



House of Commons
European Scrutiny Committee

European Union Intergovernmental Conference

Thirty-fifth Report of Session 2006–
07

*Report, together with formal minutes and
written evidence*

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The European Scrutiny Committee

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- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

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European Union Intergovernmental Conference

(28791) 11625/07 COM(07) 412	Reforming Europe for the 21 st Century: Opinion of the European Commission, pursuant to Article 48 of the Treaty on European Union, on the Conference of representatives of the governments of the Member States convened to revise the Treaties
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Legal base	—
Document originated	10 July 2007
Deposited in Parliament	17 July 2007
Department	Foreign and Commonwealth Office
Basis of consideration	EM of 25 July 2007
Previous Committee Report	None; but see HC 63 xvi (2002-03)(25 June 2003), HC 38–xiv (2004-05) (23 March 2005)
To be discussed in Council	No date set
Committee’s assessment	Legally and politically important
Committee’s decision	Cleared

Background

1. At its meeting in Laeken in December 2001 the European Council agreed that the European Union needed to become “more democratic, more transparent and more efficient”¹ and that for this purpose a number of specific questions needed to be addressed. To examine these questions the European Council agreed to establish a ‘Convention’ which would consider the key issues arising for the future development of the European Union and to identify various possible responses. The questions in issue were “a better division and definition of competence in the European Union”, “simplification of the Union’s instruments”, “more democracy, transparency and efficiency in the European Union” and the simplification and reorganisation of the Treaties. In this latter case, the European Council raised the question of whether such simplification and reorganisation “might not lead in the long run to the adoption of a constitutional text in the Union”.

2. In the event, the Convention, which ran from 2002 to 2003, drew up a Draft Constitutional Treaty which was presented to Member States in July 2003. The text formed the basis of an intergovernmental conference (IGC) which led to the adoption in October 2004 of a “Treaty establishing a Constitution for Europe” (the Constitutional Treaty)². In June 2005 the Constitutional Treaty was rejected by a popular referendum in France (with a ‘no’ vote of 54.5%) and in the Netherlands (by a ‘no’ vote of 61.6%). Following a “period of reflection” the European Council in June 2006 asked the German Presidency to produce a report to the June 2007 European Council. This report was to “contain an assessment of

1 Annex 1 to Presidency Conclusions 14 and 15 December 2001, the ‘Laeken Declaration on the future of the European Union’.

2 (2004) Cm 6429.

the state of discussion with regard to the Constitutional Treaty and explore possible future developments”.³

3. The report of 14 June from the German Presidency⁴ recommended that the European Council should agree to the “rapid convening of an IGC” and to giving a “precise and comprehensive mandate (on structure and content) to the IGC”. Although the IGC would be asked to adopt a “Reform Treaty” amending the existing Treaties rather than repealing them, the report stated that “the mandate for the IGC should set out how the measures agreed upon in the 2004 IGC with a view to a more capable and democratic Union should be inserted into the Treaty on the European Union and the ‘Treaty on the Functioning of the Union’”. The Presidency report noted that a number of Member States had underlined the importance of the “impression which might be given by the symbolism and the title ‘Constitution’ that the nature of the Union is undergoing radical change” and that for them this also implied “a return to the traditional method of treaty change through an amending treaty, as well as a number of changes of terminology, not least the dropping of the title ‘Constitution’”. The report found that such an approach was “not incompatible” with the demand from those Member States which had already ratified, that “as much of the substance of the Constitutional Treaty as possible should be preserved”. The report noted that these Member States “insist on the need to preserve the substance of the innovations agreed upon in the 2004 IGC”.

4. Under the rubric “The way forward”, the report recommended the rapid convening of an IGC with a view to adopting an amending Treaty, but noted that a number of changes from the measures agreed at the 2004 IGC would be needed to reach an overall agreement. The report went on to note that, to this end, “there should be further discussions” with regard to a number of issues, namely, “the question of the symbols and of the primacy of EU law”, “possible terminological changes”, “the treatment of the Charter on Fundamental Rights”, “the specificity of the CFSP”, “the delimitation of competences between the EU and the Member States” and “the role of national parliaments”.

5. In the event, a ‘Draft IGC Mandate’⁵ containing a series of detailed prescriptions on each of the above issues, as well as an outline of the proposed treaty, was circulated by the Presidency on 19 June as the “exclusive basis and framework” for the IGC. **Since the Presidency report was distributed on Thursday 14 June, and the draft IGC mandate was first circulated the following Tuesday on 19 June at 5:00 pm in the evening, we require the Government to clarify what “further discussions” on the issues identified in the Presidency report took place before the draft IGC mandate was produced .**⁶

6. The ‘draft IGC Mandate’ provided the basis for discussion at the European Council, which began just over 48 hours later at 5:30 pm on 21 June. The European Council concluded in the early hours of 23 June, having agreed an IGC Mandate in substantially the same terms as the draft of 19 June. The European Council agreed to convene an IGC and

3 Presidency Conclusions 15/16 June 2006, paragraph 47.

4 10659/07 of 14 June 2007.

5 SN 3116/2/07 REV2.

6 We also note that we were told by the Minister for Europe on 4 July that the draft IGC mandate was circulated for the first time in Brussels at 5:00pm local time on 19 June (Q6) and that it was confirmed on behalf of the Minister that this was the first time that any text at all had been given to those representing the UK (Q15).

invited the Presidency “without delay” to take the necessary steps in accordance with Article 48 EU⁷ with the objective of opening the IGC before the end of July. The German Presidency made a formal proposal on 27 June reproducing the agreed IGC Mandate. The Commission adopted its opinion on 10 July, and the European Parliament gave its opinion the following day. The IGC was subsequently opened on 23 July.

Our consideration of the preparations for the IGC

7. We were concerned at an early stage that the process which was leading up to the convening of an IGC was proving to be far from transparent. We raised this issue with the then Foreign Secretary when she came to give evidence to the Committee on 7 June, referring to a background of “non-transparency” and to the fact that despite an avowed welcome for ‘parliamentary contributions to the debate’⁸, the Government had resisted requests from the Committee for a statement of its views on what sort of changes there should be to the present institutional arrangements or for sight of either the Berlin Declaration⁹ or Presidency progress reports ahead of the relevant European Council meetings.

8. In her evidence in reply, the then Foreign Secretary commented that she understood our concerns and that the Government itself would have wished to have an earlier sight of the Berlin declaration than it did.¹⁰ The Minister stated that there was no proposal to bring back the Constitutional Treaty in its original form and that the Government was “on record at various levels as saying that was such a proposal made we would continue to take the view that that would require a referendum”¹¹. The Minister went on to assure us that:

“There has not been anything that you could really call negotiation and not much that you could really call discussion perhaps because the differences of view are still so considerable that it is hard for people to identify the ground on which that discussion might take place.”¹²

9. The Minister recalled that, in relation to its negotiating position, at that stage the Government was determined to “keep its powder dry”. The Minister described the Government’s attitude in these terms:

“We have continued to say quite succinctly, I think, that what we would look for is a treaty which is very different from that proposed as the Constitutional Treaty for something that was in a perfectly understandable and straightforward, historical

7 The relevant requirements are set out in the second paragraph of Article 48 EU which provides: ‘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’.

8 In her letter of 22 February 2007 to us the then Foreign Secretary stated ‘The Government welcomes Parliamentary contributions to the debate.’

9 The Declaration adopted by Member States on 25 March 2007 to mark the 50th anniversary of the signing of the Treaties of Rome.

10 Q1 HC640-i.

11 Q3 HC640-i.

12 Q9 HC640-i.

lineage, an amending treaty. It should be very different from the Constitutional Treaty proposals and, to use the phrase of the Prime Minister which I find quite helpful, it should not be proposing the characteristics of a Constitution. That is where we have hung our hats and where we stay.”¹³

10. Despite the statements from the then Foreign Secretary, work had clearly been ongoing within the Presidency, resulting in the circulation only 12 days later of a draft IGC Mandate setting out a series of detailed amendments together with an outline of a proposed draft Treaty. In his evidence to us on 4 July, the Minister for Europe confirmed to us that the Presidency circulated the draft IGC Mandate for the first time at 5:00pm on 19 June¹⁴. It was also confirmed on his behalf that the process of preparation for the European Council began with a meeting of each country’s representatives, referred to as “focal points”,¹⁵ with the Presidency in Berlin on 24 January, with a further such meeting on 2 May, with no draft text provided or discussed on either occasion and that the first time any text was given was 5:00 pm on 19 June and that “there had previously been no negotiations” — merely a statement of each country’s position.¹⁶

11. We were also struck by the evidence given on 4 July that those representing the UK did not see the draft IGC Mandate until 5:00 pm on 19 June, even though the European Council was due to commence just over 48 hours later. We wrote to the Minister on 11 July asking to be told whether responsible Ministers were consulted about the draft mandate during that brief period and for an account of such consultations. We also asked for the Government’s views on whether it was acceptable for a process which had taken two years then to be “bounced” into the European Council in two days. Although the Minister replied to our letter on 31 July, he did not offer any comment on this point.

12. In order better to understand the process whereby the IGC was being prepared, we asked the Minister on 19 July formally to deposit the Commission’s opinion of 10 July on the convening of an IGC and to supply an Explanatory Memorandum explaining the Government’s views on the opinion. The Minister acceded to our request and supplied an Explanatory Memorandum on the document on 25 July.

The Commission’s Opinion

13. The Commission’s Opinion, entitled “Reforming Europe for the 21st Century”, is given pursuant to Article 48 EU. The Opinion consists of three parts. Part I “Reforming Europe together”, briefly reviews the state of the European Union over the last decade, the process which led to the Constitutional Treaty and the subsequent outcome. This part of the opinion claims that the European Union “is uniquely well placed to find the answers to today’s most pressing questions” and asserts that “after fifty years of integration and enlargement, the vision set out by Europe’s founding fathers holds as good as ever”. It goes on to argue that the European Union has the potential to reinforce its policies in the areas

13 Q8 HC640-i.

14 Q6 HC862-i.

15 “Focal points” is the term used to refer to the senior officials of the Member States taking part in the process of preparing the IGC.

16 Q14 and 15 HC862-i.

of modernising the European economy to face new competition, keeping Europe at the forefront of efforts to address climate change worldwide, securing sustainable energy supplies, managing migration effectively, combating terrorism, helping developing countries to fight poverty and seeing “European values promoted effectively in the global community”, but that this potential “must not be held back by outdated ways of working”.

14. The Opinion further argues that the European Union needs modernisation and reform, but that the “delicate balance of the Union’s institutional mix still provides the best combination to bring together Europe’s strengths” and that “the ‘Community method’ — and more particularly the European Commission’s special role and its right of initiative¹⁷ — is the key to the success of the European system”. **We are far from convinced that a Commission monopoly of the right of initiative needs any longer to be preserved and maintained and would be grateful for the Minister’s assessment.**

15. The Opinion notes that the Constitutional Treaty has been ratified in a majority of Member States, but “failed to secure unanimous support”. In the Commission’s view, although the ratification of the Constitutional Treaty was “at a standstill”, the need to reform Europe’s way of working “remained as compelling as ever”. The Opinion states that the steps towards an “institutional settlement”, namely the European Council in 2006, the Berlin Declaration in March 2007 and what the Commission describes as “a comprehensive agreement on the elements for reform in June 2007” have been realised.

16. Part II of the Opinion describes the outcome of the European Council of June 2007. The Commission notes that the European Council agreed a “precise mandate” for the IGC which it describes as “the fruit of a carefully crafted compromise”, and the effect of which it summarises as follows:

“Together with many positive elements, which are to be welcomed, this compromise meant that some of the changes agreed in the 2004 IGC were not retained, and a number of derogations were granted to individual Member States. The disappearance of some elements, including some symbolic ones, as well as changes that reduced the readability of the Treaty text, were necessary parts of a package agreement which could be subscribed to by all Member States.”

