that all the instruments of ratification have been deposited, or, failing that,~~ on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

This Article has been merged with Article 313 TEC, which has been replaced with an Article on a different issue.

Article **41** (ex-53) [56]

Authentic texts and translations
(IV-448)

1. This Treaty, drawn up in a single original in the ~~Danish, Dutch, English, French, German, Greek, Irish, Italian, Portuguese and Spanish,~~ **Bulgarian, Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Romanian, Slovak and Slovenian languages,** the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

~~Pursuant to the Accession Treaties, the Bulgarian, Czech, Estonian, Finnish, Hungarian, Latvian, Lithuanian, Maltese, Polish, Romanian, Slovak and Slovenian versions of this Treaty shall also be authentic.~~

2. The Treaties may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall

be provided by the Member States concerned to be deposited in the archives of the Council.

The new para 2 takes over the text of Article IV-448 of the Constitutional Treaty, which alters the current rules to permit translations of the Treaty into additional languages. This provision has been consolidated with the identical provision of the TEC (Article 314), which will be replaced with an Article on a different issue.