17. The Commission also notes that the European Council emphasised that during the IGC and during the process of ratification “the EU should reinforce communication with its citizens, providing them with full and comprehensive information and involving them in permanent dialogue”¹⁸. In the Commission’s view, the approach of amending the existing Treaties “makes it particularly important to communicate the proposed reforms and their underlying rationale, and to make available as soon as possible an easily accessible and readable text of the Treaties”.

17 Under the ‘Community method’ (which presumably refers to the EC Treaty) the Commission has the exclusive right to initiate proposals.

18 Cf. paragraph 7 of the Conclusions which reads “The European Council emphasises the crucial importance of reinforcing communication with the European citizens, providing full and comprehensive information on the European Union and involving them in a permanent dialogue. This will be particularly important during the upcoming IGC and ratification process.” Given a background in which even UK Ministers were given little more than 48 hours to consider the draft IGC Mandate, the statement in the Conclusions is welcome, even if its credibility is weak.

18. Part II of the Opinion continues by reviewing salient features of the Reform Treaty under the headings of “A More Democratic and Transparent Europe”, “A more effective Europe”, “A Europe of rights and values, solidarity and security” and “Europe as an actor on the global stage”.

19. Under the first of these headings, the Commission states that, with the Reform Treaty, “Europe’s democratic infrastructures will be refreshed and reinforced”. This is to be achieved by an increase of co-decision to around 50 new areas which “will see the European Parliament placed on an equal footing with the Council for the vast bulk of EU legislation”, and giving national parliaments “greater opportunities to be involved in the work of the EU while respecting the established roles of the EU institutions”. **However, we doubt the significance of the “greater opportunities” for national parliaments to be involved in any meaningful manner in the workings of the EU without independence from Government whipping systems on subsidiarity and a “red card” system that compels the Commission to withdraw any proposal which threatens to breach the subsidiarity principle.** The Commission also refers to the provision for a “Citizen’s Initiative” whereby a petition from a million citizens from different Member States can trigger an invitation to the Commission to bring forward a new proposal.

20. Under the heading “A more effective Europe”, the Commission argues that the Community method provides the basic structure to enable the interests of different states and peoples in Europe to be married with the interests of the Union as a whole. In this connection, the Commission notes that it “attaches particular importance to the primacy of EU law, clearly established in existing case law and recognised in the mandate”.

21. The Opinion continues by describing the main features of the institutional changes made by the Reform Treaty. These include the move to Qualified Majority Voting (QMV) in justice and home affairs which is described as bringing “swifter and more consistent decisions” as well as meaning a “step change in Europe’s ability to combat terrorism, to tackle crime and human trafficking, and to manage migratory flows”. It is also pointed out that QMV will be extended to more than 40 new matters (see Annex) and “will make a reality of EU action in these areas”. Reference is also made to “new and reinforced legal bases” in relation to energy policy, public health and civil protection, climate change, “services of general interest”, research and development, “territorial cohesion”, commercial policy, space, humanitarian aid, sport, tourism and administrative cooperation. Finally, this part of the Opinion notes that future changes to policies within existing competences, and extensions of QMV and co-decision “can be agreed without needing to call a new IGC”, and that what is described as the “confusing distinction” between the European Community and the European Union will be brought to an end. **We are concerned that removing the “distinction” between the EU and EC in relation to matters now dealt with under the Third Pillar (with the consequent increase in the powers of the Commission to bring infraction proceedings and those of the ECJ to interpret and apply Union measures) will change the legal relationship between the EU and national governments in a way that will increase their powers in relation to UK law. We call on the Government to set out the safeguards they will expect to gain from the IGC to prevent this happening.**

22. Under the heading “A Europe of rights and values, solidarity and security”, the Commission draws attention to the statement of the Union’s values and objectives which it

considers will serve as a point of reference for citizens. Also highlighted is the Charter of Fundamental Rights which the Commission describes as offering citizens guarantees “with the same legal status as the treaties themselves”. The Commission states that the Charter “will also apply in full to acts of implementation of Union law, even if not in all Member States”.

23. The day before the Commission’s Opinion was published, we asked Commissioner Wallström to expand on a remark she had made in a speech to the European Parliament that “the Charter will be binding ... for Member States when they implement EU law, even if this does not apply to all of them”. The Commissioner replied that this meant that “the Charter cannot be invoked in front of UK courts”¹⁹. The Commissioner was further asked if a ruling of the ECJ would be binding on all Member States, even the UK, if it concerned the implementation of EU law. The Commissioner replied that the provision for the UK “simply means that one Member State has an opt out and that has to be respected, but I did not talk about the Court of Justice”.²⁰

24. The Commission Opinion also states that “gaps in judicial protection ensured by the European Court of Justice” will be filled “to ensure jurisdiction in freedom, security and justice”. Also noted are a new “solidarity” clause to give “force” to the obligation of Member States to support each other in the event of terrorist attack or natural or man-made disaster, and the need for solidarity in the case of shortages of energy supplies.

25. A final section is entitled “Europe as an actor on the global stage” and is concerned with the conduct of external relations by the EU. The Commission argues that all aspects of external relations (“external action policies”) need to be “geared to work together to better effect”. It states that the IGC Mandate recognises this point by providing that all such policies — CFSP, trade, enlargement, development and humanitarian assistance — “are placed on an equal political and legal footing”. In apparent contradiction, the Opinion notes that respect for the particular interests of Member States will be maintained by “retaining specific decision-making procedures” (i.e. unanimity) in the area of the Common Foreign and Security Policy. **We note that this could be interpreted as contradictory and call on the Government to set out clearly what safeguards it will expect from the IGC to ensure that the particular interests of the UK ‘will be maintained’.** The Opinion also notes that the European Security and Defence Policy “will be brought more clearly into the Union”, but that special decision-making arrangements (i.e. unanimity) will be preserved, whilst paving the way for reinforced cooperation among a smaller group of Member States. (In this case, only those countries which wished to proceed with a particular matter would be under any obligation to do so).

26. The Opinion comments on the question of establishing a single legal personality for the Union in these terms:

“Establishing a single legal personality of the Union will strengthen the Union’s negotiating power, making it even more effective on the world stage and a more visible partner for third countries and international organisations.”

19 Q84 HC862-ii.

20 Q85. HC862-ii.

27. The Opinion concludes with a brief Part III stating that the “Reform Treaty will underpin some of the most deep-seated aspirations of European citizens”. The Opinion cites no evidence for this conclusion, and refers only obliquely to the rejection of the Constitutional Treaty by popular referendum in France and the Netherlands.²¹ The Opinion goes on to welcome the convening of an IGC, stating that “Europe needs a Reform Treaty to be agreed and ratified ahead of the June 2009 European elections” and that “it is the responsibility of all participants in the Inter-Governmental Conference to create the conditions for this goal to be met”.

The Government’s view

28. In his Explanatory Memorandum of 25 July the Minister for Europe at the Foreign and Commonwealth Office (Jim Murphy) explains that the Government notes the publication of the Commission Opinion. The Minister adds that the document covers a broad range of issues regarding the IGC, and that the Government’s position on the IGC is set out in the White Paper “The Reform Treaty: The British Approach to the European Union Intergovernmental Conference” (Cm 7174) published and laid before Parliament on 23 July.

29. The White Paper sets out the Government’s approach to the IGC and includes a glossary of EU terms and the text of the IGC Mandate agreed at the June European Council. The White Paper explains that in the run-up to the European Council in June the UK argued that the EU needed a new amending Treaty “without constitutional characteristics” and that it set out four pre-conditions (referred to in the foreword as ‘red lines’) for agreement on a new Treaty. These four pre-conditions are stated as follows:

- “protection of the UK’s existing labour and social legislation;
- protection of the UK’s common law system, and our police and judicial processes;
- maintenance of the UK’s independent foreign and defence policy;
- protection of the UK’s tax and social security system.”

—Treaty structure and the ‘constitutional concept’

30. The White Paper discusses the IGC Mandate in some detail, beginning with a discussion of the proposed treaty structure. The White Paper explains that the Constitutional Treaty would have abolished the existing three pillar structure (i.e. European Community, CFSP and JHA), would have merged the existing EC and EU treaties into one and by replacing all of the existing Treaties²² with a single, new, consolidated Treaty “would — in effect — have refounded the European Union”. The White Paper refers to the statement in the IGC Mandate that “the constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called ‘Constitution’ is abandoned”. The White Paper then argues that the IGC Mandate “rejects

21 Part I of the Opinion refers to the fact that the Constitutional Treaty ‘failed to secure unanimous support’.

22 It should be noted that the Constitutional Treaty would not have replaced the Euratom Treaty. Protocol No 36 to the CT set out a number of amendments to the Euratom Treaty, but did not replace it.

the Constitutional Treaty approach” and that the “Reform Treaty” will instead be an amending Treaty which will amend the existing EU, EC and Euratom Treaties. It explains that the current EC Treaty will be amended and will be renamed the “Treaty on the Functioning of the Union”. The White Paper acknowledges that the third pillar for JHA matters (which are currently dealt with intergovernmentally) will be abolished for what it describes as “residual areas of JHA” (but which in fact include the whole field of police and judicial cooperation in criminal matters including the general criminal law and criminal procedure) but also explains that the ‘opt-in’ arrangements now applying to Title IV EC matters will be extended to judicial and police cooperation in criminal matters. In consequence, the UK will retain a right not to participate in any new JHA measures proposed at Union level.

31. The White Paper then discusses the effect of the proposed changes on the Common Foreign and Security Policy (CFSP), European Security and Defence Policy (ESDP) and Justice and Home Affairs (JHA) before turning to more general questions such as the Charter of Fundamental Rights, tax and social security, subsidiarity and the role of national parliaments, the legal personality of the Union and a number of institutional issues.

— *Common Foreign and Security policy*

32. In relation to the CFSP, the White Paper states that “CFSP will remain an intergovernmental process” and that decision-making by unanimity “will remain the norm”. The White Paper also refers to a declaration in the IGC Mandate²³ “confirming that the provisions on CFSP will not affect the responsibilities of the Member States, as they currently exist, for the formation and conduct of their foreign policy, or of their national representations in third countries and international organisations”. The White Paper also notes that the Reform Treaty will provide for a “High Representative of the Union for Foreign Affairs and Security Policy” in whom will be merged the roles of the existing High Representative and of the Commissioner for External Relations.²⁴ The White Paper explains that the High Representative will chair the Foreign Affairs Council rather than the Foreign Secretary of each Presidency as at the moment and “will be able to present agreed Union positions in international organisations”²⁵ as the High Representative does at the moment on designated areas of EU interest, but that where the UK wishes to pursue its aims independently, it may do so. The Committee notes that the High Representative will also acquire a new right to present EU positions at UN Security Council meetings when requested by those Member States which sit on the Security Council.

— *European Security and Defence policy*

33. In relation to the ESDP, the White Paper states that the Reform Treaty will preserve the principle of unanimity for ESDP policy decisions and for initiating missions and will recognise the provision of the UN Charter (Article 51) that Member States may come to

23 Which now appears as declaration No.32 in the draft Treaty text CIG3/07.

24 The Constitutional Treaty made similar provision in Article I-28, but referred instead to a ‘Union Minister for Foreign Affairs’.

25 Cf The new Article 13a in the draft Treaty which provides that the High Representative “shall represent the Union for matters relating to the common foreign and security policy....and shall express the Union’s position in international organisations and at international conferences”.

each other's assistance in the event of armed aggression. It is also stated that the text "will explicitly make it clear that, for its members, NATO remains the foundation of their collective defence and the forum for implementing such a commitment".²⁶

— *Justice and Home Affairs*

34. In relation to Justice and Home Affairs (JHA) the White Paper notes that the Reform Treaty will move JHA matters to the First Pillar, with the result that QMV and co-decision will apply as the general rule in this area. The White Paper states that the UK has always been clear that EU cooperation must be in the national interest and that it "must not affect fundamental aspects of our criminal justice system, nor undermine our ability to safeguard national security". In this connection, the White Paper refers to the safeguard of the current "opt-in" arrangements for cooperation in asylum, immigration and civil justice matters.²⁷ This opt-in arrangement will be extended to police and judicial cooperation in criminal matters when these move to the First Pillar. The White Paper also refers to the retained safeguard of the "emergency brake" whereby certain proposals for legislation in criminal matters may be referred to the European Council if they would affect fundamental aspects of a Member State's legal system. If referred to the Council, the proposal will fall unless all members of the European Council agree, or will go ahead only in those Member States which wish to adopt it, provided they constitute a third of EU Member States.²⁸

35. The White Paper notes that the Reform Treaty provides for the creation of a European Public Prosecutor, but points out that the Government sees no need for such a prosecutor and adds that "under the new Treaty, the UK would be able to prevent a European Public Prosecutor from having any role in the UK"²⁹. We would seek firm confirmation that this safeguard has been agreed by the IGC and that, even where a relevant regulation had been adopted under enhanced cooperation, there could be no question of a European Public Prosecutor having any role in the UK, except with the UK's agreement.

— *Charter of Fundamental Rights*

36. In relation to the Charter of Fundamental Rights, the White Paper states:

"The Government sought to ensure that nothing in the Charter of Fundamental Rights would give national or European Courts any new powers to strike down or reinterpret UK law, including labour and social legislation. This has been achieved."

37. The White Paper also explains that the Charter of Fundamental Rights is currently not legally binding but that the Reform Treaty will make the Charter legally binding on the EU institutions and on Member States when implementing EU legislation. The White Paper makes the following statement in relation to the position of the UK:

26 The relevant provision was also in the Constitutional Treaty – see Article I-41(7).

27 See protocol (No 4) on the position of the United Kingdom and Ireland (1997).

28 The Constitutional Treaty contained the same provisions for an 'emergency brake'. See Articles III-270(3) and III-271(3).

29 The Constitutional Treaty also provided for a European Public Prosecutor, by unanimity. The Reform Treaty has the same voting rule, but also now expressly provides for the possibility of 9 Member States introducing such an institution by means of enhanced cooperation.

“A UK-specific Protocol annexed to the Treaty, as set out in the IGC Mandate, will clarify beyond doubt the application of the Charter in relation to UK laws and measures, and in particular its justiciability in relation to labour and social articles. This Protocol is legally binding and sets out clearly that the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law.”³⁰

— *Subsidiarity and the role of national parliaments*

38. On subsidiarity and the role of national parliaments, the White Paper states that the Reform Treaty “strengthens the role of national parliaments in EU decision-making” and that the latter “will be given a direct say in the EU’s law-making procedures for the first time”. However, it may be noted that the Protocol (No 9) on the role of national parliaments in the European Union (1997) already requires the Commission to forward all consultation documents to national parliaments of the Member States and to make legislative proposals available in good time to governments so that they may ensure that their own national parliaments receive them. The White Paper states that “at present, there is no obligation on the EU institutions to consult national parliaments about EU laws” but that under the new mechanism “all national parliaments must be notified by the EU institutions of proposed EU legislation and be given eight weeks to comment”. The White Paper also refers to the possibility of national parliaments gaining the power to challenge proposals on subsidiarity grounds if one third of them agree. If such a challenge is made, the EU institutions “would have to reconsider” and decide whether to maintain, amend or withdraw the proposal. The White Paper notes that if a majority of national parliaments object to a proposal but the Commission decides to maintain it the “final decision on whether the legislation should proceed” would be made by the Council and the European Parliament.³¹ The White Paper comments that there is a “lack of clarity” as to how the IGC Mandate provisions will apply in practice and that the Government “will seek early clarification” in the IGC. **We agree that it is not helpful to its scrutiny role not to have the process outlined and asks the Government to have the process clarified at the IGC. We further ask the Government to set out its proposals for the process that will operate in the UK Parliament and for clarifying how the UK Parliament will be allowed to respond on issues of subsidiarity independent of executive.**

— *Single legal personality for EU*

39. The White Paper notes that the European Community and Euratom already have express legal personality and that the Reform Treaty would formally give the EU a single legal personality. The White Paper comments that, when it acts in CFSP and some JHA matters, the EU already has a “degree of ‘functional’ legal personality by virtue of its power to make international agreements” and adds that conferring a single legal personality “will be simpler than the existing situation and will therefore allow the EU to act in the international arena in a more coherent way” and that this “should lead to streamlined procedures for negotiating agreements throughout the EU”.

30 We consider the effect of the Protocol below.

31 However, if 50% of national parliaments object to a proposal, it seems unlikely that a qualified majority could be reached in the Council.

40. The White Paper states that conferring a single legal personality “does not create any new powers for the EU” and refers to a declaration to be made by all the Member States that “the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or act beyond the competences conferred upon it by the Member States in the Treaties”³². The White Paper also comments that conferring a single legal personality “will not impact on the independence of Member States’ foreign policies”. We accept that the mere fact of conferring legal personality may not have this effect, but it should be noted that Article III-323 of the Constitutional Treaty (now reproduced as Article 188l of the Reform Treaty) confers a wide power on the Union to conclude international agreements, not only where the Treaties expressly provide, but also 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”. In relation to Title IV EC matters, (i.e. justice and home affairs) a declaration (No.25) will be adopted confirming that Member States are entitled to conclude agreements with third countries and international organisations in these areas³³, in so far as such agreements are consistent with Union law.³⁴ In the case of Title IV matters where the UK has not ‘opted in’, it seems to us that the freedom of the UK to enter into agreements with third countries will not be affected, but we invite the Minister to confirm if this assumption is correct. **We would wish the Government to make clear whether or not these powers will in any way prevent the UK from concluding its own treaties in the same areas as the Union, despite the provisions of the new Article 3(2) EC on exclusive external competence.**

— *Other institutional issues*

41. The White Paper reviews a number of institutional changes proposed by the Reform Treaty, including the provisions for a permanent President of the European Council, a reduction in the size of the Commission, the extension of QMV, (also proposed by the Constitutional Treaty) and the introduction of a new system of majority voting, referred to as Double Majority Voting. Under this formula (which was also contained in the Constitutional Treaty³⁵), the support of 55% of Member States (i.e. 15 out of the current 27) representing 65% of the Union’s population is required for the legislation to be adopted, but the formula will not apply until 2014.

42. The White Paper also refers to procedures for ‘simplified treaty revision’ i.e. the amendment of the Treaties without going through the full procedure of an intergovernmental conference as currently provided for in Article 48 EU. The White Paper states that procedures to revise the Treaties without an IGC already exist in the Single European Act and Treaties of Maastricht, Amsterdam and Nice. We ask the Government

32 It is hard to see how the declaration takes matters any further, since the only competences the Union has are those conferred expressly or implicitly by the Treaties.

33 The requirement that such agreements must be consistent with Union law is an aspect of the primacy of Union law and appears to reflect the ‘AETR’ doctrine of EC law derived from the ECJ judgment in Case 22/70 Commission v. Council [1971] ECR 263 and the provisions of Article 10 EC.

34 The new Article 3(2) EC (as inserted by the Reform Treaty) confers an exclusive competence on the Union to conclude an international agreement “when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusions may affect common rules or alter their scope”.

35 See Article I-25(1).

to clarify the relevant provisions as they are not identified by the White Paper. We note that the “simplified revision procedure” was provided for in Articles IV-444 and 445 of the Constitutional Treaty and was described, in each case, at the time by the Government as a new provision³⁶. The simplified revision procedure³⁷ would allow a change from unanimity to QMV (except in relation to decisions with military implications or in the area of defence) or from other legislative procedures to co-decision to be effected by Council decision, not requiring the convening of an IGC. The same simplified procedure may be used to amend all or part of the provisions of Part Three of the Treaty on the Functioning of the Union (i.e. the EC Treaty as re-named), except where the proposal would increase the competences conferred on the Union by the Treaties. There is some similarity with the so-called “passerelle” provisions of Article 42 EU, which provide for the transfer of police and judicial cooperation from the Third Pillar to the First (Title IV EC), but the new Article 33 EU is much more extensive in scope, since it would allow revisions to be made of any part of the provisions, including voting rules, on Community policies in the Treaty on the Functioning of the Union (i.e. the EC Treaty as renamed), even if it would not allow any increase in the competences of the Union. **We are concerned that these provisions could allow substantial changes to be made without convening an IGC and so lead to even less transparency in the way the EU is governed, and less accountability of governments to their national parliaments. We ask the Government to outline what safeguards they would put in place to prevent this further erosion of transparency and accountability.**

Assessment of the Commission’s opinion and of the Government’s response in the White Paper

43. Neither the Commission’s Opinion nor the Government’s White Paper seeks to explain in any detail how the proposals for a Reform Treaty will differ from those in the Constitutional Treaty. The White Paper also fails to set out clearly and specifically what proposals will allow the UK to guarantee the ‘red lines’ they claim to have set or to safeguard those red lines over time. The IGC Mandate is itself largely concerned to explain those proposals which are to be included in the Reform Treaty, but which differ from the corresponding provisions in the Constitutional Treaty. As much of the Constitutional Treaty itself restates existing provisions of the EU and EC Treaties, as well as making substantial amendments, it has been rendered difficult to assess what the overall effect of the Reform Treaty will be.

44. Such an assessment would have been facilitated by a consolidated text which set out the proposed European Union Treaty and the Treaty on the functioning of the Union, with an explanation of the origin of each provision i.e. whether it was a restatement of the existing EU or EC Treaties, a provision of the Constitutional Treaty, or a new provision proposed in the IGC Mandate. As far as we are aware, no text of this kind has been published by the EU institutions or the Government. Indeed, no draft of the Reform Treaty had been published prior to publication of the Commission’s Opinion or the White Paper, and it appears that both those documents were based on the textual amendments described in the

36 See Cm 6459 (2005) Treaty establishing a Constitution for Europe – Commentary.

37 See new Article 33 EU as inserted by the Reform Treaty. In all material respects it is identical to Articles IV-444 and 445 of the Constitutional Treaty.

IGC Mandate. A draft of the proposed Reform Treaty was made available (but only in French) on 24 July. An English version of that draft was first made available on 30 July.

— *the Constitutional Treaty and the Reform Treaty compared*

45. As an aid to assessing the Reform Treaty and its relationship with the Constitutional Treaty, we have prepared a concordance table enumerating the provisions of the Constitutional Treaty, and showing where these now appear, either in the Reform Treaty or in those provisions of the EU and EC Treaty which have remained unamended. For this purpose, we adopt the classifications made in the Government's Commentary and presented to Parliament in February 2005³⁸ as to whether a provision of the Constitutional Treaty was a new provision or was a re-statement of existing provisions of the EU and EC Treaties. We have also based our analysis on the text of the Reform Treaty as first made available in English on 30 July³⁹. The table is set out in the Annex to this report. It shows that, in accordance with the IGC Mandate, the Reform Treaty will introduce into the existing Treaties all the “innovations” resulting from the 2004 IGC (apart from I-8 on symbols). It also shows that wherever the Constitutional Treaty restated the provisions of the EU and EC Treaties in an amended form, those amendments have been taken up in the Reform Treaty. Taken as a whole, the Reform Treaty produces a general framework which is substantially equivalent to the Constitutional Treaty. **Even with the ‘opt-in’ provisions on police and judicial cooperation in criminal matters, and the Protocol on the Charter, we are not convinced that the same conclusion does not apply to the position of the UK under the Reform Treaty. We look to the Government to make it clear where the changes they have sought and gained at the IGC alter this conclusion in relation to the UK.**

— *the ‘constitutional concept’*

46. The IGC Mandate emphasises that the ‘constitutional concept’ has been ‘abandoned’ in the Reform Treaty, but it should be recalled that the ‘constitutional concept’, as referred to in the IGC Mandate, was only the proposition that the existing EU, EC and Euratom Treaties⁴⁰ should be replaced by a single text. As the IGC Mandate itself makes clear, the intention is nevertheless to integrate the “innovations resulting from the 2004 IGC” into the existing Treaties.

47. The IGC Mandate also asserts that the EU Treaty and the Treaty on the Functioning of the Union “will not have a constitutional character”. In support of this assertion, the IGC Mandate refers to the fact that the term ‘constitution’ will not be used, that the “Union Minister for Foreign Affairs”⁴¹ will instead be called “the High Representative of the Union for Foreign Affairs and Security Policy” and that the terms “law” and “framework law”⁴² will not be used to replace the existing classification of legal acts as “regulations”,

38 (2005) Cm 6459.

39 CIG 1/07.

40 However, the Constitutional Treaty only amended the Euratom Treaty. It did not seek to replace it. See Protocol No 36.

41 See Article I-28 CT.

42 Article I-33 CT.

“directives” and “decisions”. The IGC Mandate also refers in support to the fact that there “will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, anthem or motto” and that the IGC will adopt a Declaration on the primacy of EU law in place of the provision on primacy in I-6 of the Constitutional Treaty.

48. Article I-6 of the Constitutional Treaty provided that “the Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States”. This provision will not be taken over in the Reform Treaty but will be replaced by a Declaration. As the Declaration will provide that “in accordance with the settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law”, no substantial difference from the effect of I-6 of the Constitutional Treaty seems intended, or is likely to result.

49. **Nevertheless**, these changes are clearly regarded as substantial by the Government. The Committee is aware that changes in names may be viewed as no more than changes in terminology, whilst the flag and the anthem of the EU were in fact adopted as long ago as 1986⁴³. **We recognise the Government’s wish to distance itself from the previous public perception of taking part in the creation of a constitution. We would wish to explore the reality and significance of the new approach with the Government.**

50. Whereas the term ‘constitutional’ may have a precise significance in the national law of those Member States which have written constitutions, its significance is less clear at EU level. There is clearly a divergence of opinion on whether the existing EU and EC Treaties can be said to be ‘constitutional’ in that they constitute the European Union and European Community. If this is so, then it would then follow that amendments to those documents are themselves ‘constitutional’, even if the amendments made were relatively minor. It has also been pointed out that the Constitutional Treaty did not supplant all the previous Treaties in any event, since it only amended the Euratom Treaty, and in that sense did not create a ‘Constitution’. **Accordingly, we do not consider that references to abandoning a ‘constitutional concept’ or ‘constitutional characteristics’ are helpful and consider that they are even likely to be misleading in so far as they might suggest the Reform Treaty is of lesser significance than the Constitutional Treaty. We believe that the Government must offer evidence if it is to assert that the processes are significantly different.**

— the Government’s ‘red-line’ issues

51. The table in the Annex shows that the overall effect of the Reform Treaty for countries which do not seek agreements that some parts of the new Treaty do not apply is substantially equivalent to the Constitutional Treaty. Given the importance which the Government has attached to its “preconditions” or “red lines” for agreeing to any new Treaty, we think it useful to examine the extent to which the Reform Treaty marks a difference from the corresponding provision made in the Constitutional Treaty and meets those conditions, or whether any further amendments are required for those conditions to be met.

43 Article I-8 CT provides for a motto “United in diversity” which has been in use since 2000.

52. In his appearance before the Liaison Committee on 18 June the then Prime Minister in response to questions from the Committee's Chairman stated the Government's position prior to the European Council as follows:

“First, we will not accept a treaty that allows the Charter of Fundamental Rights to change UK law in any way. Secondly, we will not agree to something which displaces the role of British foreign policy and our foreign minister. Thirdly, we will not agree to give up our ability to control our common law and judicial and police system. Fourthly, we will not agree to anything that moves to qualified majority voting, something that can have a big say in our own tax and benefit system.”

53. These four conditions are re-stated (although in more general terms) in the White Paper as “protection of the UK's existing labour and social legislation”, “maintenance of the UK's independent foreign and defence policy”, “protection of the UK's common law system, and our police and judicial processes” and “protection of the UK's tax and social security system”. Additionally, the White Paper stated that the Government wished “to clearly establish that national security is a matter for the Member States”. In terms of the Reform Treaty these matters are covered in the provisions concerning the Charter of Fundamental Rights, the CFSP and ESDP, Justice and Home Affairs and on the extension of QMV to social security, respectively.

— *the Charter of Fundamental Rights*

54. In relation to the Charter of Fundamental Rights, the White Paper states that the Government has achieved its aim of ensuring that “nothing in the [Charter] would give national or European courts any new powers to strike down or reinterpret UK law, including labour and social legislation”. To support this statement the Government relies on the Protocol which appeared at footnote 19 to the IGC Mandate and which is now set out in Protocol No 7 to the Reform Treaty. The Protocol has two main substantive articles, the first⁴⁴ of which provides that:

“1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

2. In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.”

55. We raised with the Minister a number of issues concerning the effect of the Protocol. As the Charter would apply to Member States when implementing Union law, the question arises of whether the UK would be bound by ECJ case law when the latter interprets Union law as implemented in other Member States in circumstances where the same Union law is also implemented in the United Kingdom. On the one hand, the Protocol states that the

44 Article 2 of the Protocol provides “To the extent that a provision of the Charter refers to national laws and practices, it shall only apply in the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom”.

Charter does not “extend” the ability of the ECJ to find that UK law is inconsistent with the Charter, but, on the other, the Protocol is itself expressed to be “without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally”.

56. In view of this possible inconsistency between the Protocol and the Treaties, we asked the Minister, when he gave evidence to us on 4 July, whether the general obligation to ensure the uniform application of Union law would give way to the Protocol when it came to the interpretation of Union law which had been implemented in the United Kingdom. The Minister replied that the ECJ already insists on the uniformity of application of EU law to which the UK has agreed, but that the Charter “does not create any new rights but brings together existing rights found under the ECHR, current EC Treaties and other instruments so there are no additional powers of consequence of the chapter being treated in this way”⁴⁵. In our letter of 11 July to the Minister we said that the Minister appeared to acknowledge that the ECJ already interprets measures adopted at EU level in a uniform way and that interpretations by the ECJ in the light of the Charter would be binding on the UK in respect of measures to which the UK had already agreed. We asked the Minister if, by reason of the Protocol it was the Government’s position that the same consequence would not apply to new measures i.e. those adopted after the Protocol comes into force.

57. In his letter of 31 July the Minister replies as follows:

“The UK-specific Protocol which the Government secured is not an ‘opt-out’ from the Charter. Rather, the Protocol clarifies the effect the Charter will have in the UK. The UK Protocol confirms that nothing in the Charter extends the ability of any court to strike down UK law. In particular, the social and economic provisions of Title IV give people no greater rights than are given in UK law. Any Charter rights referring to national law and practice will have the same limitations as those rights in national law. The Protocol confirms that since the Charter creates no rights, or circumstances in which those rights can be relied on before the courts, it does not change the status quo.”

58. We recall that the Commission’s opinion on the IGC Mandate states that the Charter “will apply in full to acts of implementation of Union law even if not in all Member States”, from which it could be inferred that ECJ interpretations based on the Charter would not apply to measures adopted in the UK to implement Union law. It could be argued that such an inference is not sustainable as the words of the recital reaffirm that the Protocol is “without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally”. The Minister also confirms that the Protocol is not an ‘opt-out’ from the Charter. If it is intended that ECJ case law based on the Charter should have no effect at all within the UK, we would have expected some provision in the Protocol to make it clear that the Protocol takes effect notwithstanding other provisions in the Treaties or Union law generally. This would be the more necessary given the tendency for any derogation from the Treaties to be interpreted restrictively by the ECJ. To take a possible example, the Working Time Directive⁴⁶ contains provisions limiting the weekly hours of work of a

45 Q49 HC862-i.

46 Council Directive 104/93/EC, implemented in the UK by the Working Time Regulations 1998 SI 1998/1833.

worker to 48 hours per week, but with the possibility of agreements to waive those limits. As Article II-91(1) of the Charter provides that “every worker has the right to limitation of maximum working hours” we have some concern that it seems quite possible that following a reference to the ECJ from some other Member State the Court might find that, in the light of the Charter, the derogation from the Directive allowing such waivers has to be interpreted more restrictively than before (i.e. before the Charter had legal effect).

59. As another possible example, Article II-81 of the Charter prohibits discrimination “on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation”. **We would be concerned that, following a reference to the ECJ from some other Member State, the Court might find that a measure adopted at EU level (such as Council Directive 200/43/EC) had to be given an extended interpretation in the light of the wide grounds⁴⁷ for prohibiting discrimination under the Charter.**

60. If the Member States have indeed agreed in the IGC Mandate that a ruling from the ECJ in such cases should have no effect in the UK, then this ought to be made clear. In our view, there is here at least an ambiguity which should be resolved and the UK’s safeguards made firmer in the course of the IGC if the results claimed by the Government are to be secured. **We would wish the Government to show how they have secured the UK from such interpretations and ask that they secure the phrasing “notwithstanding other provisions in the Treaties or Union law generally” in the text of the Protocol.**

61. A secondary issue which we raised with the Minister was whether the provisions of Article 1(2) of the Protocol applied to the whole Charter or only to Title IV. We note the Minister’s confirmation in his letter of 16 July that the Protocol applies to all the Titles of the Charter, but we also observe that in the IGC Mandate text the reference to Title IV in Article 1(2) was in square brackets, so that it was not clear to us if the provision in Article 1(2) (which was a particular provision for the avoidance of doubt) applied only to Title IV or to the Charter as a whole. The Minister confirmed in his letter of 16 July to us that Article 1(2) referred only to Title IV.⁴⁸ The Minister described the provision as securing “*in particular* that the Charter will not extend the ECJ’s or national courts’ power to challenge or reinterpret UK employment or social legislation” [our emphasis]. We accept that this was intended to underline the Government’s particular concern to secure its industrial relations legislative position.

62. We would be concerned if the assurances given by the Minister that the provision will secure the results which have been claimed prove to be flawed. As far as we are aware, avoidance of doubt provisions are a rarity in the Treaties and lead us to question why, in this case, the specific reference was only to Title IV. **We would seek more concrete evidence from the Government that this provision could not be read as suggesting that the other provisions of the Charter do create justiciable rights applicable to the United Kingdom.** We accept that the avoidance of doubt provision does not apply “in so far as the United Kingdom has provided for such rights in its national law”. The application of this

47 The grounds of social origin, language, political or any other opinion, property and birth are not mentioned in Article 13 EC.

48 Title IV of the Charter (Articles 87-106) is concerned with social and employment rights, including the right to strike.

exception would, ultimately, be a matter for the ECJ in the event of a dispute involving UK law. **We would seek to clarify with the Government what protection there is for their safeguards in this area and if the ECJ could decide that the exception would not apply, because the UK had made provision of some kind in an area (e.g. in relation to limits on working time) even if the provision did not exactly match what the ECJ might consider was required by the Charter. We would wish to know what value the Government's claimed safeguards would provide if this was to occur.**

— *CFSP and ESDP*

63. The Constitutional Treaty provided for European decisions relating to the Common Foreign and Security Policy to be adopted by unanimity, “except in the cases referred to in Part III”.⁴⁹ These cases largely corresponded to those for which QMV is already provided for by Article 23(2)EU, but now include decisions on proposals from the High Representative where these have been specifically requested by the European Council by unanimity, the decision to establish ‘permanent structured cooperation’ in defence by those Member States willing to do so, and decisions (by the special legislative procedure) for cooperation on diplomatic and consular protection. These provisions of the Constitutional Treaty will be taken over in a new Title V EU which will maintain the largely intergovernmental nature of the CFSP and ESDP.

64. A point which concerned our predecessors when they considered the Constitutional Treaty was that the jurisdiction of ECJ was not excluded in respect of Article I-16 CT (which set out Union competence and provided for a duty on Member States actively and unreservedly to support the Union's common foreign and security policy) even though the ECJ had no jurisdiction in relation to CFSP under Part III of the Constitutional Treaty. We welcome the clarification (by a new Article 11(1) EU) that the ECJ will not have jurisdiction, save in respect of monitoring compliance with the provisions Article III-308 (which preserve the non-CFSP competences of the institutions) and in relation to the legality of restrictive measures imposed on natural or legal persons.

— *Justice and Home Affairs*

65. The provisions of the Constitutional Treaty on judicial cooperation in criminal matters will be reproduced in the Reform Treaty in the form of an amended Title IV which will incorporate Articles III-257-277 of the Constitutional Treaty and, accordingly, measures under that Title will for the most part⁵⁰ be adopted by QMV and codecision. The previous Committee drew attention to similar proposals when it considered the Convention⁵¹. The previous Committee was not persuaded that there was any need to abandon the safeguard of unanimity in such sensitive areas, and paid particular attention to the so-called ‘emergency brake’ which was introduced in the Constitutional Treaty and would allow a Member State to require that a proposal should be referred to the European Council if it

49 Article I-40(6) CT.

50 Exceptionally, unanimity is required for measures concerning family law (Article 69d [Article III-269 CT]), the European Public Prosecutor's Office (Article 69i [Article III-274 CT]), operational cooperation between police authorities (Article 69j [Article III-275]), operations of police and other authorities within territory of another Member State (Article 69l [Article III-277]).

51 HC 63 –xxvi-I (2002-03) (25 June 2003).

affected fundamental aspects of its criminal justice system.⁵² The previous Committee had reservations about the voting arrangements for the adoption of criminal justice measures under that Treaty, but accepted that the ‘emergency brake’ procedure could provide an effective mechanism to protect Member States which are initially outvoted.⁵³ However, an emergency brake cannot be applied very frequently and it may be difficult to protect against the repackaging of controversial proposals into smaller measures.

66. A further safeguard for the UK (and Ireland) is now proposed in the Reform Treaty to the effect that the existing ‘opt-in’ arrangements under the Protocol on the position of the United Kingdom and Ireland⁵⁴ should also apply to the new provisions now transferred to Title IV. It is clear from the ‘opt-in’ arrangements that the United Kingdom is free to decide whether or not to take part in the negotiation of proposals under the transferred provisions, and to that extent is able to protect the distinctive features of the legal systems of the UK, including criminal law and procedure.

67. It is less clear if, having once made a decision to opt in, the United Kingdom remains free not to take part in a measure should the negotiations produce a text which is not acceptable. The Protocol does not provide for any revocation of the decision to opt in and, as far as we are aware, there has been no case in which the UK having once opted in to a measure under Title IV EC, has subsequently not taken part in that measure. There is, therefore, a risk that having once opted in to a draft measure, the UK will find itself unable to prevent amendments in the course of negotiations which are disadvantageous to the UK, since these will be adopted by QMV and codecision. This is a particular risk in civil matters where the ‘emergency brake’ is not available. Even where the emergency brake is in principle available, we consider that the interests of the UK would be better protected if it were confirmed that the UK is free to revoke its decision to opt in if the final text is not acceptable. **We will seek to explore with the Government the necessity of achieving this agreement at the IGC.**

— *the role of national parliaments*

68. Whilst we welcome in principle the provisions in the Reform Treaty on the role of national parliaments, we consider that their effect can easily be exaggerated. The mechanism proposed in the Constitutional Treaty⁵⁵ required only the review of a proposal which had been objected to on subsidiarity grounds by one third of the national parliaments in the EU, with the Commission or other relevant institution remaining free to proceed. A number of small improvements to that position are proposed in the Reform Treaty. First, the period within which a national parliament may submit a reasoned opinion why a proposal does not comply with the principle of subsidiarity is increased from six to eight weeks. Secondly, it is proposed that where a majority of national parliaments object to a proposal on subsidiarity grounds, the Commission is to be obliged

52 Under the Constitutional Treaty, the ‘emergency brake’ mechanism did not apply to judicial cooperation in civil matters, and this remains the case under the draft Reform Treaty.

53 ‘Aspects of the EU’s Constitutional Treaty’ HC 38 xiv-1 (2004-05), paragraph 139 (23 March 2005).

54 Now Protocol No 4 annexed to the EU and EC Treaties. Consequential amendments are made by the Reform Treaty to take account of the transfer of Justice and Home affairs matters to Title IV.

55 Protocol on the application of the principles of subsidiarity and proportionality.

to re-examine the proposal, but to remain free to maintain it. If the proposal is maintained, the Commission must produce a reasoned opinion. The opinion would then be considered by the Council and the European Parliament. If at that stage 55% of the members of the Council or a majority of the European Parliament agree with the objections, the proposal is not to be given further consideration. However, since this degree of opposition would in any event be sufficient to prevent adoption of a measure by co-decision, we consider that the procedure adds very little by way of democratic control over the Commission and the EU institutions. In our view, the required thresholds for preventing further consideration of a proposal must be much lower if the procedure is to have any real utility.

69. A matter we regarded as being particularly serious was the drafting of a new provision which appeared to place a legal obligation directly on national parliaments. The provision (which now appears in the Reform Treaty as a new Article 8c EU) stipulates that “national parliaments *shall* contribute actively to the good functioning of the Union” [our emphasis] and shall do so by “seeing to it” that the principle of subsidiarity is respected, by taking part in evaluation mechanisms in relation to JHA matters, by taking part in Treaty revision procedures and by taking part in inter-parliamentary cooperation between national parliaments and with the European Parliament.

70. In our view, these are matters of entitlement, not obligation and it is wholly a matter for Parliament to decide whether it wishes to use these opportunities: there should be no question of being under any legal obligation to do so.⁵⁶ We put this point to the Minister on 4 July who said he took the point we were making and undertook to “continue that dialogue on the matter”⁵⁷. Subsequently, the Minister stated in a letter of 31 July to the Chairman of the EU Select Committee in the House of Lords that the wording of the new Article on the role of national parliaments was “inappropriate” and that this would be raised in the IGC, where the Government would press for more appropriate language.

Conclusion

71. We welcome the emphasis placed by the European Council on providing EU citizens with “full and comprehensive information” and involving them in “permanent dialogue” which is said to be “particularly important” during the IGC. However, the evidence until now has not been consistent with these ideals, with an essentially secret drafting process conducted by the Presidency, with texts produced at the last moment before pressing for agreement. The compressed timetable now proposed, having regard to the sitting terms of national parliaments, could not have been better designed to marginalise their role.

72. As far as the substance of the Reform Treaty and its comparison with the Constitutional Treaty are concerned, we accept that references to the “constitutional concept” or “constitutional characteristics” in trying to distance the present proposals from the creation of a Constitution are less than helpful. What matters is whether the

56 If national parliaments were to be placed under an obligation, this would in principle be enforceable against the Member States in proceedings before the ECJ. In the United Kingdom, such a possibility would raise the question of consistency with Article IX Bill of Rights 1688 (which prevents proceedings in Parliament from being ‘impeached or questioned’ in any court or place outside Parliament).

57 Q57, Q58 HC862-i.

new Treaty produces an effect which is substantially equivalent to the Constitutional Treaty. We consider that, for those countries which have not requested derogations or opt outs from the full range of agreements in the Treaty, it does, and refer readers to the table in the Annex to this report.

73. We explain in this report our concerns about the security of the United Kingdom's position under the Charter. In our view, it requires to be made clear that the Protocol No.7 to the Reform Treaty takes effect notwithstanding other provisions of the Treaty or Union law generally.

74. We note that the 'opt-in' arrangements under the Protocol on the position of the United Kingdom and Ireland will apply to the areas transferred by the Reform Treaty to Title IV. In our view, it should be made clear that the United Kingdom retains the ability also to 'opt-out' of participating in a measure in these sensitive fields, if UK interests are not fully protected in the final text of any measure.

75. We note the new provisions on the role of national parliaments. In our view, these mark only a minor improvement on the proposals contained in the Constitutional Treaty. If these are to have any real utility, the threshold for discontinuing a proposal which has been objected to by national parliaments on subsidiarity grounds must be made lower than 55% of the members of the Council or a majority of votes in the European Parliament.

76. We wish to emphasise that the proposals in the Reform Treaty raise a serious difficulty of a constitutional order in as much as they appear to impose, whether by accident or design, a legal duty on national parliaments "to contribute actively to the good functioning of the Union" by taking part in various described activities. National parliaments, unlike the European Parliament, are not creations of the Treaties and their rights are not dependent on them. In our view, the imposition of such a legal duty on the Parliament of this country is objectionable as a matter of principle and must be resisted.

77. Pending further information from the Government and answers to the questions we have posed, we are holding the document under scrutiny.

Annex — The Constitutional Treaty and the Reform Treaty- table of derivation

(Some provisions may be the subject of derogations for the UK or opt-in arrangements)

Constitutional Treaty	Commentary¹	Reform Treaty
I-1	Consolidates 1EU and 1EC	Inserts CT I-1
I-2	New	Inserts CT-2
I-3	New, based on 2EU and 2EC	Inserts CT-3 ²
I-4	Draws on 3(1)(c) EC and 12(1)EC	Inserts parts of CT-4 ³
I-5	Expands existing 6(3) EU and sets out principle of sincere cooperation, 11(2)EU, 10 EC.	Inserted as new 4EU
I-6	Based on case law, but not hitherto stated explicitly (primacy)	Substance of CT 1-6 reproduced in Declaration No 29
I-7	(legal personality of Union)	Inserted as new 32 EU
I-8	New (symbols)	Not taken over
I-9	New (fundamental rights)	Substance of CT I reproduced as new 6 EU
I-10	Contains substance of 17-21 EC	Reproduced as new 17(2) EC ⁴
I-11	Sets out “fundamental constitutional and political principles” which “underlie the legal powers of the Union”.	CT I-11(1) and (2) reflected in Declaration No.30
I-12	New (categories of competence)	Inserted as new 2 EC
I-13-15	New (areas of exclusive and shared Competence, coordination of economic policies)	Inserted as new 3-5 EC
I-17	New	Inserted as new 6 EC
I-18	New (revised form of Article 308 EC)	Inserted as new 308 EC
I-19	New	Inserted as new 9 EC
I-20	Draws on 189-190, 249 EC	Inserted as new 9a EC

¹ Treaty establishing a Constitution for Europe –Commentary CM 6459

² The Article also refers to establishing an economic and monetary union whose currency is the euro.

³ Inserts parts of CT I-4 as amended 17 EC.

⁴ The Reform Treaty renames the EC Treaty as the ‘Treaty on the Functioning of the European Union’. For ease of reference the table refers to the EC Treaty.

I-21	Draws on Article 4EU	Inserted as new 9b (1)-(4) EC
I-22	New	Inserted as new 9b(5)-6) EC
I-23	Draws on Articles 202-205 EC	Inserted as new 9c(1)-(3) EC
I-24	Draws on Articles 202-207 EC ⁵	Inserted as new 9c(6)-(9)EC
I-25	New (definition of QMV)	Inserted as new 9c(4)-(5)EC
I-26	Draws on Articles 211-215,274, 300, and 302-304 EC	Inserted as new 9d(1)-(6)EC
I-27	Draws on 214 EC	Inserted as new 9d(7)-(8) EC
I-28	New	Inserted as new 9e EC ⁶
I-29	Draws on and summarises 220-240 EC	Inserted as new 9f EC
I-30	Draws on 105-108 EC	Inserted as new 245a EC
I-31	Summarises 248(1) and (2) EC	Inserted as amendments to to 246, 247EC
I-32	Based on 7(2), 263 EC	Inserted as new 256a EC
I-33	New (definition of legal acts)	Partly inserted as amendments to 249 EC ⁷
I-34	New	Partly inserted as new 249a EC
I-35	New	Partly inserted as new 249d EC ⁸
I-36	New	Inserted as new 249b EC
I-37	New, but successor to 202 EC	Inserted as 249c EC
I-38	I-38(1) new, I-38(2) same as 253 EC	Inserted as amended 253 EC
I-39	New, replaces 254 EC	Inserted as new 254 EC

⁵ Also on Council's 2004 rules of procedure.

⁶ With change of title from 'Union Minister for Foreign Affairs' to 'High Representative of the Union for Foreign Affairs'.

⁷ The CT terminology of 'laws', 'framework laws', 'regulations', 'decisions' and 'recommendations' has not been adopted, the existing EC equivalents of regulations, directives, decisions and recommendations being retained. 'Framework decisions' disappear with the transfer of Title VI EU to the First Pillar.

⁸ But CT I-35(1) (which would have allowed the European Council to adopt 'European decisions') has not been taken over.

I-40	New, but includes parts of 13 to 15EU	I-40(2) inserted as new 11(2) EU, I-40 (5) as amended 17Aeu
I-41	New, but based in part on 17EU	Inserted as new 27 EU
I-42	New (JHA)	Part of I-42(1) inserted as new 61 EC
I-43	New	Inserted as new 188r EC ⁹
I-44	Based on 43EU and 44EC	Inserted as new 10 EU
I-45	New	Inserted as new 8EU
I-46	New	Inserted as new 8a EU
I-47	New	Inserted as new 8bEU
I-48	New	Inserted as new 136a EC
I-49	Based on 195 EC	195 EC amended in line with I-49
I-50	New	Inserted as new 21a EC
I-51	New	Inserted as new 21b EC
I-52	New	Inserted as new 15 EC
I-53	Based on 268, 271,274 and 280	Inserted as amended 268EC
I-54	Based on 6(4)EU, 269 EC	Inserted as new 269 EC
I-55	New	Inserted as new 270aEC
I-56	New	Inserted as amendment to 268 EC
I-57	New	Inserted as new 7a EU
I-58	Corresponds to 49 EU	Inserted as new 34EU
I-59	In substance same as 7EU	Inserted as amended 7 EU

⁹ This new Article also includes CT III-329.

I-60	New (secession from Union)	Inserted as new 35 EU
II-60 to 114	New (Charter)	Given legal effect by amended 6 EU. Text of Charter incorporated as Declaration No.11
III-115	Based on 3 EU	Inserted as new 7 EU
III-116	Based on 3(2)EC	Inserted as amended 8 EC
III-117	Draws on 2 EC	Inserted as amended 9 EC
III-118	New	Inserted as new 10 EC
III-119	In substance same as 6 EC	—
III-120	In substance same as 153(2)EC	Inserted as new 12 EC
III-121	(Animal welfare) In substance same as Protocol annexed by Amsterdam Treaty	Inserted as new 13 EC
III-122	New	Inserted as amended 14EC and Protocol No 9
III-123	In substance same as 12(2) EC	Inserted as amended 17 EC
III-124	In substance same as 13 EC	Inserted as 17 a EC
III-125	III-125(1) same as 18(2)EC, 125(2) new	Inserted as 18 EC ¹⁰
III-126	In substance same as 19 EC	19 EC as amended
III-127	New (as to legal base)	Inserted as amended 20 EC
III-128	Equivalent to 21(3) EC	Amended 21EC
III-129	In substance same as 22(1) EC but now consent of EP required	Amended 22 EC (EP consent not adopted)
III-130	In substance same as 14,15 EC	Inserted as new 22a and 22b EC
III-131	In substance same as 297 EC	297 EC remains unamended
III-132	In substance same as 298 EC	298 EC remains unamended
III-133	In substance same as 39 EC	39 EC remains unamended

¹⁰ But the reference to passports, identity cards and residence permits in III-125(2) has been omitted.

III-134	In substance same as 40 EC	40 EC remains unamended
III-135	In substance same as 41 EC	41 EC remains unamended
III-136	Amends 42 EC (QMV)	Inserted as amended 42 EC
III-137	In substance same as 43 EC	43 EC remains unamended
III-138	In substance same as 44 EC	Inserted as amended 44 EC ¹¹
III-139	In substance same as 45 EC, but now co-decision	Inserted as amended 45 EC
III-140	In substance same as 46 EC	46 EC remains unamended
III-141	In substance same as 47 EC, but move to QMV for matters under 47(2)	Inserted as amended 47 EC
III-142	In substance same as 48 EC	48 EC remains unamended
III-143	In substance same as 294 EC	Inserted as new 48a EC
III-144	In substance same as 49 EC, but moves to co-decision on third country nationals	Inserted as amended 49 EC
III-145	In substance same as 50 EC	Inserted as amended 50 EC
III-146	In substance same as 51 EC	51 EC remains unamended
III-147	In substances same as 52 EC, but moves to co-decision	Inserted as amended 52 EC
III-148	In substance same as 53 EC	53 EC remains unamended
III-149	In substance same as 54 EC	54 EC remains unamended
III-150	In substance same as 55 EC	55 EC remains unamended
III-151	Corresponds to 23 -27 EC	23-27 EC remain unamended
III-152	In substance same as 135 EC	Inserted as amended 27Aec
III-153	In substance same as 28 and 29 EC	28 and 29 EC remain unamended
III-154	In substance same as 30 EC	30 EC remains unamended

¹¹ The amendment, in accordance with CT III-138 gives a role to the European Parliament.

III-155	In substance same as 31 EC	31 EC remains unamended
III-156	Combines two paragraphs of 56 EC	56 EC remains unamended
III-157	In substance same as 57 EC, but moves to co-decision	Inserted as amended 57 EC
III-158	In substance same as 58 EC, but 158(4) is new	Inserted as amended 58 EC (including new CT III-158(4))
III-159	In substance same as 59 EC	59 EC remains unamended
III-160	Based on 60 EC, but moves to QMV and co-decision	Inserted as amended 67aEC
III-161-164	In substance same as 81-84 EC	81-84 EC remain unamended
III-165	In substance same as 85 EC, but III-165(3) is new	Inserted as amended 85 EC
III-166	In substance same as 86 EC	86 EC remains unamended
III-167	In substance same as 87 EC, but new provision (167(2)(c))	Inserted as amended 87 EC
III-168	In substance same as 88 EC, but new III-168(4)	Inserted as amended 88 EC
III-169	In substance same as 89 EC	89 EC unamended
III-170	In substance same as 90, 91, 92 EC	90-92 EC unamended
III-171	In substance same as 93 EC, but new reference to distortion of competition	Inserted as amended 93 EC
III-172	In substance same as 95 EC	Inserted as 94 EC
III-173	In substance same as 94 EC	Inserted as 95 EC
III-174	In substance same as 96EC, but now co-decision	Inserted as amended 96 EC
III-175	In substance same as 97 EC	97 EC unamended
III-176	New	Inserted as new 97a EC
III-177	In substance same as 4(1) to (3) EC	Inserted as new 97b EC
III-178	In substances same as 98 EC	98 EC unamended
III-179	In substance same as 99EC, but Commission may issue warning directly to Member State, Member State concerned does not participate	Inserted as amended 99 EC

	in decision to address recommendations, co- decision for multilateral surveillance rules	
III-180	In substance same as 100 EC	Inserted as amended 100 EC ¹²
III-181	In substance same as 101 EC	101 EC unamended
III-182	In substance same as 102 EC	102 EC unamended (except for deletion of 102(2))
III-183	In substance same as 103 EC	Inserted as amended 103 EC
III-184	In substance same as 104 EC	Inserted as amended 104 EC
III-185	In substance same as 105 EC	Inserted as amended 105 EC
III-186	In substance same as 106 EC	Inserted as amended 106 EC
III-187	In substance same as 107 EC, but move to QMV and co-decision	Inserted as amended 107 EC
III-188	In substance same as 108 EC	108 EC unamended
III-189	In substance same as 109 EC	Inserted as amended 109 EC
III-190	In substance same as 110 EC	Inserted as amended 110 EC
III-191	New	Inserted as new 111 EC
III-192	In substance same as 114 EC	Inserted as amended 112 EC
III-193	In substance same as 115 EC	Inserted as 113 EC
III-194	New	Inserted as new 114 EC
III-195	New	Inserted as new 115 EC
III-196	New	Inserted as new 115Aec
III-197	Follows 122 EC, but (2)(a) and (f) and (4)(a) and (b) are new	Inserted as new new 116 EC
III-198	Based on 121, 122(2) and 123(5) EC, but with consolidation and updating, and QMV on recommendation on fulfilling criteria for euro entry	Inserted as amended 117 EC
III-199	Brings together and updates 123(3) and 117(2) EC	Inserted as amended 118 EC
III-200	In substance same as 124(1) EC	Inserted as new 118a EC

¹² The new 100 EC, unlike III-180 CT also refers explicitly to energy

III-201	In substance same as 119 EC	Inserted as amended 119 EC
III-202	In substance same as 120 EC	Inserted as amended 120 EC
III-203	In substance same as 125 EC	Inserted as amended 125 EC
III-204	In substance same as 126 EC	Inserted as amended 126 EC
III-205	In substance same as 127 EC	Inserted as amended 127 EC
III-206	In substance same as 128 EC	Inserted as amended 128 EC
III-207	In substance same as 129 EC	Inserted as amended 129 EC
III-208	In substance same as 130 EC	130 EC unamended
III-209	In substance same as 136 EC	136 EC unamended
III-210	In substance same as 137 EC	Inserted as amended 137 EC
III-211	In substance same as 138 EC	Inserted as amended 138 EC
III-212	In substance same as 139 EC, but EP to be informed of agreements with social Partners	Inserted as amended 139 EC
III-213	Closely follows 140 EC	Inserted as amended 140 EC
III-214	In substance same as 141 EC	Inserted as amended 141 EC
III-215	In substance same as 142 EC	142 EC unamended
III-216	In substance same as 143(1) EC	143 EC unamended
III-217	In substance same as 144 EC	Inserted as amended 144 EC
III-218	In substance same as 145 EC	145 EC unamended
III-219	In substance same as 146-148 EC	146,147 EC unamended, 148 EC amended
III-220	In substance same as 158 EC, but includes reference to 'territorial cohesion' of Union	Inserted as amended 158 EC
III-221	In substance same as 159 EC, but includes reference to territorial cohesion	Inserted as amended 159 EC
III-222	In substance same as 160 EC	160 EC unamended
III-223	Corresponds to 161 EC, but postponement of 2007 date for adoption of decisions on structural fund decisions	Inserted as amended 161 EC
III-224	In substance same as 162 EC	Inserted as amended 162 EC

III-225	Draws on 32(1) and 32(4) EC	Inserted as amended 32(1) EC
III-226	In substance same as 32 EC	Inserted as amended 32 EC
III-227	In substance same as 33 EC	33 EC unamended
III-228	In substance same as 34 EC	34 EC unamended
III-229	In substance same as 35 EC	35 EC unamended
III-230	In substance same as 36 EC	Inserted as amended 36 EC
III-231	Corresponds to 37 EC, but CAP and CFP subject to co-decision with EP, except for prices, levies and aids decisions	Inserted as amended 37 EC
III-232	In substance same as 38 EC	Inserted as amended 38 EC
III-233	In substance same as 174 EC	Inserted as amended 174 EC ¹³
III-234	In substance same as 175(1-5) EC and 176 EC	Inserted as amended 175 EC 176 EC unamended
III-235	In substance same as 153 EC	Inserted as amended 153 EC
III-236	In substance same as 70, 71 EC, but move to co-decision and QMV	Inserted as amended 70, 71 EC
III-237	In substance same as 72 EC	Inserted as amended 72 EC ¹⁴
III-238	In substance same as 73 EC	73 EC unamended
III-239	In substance same as 74 EC	74 EC unamended
III-240	In substance same as 75 EC, adds requirement to consult EP	Inserted as amended 75 EC
III-241	In substance same as 76 EC	76 EC unamended
III-242	In substance same as 77 EC	77 EC unamended
III-243	In substance same as 78 EC, but new second sentence	Inserted as amended 78 EC
III-244	In substance same as 79 EC	Inserted as amended 79 EC
III-245	In substance same as 80 EC	Inserted as amended 80 EC
III-246	In substance same as 154 EC	154 EC unamended
III-247	In substance same as 155(1)EC and 156 EC	155, 156 EC unamended
III-248	In substance same as 163 EC, but new reference to 'European research area'	Inserted as amended 163 EC
III-249	In substance same as 164 EC	164 EC unamended

¹³ The amended 174 EC differs from the CT in that it includes an express reference to 'combating climate change'.

¹⁴ The amended 72 EC replaces requirement for unanimity with 'special legislative procedure'.

III-250	In substance same as 165 EC	Inserted as amended 165 EC
III-251	In substance 251(1-3) same as 166(1-4) EC, but 254(4) provides for QMV and co-decision to establish European research area	Inserted as amended 166 EC
III-252	Consolidates and in substance same as 167 -170, 172 EC	Inserted as amended 167-170, 172 EC
III-253	In substance same as 171 EC	171 EC unamended
III-254	New (QMV and co-decision for European space Policy)	Inserted as new 172aEC
III-255	In substance same as 173 EC	173 EC unamended
III-256	New	Inserted as new 176a EC
III-257	257(1) new, 257(3) corresponds to 29 EU, 257(4) to 61(c) EC. Introduces area of 'freedom, security and justice'	Inserted as new 61EC
III-258-261	New	Inserted as new 62-65 EC
III- 262	New	Inserted as new 66(1) EC ¹⁵
III-263	In substance same as 66EC	<i>Inserted as new 67 EC*¹⁶</i>
III-264	Amends 34(2) EU	Inserted as new 68 EC
III-265	Draws on 62 EC	<i>Inserted as new 69 EC*</i>
III-266	Draws on 63 and 64 EC	<i>Inserted as new 69aEC*</i>
III-267	267(1-2) draw on 63 EC, 267(3-5) are new (QMV and co-decision for promoting integration of third country nationals)	<i>Inserted as new 69bEC*</i>
III-268	New	<i>Inserted as new 69c EC*</i>
III-269	Draws on 65 EC	<i>Inserted as new 69d EC*</i>
III-270	Draws on 31(1) EU, but change to QMV and co-decision	<i>Inserted as new 69e EC*</i>
III-271	Draws on 31(1)(e) EU but QMV and co-decision	<i>Inserted as new 69fEC*</i>
III-272	New	<i>Inserted as new 69g EC*</i>
III-273	Draws on 31(2) EU (Eurojust), but change to QMV and co-decision	<i>Inserted as new 69h EC*</i>

¹⁵ A new 66(2) EC (not included in CT) is also inserted, providing for cooperation and coordination by Member States in relation to national security

¹⁶ * denotes a provision in respect of which the UK may opt in.

III-274	New (European Public Prosecutor's Office)	<i>Inserted as new 69i EC*¹⁷</i>
III-275	Corresponds to 30(1) EU, but change to QMV and co-decision	<i>Inserted as new 69j EC*¹⁸</i>
III-276	276(1) and (3) new. Change to QMV and co-decision 276(2)	<i>Inserted as new 69k EC*</i>
III-277	In substance same as 32 EU	<i>Inserted as new 69l EC*</i>
III-278	In substance same as 152 EC, but with changes	Inserted as new 176e EC
III-279	In substance same as 157 EC, but with express Exclusion of harmonisation (279(3))	Inserted as new 176f EC
III-280	In substance same as 151(1) to (4), but change to QMV and co-decision in 280(5)	Inserted as new 176d EC
III-281	New. QMV and co-decision (tourism)	Inserted as new 176g EC
III-282	In substance same as 149(1) and (2), draws on 149(3) but adds reference to sport and European sporting issues. QMV and co-decision.	Inserted as new 176b EC
III-283	In substance same as 150 EC, but provides for recommendations by QMV and co-decision	Inserted as new 176c EC
III-284	New. QMV and co-decision (civil protection)	Inserted as new 176h EC
III-285	New. QMV and co-decision (administrative Cooperation)	Inserted as new 176i EC
III-286	In substance same as 182 and 188 EC	182 and 188 EC Unamended
III-287	In substance same as 183 EC	183 EC unamended
III-288	In substance same as 184 EC	184 EC unamended
III-289	In substance same as 185 EC	185 EC unamended
III-290	Draws on 186 EC	Inserted as amended 186 EC
III-291	Draws on 187 EC	Inserted as amended 187 EC
III-292	No exact equivalent	Inserted as new 10a EU
III-293	No exact equivalent	Inserted as new 10b EU
III-294	Based on 11, 12 EU	Corresponding amendments made to 11 and 12 EU ¹⁹
III-295	Draws on 13 EU	Inserted as amended 13 EU
III-296	No equivalent (role of Union Minister for Foreign Affairs)	Inserted as new 13a EU ²⁰

¹⁷ A new provision, not in the CT, provides for enhanced cooperation between 9 Member States on the basis of a draft regulation establishing the EPPO.

¹⁸ A new provision, not in the CT, provides for enhanced cooperation between 9 Member States on police cooperation

¹⁹ These amendments differ from those in III- 294 by including institutional provisions on the roles of the Commission and EP and the jurisdiction of the ECJ.

²⁰ The Union Minister for Foreign Affairs is now the 'High Representative of the Union for Foreign Affairs and Security Policy'.

III-297	In substance same as 14 EU	Inserted as amended 14 EU
III-298	In substance same as 15 EU	Inserted as amended 15 EU
III-299	Corresponds to 22 EU	Inserted as new 16 EU
III-300	Corresponds to 23 EU, but QMV on proposal from High Representative when such is requested by European Council	Inserted as new 17 EU
III-301	No exact equivalent in current Treaties	Inserted as part of new 17 aEU
III-302	Corresponds to 18(5) EU but Union Minister To propose Special Representative	Inserted as amended 18 EU
III-303	Draws on 24(1) EU	Inserted as new 22 EU
III-304	Corresponds to 21 EU. New provision for Special Representative to brief EP	Inserted as amended 21 EU
III-305	Draws on 19 EU but 305(2) is new (requires Security Council Members to ask Union Minister to present Union's position on any subject on which Union has defined a position	Inserted as amended 19 EU
III-306	In substance same as 20 EU	Inserted as amended 20 EU
III-307	In substance same as 25 EU but new provisions to take account of Union Minister	Inserted as new 23 EU
III-308	Corresponds to 47 EU (saving provision for EC competences)	Replaced by new 25 EU
III-309	Reflects 17(2) EU ('Petersberg' tasks) but new tasks added	Inserted as amended 28 EU
III-310	New 'in Treaty form' but consistent with CSDP arrangements agreed at December 2000 European Council for conduct of EU-led military operations	Inserted as new 29 EU
III-311	European Defence Agency (established by Joint Action of July 2004)	Inserted as new 30 EU
III-312	Permanent structured cooperation (new)	Inserted as new 31 EU
III-313	313(1) and (2) in substance same as 28(2) and (3) EU, 313(3) is new	Inserted as new 26 EU
III-314	Draws on 131(1) EC	Inserted as new 188b EC
III-315	Broadly follows 133 EC, but foreign direct Investment now part of common commercial Policy, change to co-decision, omits a number of grounds on which Council acts by unanimity	Inserted as new 188c EC
III-316	Based on 177(1) and 178 EC, 316(2) in substance same as 177(3)	Inserted as new 188d EC
III-317	Based on 179(1) EC. 317(2) in substance same as 181(1) EC	Inserted as new 188e EC
III-318	In substance same as 180(1) and (2) EC	Inserted as new 188f EC

III-319	Draws on 181a EC, but change to co-decision	Inserted as new 188g EC
III-320	New. QMV for ‘urgent financial assistance’ to third countries	Inserted as new 188i EC
III-321	New. QMV and co-decision for establishing ‘European Voluntary Humanitarian Aid Corps’	Inserted as new 188j EC
III-322	Based on 60 and 301 EC, III-322(2) and (3) new	Inserted as new 188k EC
III-323	323(1) new. 323(2) in substance same as 300(7) EC	Inserted as new 188l EC
III-324	In substance same as 310 EC	Inserted as new 188m EC
III-325	Corresponds to 24, 38 EU and 300 EC, but provisions have been ‘reorganised, clarified and supplemented	Inserted as new 188n EC
III-326	In substance same as 111 EC (which does not apply to UK unless it adopts euro)	Inserted as new 188o EC
III-327	Consolidates 302-305 EC	Inserted as New 188p EC
III-328	No exact equivalent, but foreshadowed in 20 EC (Union delegations)	Inserted as new 188q EC
III-329	New. (‘solidarity clause’). QMV + co-decision	Inserted as new 188r EC
III-330	Draws on 190 EC	Inserted as amended 190 EC
III-331	In substance same as 191(2) EC	Inserted as amended 191 EC
III-332	In substance same as 192(2) EC	Inserted as amended 192 EC
III-333	In substance same as 193 EC	Inserted as amended 193 EC
III-334	In substance same as 194 EC	194 EC unamended
III-335	In substance same as 195 EC	Inserted as amended 195 EC
III-336	In substance same as 196 EC	Inserted as amended 196 EC
III-337	Based on 197(2) –(4).III-337(3) same as 200 EC	Inserted as amended 197 EC
III-338	In substance same as 198 EC	Inserted as amended 198 EC
III-339	In substance same as 199 EC	Inserted as amended 199 EC
III-340	In substance same as 201 EC, but provides For EP motion of censure against Union Minister for Foreign Affairs	Inserted as amended 201 EC
III-341	New, but reflects current practice	Inserted as new 201a EC
III-342	In substance same as 204 EC	204 EC unamended
III-343	343 (1) in substance same as 206 EC, 343(2) and	206 EC unamended

	(3) correspond to 205(1) and (3) respectively	inserted as amended 205 EC
III-344	344(1) in substance same as 207(1) EC, 344(2) and (3) correspond to 207(2) and (3) EC	Inserted as amended 207 EC
III-345	In substance same as 208 EC	Inserted as amended 208 EC
III-346	In substance same as 209 EC	Inserted as amended 209 EC
III-347	In substance same as 213(2) EC	Inserted as amended 213 EC
III-348	In substance same as 215 EC, but new role for President of Commission and for EP in appointing new members of Commission to vacant posts, 348(4) and (5) new	Inserted as amended 215 EC
III-349	In substance same as 216 EC	216 EC unamended
III-350	In substance same as 217(2) EC	Inserted as amended 217 EC
III-351	In substance same as 219 EC	Inserted as amended 219 EC
III-352	352(1) in substance same as 218(2) EC, 352(2) In substance same as 212 EC	Inserted as amended 218 EC
III-353	In substance same as 221(2) EC	Inserted as amended 221 EC
III-354	In substance same as 222 EC	222 EC unamended
III-355	In substance same as 223 EC, but reference to judicial appointments panel	Inserted as amended 223 EC
III-356	Corresponds to 224 EC	Inserted as amended 224 EC
III-357	New. (Judicial Appointments Panel). QMV.	Inserted as new 224a EC
III-358	In substance same as 225 EC	Inserted as amended 225 EC
III-359	In substance same as 225a EC, but change to QMV + codecision for establishment of specialised courts	Inserted as amended 225a EC
III-360	In substance same as 226 EC	226 EC unamended
III-361	In substance same as 227 EC	227 EC unamended
III-362	Corresponds to 228 EC, but new procedure to Commission to apply for a fine for failure to notify measures to transpose framework law	Inserted as amended 228 EC
III-363	In substance same as 229 EC	229 EC unamended
III-364	Corresponds to 229a EC, but move to QMV + codecision (ECJ jurisdiction over intellectual property)	Inserted as amended 229a EC
III-365	Corresponds to 230 EC	Inserted as amended 230 EC

III-366	In substance same as 231 EC	Inserted as amended 231 EC
III-367	In substance same as 232 EC	Inserted as amended 232 EC
III-368	In substance same as 233 EC	Inserted as amended 233 EC
III-369	In substance same as 234 EC, but requires ECJ to act 'with the minimum of delay' in relation to a person in custody	Inserted as amended 234 EC
III-370	In substance same as 235 EC	235 EC unamended
III-371	In substance same as 46(e) EU	46 EU repealed ECJ jurisdiction conferred by new 235a EC
III-372	In substance same as 236 EC	Inserted as amended 236 EC
III-373	In substance same as 237 EC	Inserted as amended 237 EC
III-374	In substance same as 238 EC	238 EC unamended
III-375	375 (1), (2) and (3) in substance same as 240, 292 and 239 EC respectively	240, 292 and 239 EC unamended
III-376	New	Inserted as new 240a EC
III-377	In substance same as 35(5) EU	Inserted as new 240b EC
III-378	In substance same as 241 EC	Replaced by new 241 EC
III-379	In substance same as 242, 243 EC	242, 243 EC Unamended
III-380	In substance same as 244 EC	244 EC unamended
III-381	Corresponds to 245 EC but move to QMV+ codecision	Inserted as amended 245 EC
III-382	In substance same as 112 EC but move to QMV (does not apply to UK unless it adopts euro)	Inserted as new 245b EC
III-383	In substance same as 113 EC	Inserted as new 245c EC
III-384	In substance same as 248 EC	Inserted as amended 248 EC
III-385	In substance same as 247(2) to (7) EC	Inserted as amended 247 EC
III-386	Corresponds to 263 EC	Inserted as amended 263 EC
III-387	In substance same as 264 EC	Inserted as amended 264 EC
III-388	In substance same as 265 EC	Inserted as

III-389	Corresponds to Article 258 EC	amended 265 EC Inserted as 258 EC
III-390	Corresponds to 259 EC	Inserted as amended 259 EC
III-391	Corresponds to 260 EC	Inserted as amended 260 EC
III-392	In substance same as 262 EC	Inserted as amended 262 EC
III-393	In substance same as 266 EC, but extended power of Council to amend EIB Statute	Inserted as amended 266 EC
III-394	In substance same as 267 EC	Inserted as amended 276 EC
III-395	In substance same as 250 EC	Inserted as amended 250 EC
III-396	In substance same as 251 EC	Inserted as amended 251 EC
III-397	In substance same as 218(1) EC	Inserted as amended 218 EC
III-398	New. (Principles of European administration) QMV + codecision	Inserted as 254a EC
III-399	Corresponds, with I-50, to 255 EC	Inserted as new 21a EC
III-400	Corresponds to 210, 247(8) and 258 with addition of new offices created by CT	Inserted as amended 210 EC
III-401	In substance same as 256 EC	Inserted as amended 256 EC
III-402	New. (Multi-annual financial framework)	Inserted as new 270a EC
III-403	In substance same as 272(1) EC	Inserted as new 270b EC
III-404	Replaces budgetary procedure under 272 EC	Inserted as new 270b EC
III-405	405(1) in substance same as 273(1) EC, 405(2) replaces rest of 273 EC to take account of abolition of distinction between compulsory and non-compulsory expenditure	Inserted as amended 273 EC
III-406	Corresponds to 271 EC	Inserted as new 273Aec
III-407	Corresponds to 274 EC, but 407(2) is new	Inserted as amended 274 EC
III-408	408(1) in substance same as 275 EC, 408(2) new (evaluation report by Commission on Union's finances)	Inserted as amended 275 EC but 408(2) not taken over

III-409	In substance same as 276 EC	Inserted as amended 276 EC
III-410	Updates 277 EC	Inserted as amended 277 EC
III-411	In substance same as 278 EC	278 EC unamended
III-412	In substance same as 279 EC, but changes procedure to QMV and codecision	Inserted as amended 279 EC
III-413	No equivalent in existing Treaties, but obligation implicit in that expenditure to fulfil obligation to third parties was classified as obligatory	Inserted as new 279a EC
III-414	New	Inserted as new 279b EC
III-415	In substance same as 280(2) to (5) EC, but no 'carve-out' for measures concerning the national criminal law or the national administration of justice	Inserted as amended 280 EC
III-416	In substance same as 43 EU(b) to (f)	Inserted as new 280a EC
III-417	In substance same as 43(h) and 44(2) EU	Inserted as new 280b EC
III-418	418(1) in substance same as 43b EU, 418(2) draws on 27d EU	Inserted as new 280c EC
III-419	419(1) procedure (for enhanced cooperation) in substance same as 11(1) and (2) EC, 419(2) in substance same as 27c EU	Inserted as new 280d EC
III-420	Draws on and expands 11a EC (420(1)), and 27e EU	Inserted as new 280f EC
III-421	In substance same as 44a EU	Inserted as new 280g EC
III-422	New	Inserted as new 280h EC
III-423	In substance same as 45 EU	Inserted as new 280i EC
III-424	In substance the same as all but first paragraph of 299(2) EC	Inserted as amended 299 EC
III-425	In substance same as 295 EC	295 EC unamended
III-426	In substance same as 282 EC	Inserted as amended 282 EC
III-427	In substance same as 283 EC, but EP now involved by codecision	Inserted as amended 283 EC
III-428	In substance same as 284 EC	284 EC unamended
III-429	In substance same as 285 EC	285 EC unamended
III-430	In substance same as 287 EC	287 EC unamended
III-431	In substance same as 288 EC	Inserted as amended 288 EC

III-432	In substance same as 289 EC (seat of institutions)	289 EC unamended
III-433	In substance same as 290 EC	290 EC unamended
III-434	In substance same as 291 EC	Inserted as amended 291 EC
III-435	In substance same as 307 EC	307 EC unamended
III-436	In substance same as 296 EC	296 EC unamended
IV-437	No direct predecessor (repeals earlier Treaties)	Not taken over
IV-438	No direct predecessor (succession and legal continuity of Union created by CT)	Not taken over
IV-439	Refers to Protocol No 34 on transitional Arrangements	See Article 4 of Final Provisions of Reform Treaty ²¹
IV-440	Corresponds to 299 EC, but 440(7) new	Inserted as amended 299 EC, 440(7) not taken over
IV-441	In substance same as 306 EC	306 EC unamended
IV-442	In substance same as 311 EC	311 EC unamended
IV-443	Corresponds to Article 48 EU (ordinary revision Procedure), but provides 443(2) for a Convention to prepare for IGC	Inserted as new 33(1) EU
IV-444	New (simplified revision procedure for moving from unanimity to QMV)	Inserted as new 33(3) EU
IV-445	New (simplified revision procedure for revising All or any part of Part Three of Treaty on Functioning of Union [previously known as EC Treaty])	Inserted as new 33(2) EU
IV-446	In substance same as 51 EU	51 EU unamended
IV-447	Corresponds to 52 EU	Article 6 of Final Provisions of Reform Treaty
IV-448	Corresponds to 53 EU (authentic texts and translations)	Article 7 of Final Provisions of Reform Treaty
<u>Protocols</u>		
1.	Replaces and expands Protocol annexed to Treaty of Amsterdam on role of national parliaments	Inserted as Protocol No 1
2.	Replaces and expands Protocol annexed to Treaty of Amsterdam on application of principles of	Inserted as Protocol No 2 ²²

²¹ Protocol No 10 corresponds to Protocol No 34 to the Constitutional Treaty

subsidiarity and proportionality

3.	Protocol on the Statute of the Court of Justice of the European Union (same as its predecessors, with only technical updating)	Corresponding amendments made by Protocol No 11 ²³
4.	Protocol on the Statute of the European System of Central Banks and of the European Central Bank (corresponds to Protocol of same title annexed to EC Treaty by Treaty of Maastricht)	Corresponding amendments made by Protocol No 11
5.	Protocol on the Statute of the European Investment Bank (Protocol makes a number of changes to reflect developments elsewhere, and to permit EIB to provide finance in forms other than loans and guarantees)	Corresponding amendments made by Protocol No 11
6.	Protocol on the location of the seats of Institutions and of certain bodies, offices agencies and departments of the European Union (same as Protocol of same annexed by Treaty of Amsterdam)	Corresponding amendments made by Protocol No 11
7.	Protocol on the Privileges and Immunities of the European Union (in substance same as Protocol annexed to Treaty establishing a single Council and Commission of the European Communities of 1965)	Corresponding amendments made by Protocol No 11
8. and 9	Protocols on the Treaties and Acts of Accession of Denmark, Ireland, United Kingdom, Greece, Spain Portugal, Austria, Finland, Sweden, Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia (new, but incorporates provisions already found in Acts of Accession)	Acts of Accession remain unamended
10.	Protocol on the excessive deficit procedure (in substance same as protocol annexed to EC Treaty by Treaty of Maastricht)	Corresponding amendments made by Protocol No 11
11.	Protocol on the convergence criteria (in substance	Corresponding

²² With the addition of an Article 7(3) under which 55% of the Members of the Council or a majority of the EP prevent further discussion of a proposal on the grounds that it infringes the principle of subsidiarity.

²³ This Protocol makes a series of amendments to the existing Protocols which correspond to the Protocols annexed to the Constitutional Treaty.

	same as Protocol annexed by Treaty of Maastricht	amendments made by Protocol No 11
12.	Protocol on the Euro Group	Inserted as Protocol No 3
13.	Protocol on certain provisions relating to the UK as regards economic and monetary union	Corresponding amendments made by Protocol No 11
14.	Protocol on the position of Denmark as regards economic and monetary union	Corresponding amendments made by Protocol No 11
15.	Protocol on certain tasks of the National Bank of Denmark (declares that Danish National Bank may continue with tasks in relation to Greenland)	-
16.	Protocol on the Pacific Financial Community (CFP) franc system (same as Protocol annexed by Treaty of Maastricht)	Corresponding amendments made by Protocol No 11
17.	Protocol on the Schengen <i>acquis</i> (in substance same as Protocol annexed by Treaty of Amsterdam)	Corresponding amendments made by Protocol No 11
18.	Protocol on the application of certain aspects of Article 111-130 of the Constitution to the UK and Ireland (in substance same as Protocol annexed by Treaty of Amsterdam allowing frontier checks on Persons coming from rest of EU)	Corresponding amendments made by Protocol No 11
19.	Protocol on the position of the UK and Ireland on policies with respect to border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation	Corresponding amendments made by Protocol No 11 ²⁴
20.	Protocol on the position of Denmark (corresponds to Protocol annexed by Treaty of Amsterdam, main change is to give Denmark opt-in arrangements rather like the UK's)	Corresponding amendments made by Protocol No 11
21.	Protocol on external relations of the Member	Protocol No 31

²⁴ It should be noted that the Reform Treaty transfers police and judicial cooperation in criminal matters to Title IV, so that this field becomes subject to the opt-in arrangements under the Protocol.

	States with regard to the crossing of external Borders (in substance same as Protocol annexed by Treaty of Amsterdam)	unamended
22.	Protocol on asylum for nationals of Member States (in substance same as Protocol annexed by Treaty of Amsterdam)	Corresponding amendments made by Protocol No 11
23.	Protocol on permanent structured cooperation (new, sets out arrangements for permanent structured cooperation in defence area)	Inserted as Protocol No 4
24.	Protocol on Article I-41(2) of the Constitution (in substance same as Protocol on Article J7 EU annexed by Treaty of Amsterdam)	Corresponding amendments made by Protocol No 11
25.	Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles (in substance same as previous Protocol (No 14) annexed to EEC Treaty)	Corresponding amendments made by Protocol No 11
26.	Protocol on the acquisition of property in Denmark (in substance same as Protocol (No 16) annexed by Treaty of Maastricht)	Protocol No 16 unamended
27.	Protocol on the system of public broadcasting in the Member States (in substance same as Protocol (No 32) annexed by Treaty of Amsterdam)	Protocol No 32 unamended
28.	Protocol concerning Article III-214 of the Constitution (in substance same as Protocol (No 17) concerning Article 141 EC annexed by Treaty of Maastricht)	Corresponding amendments made by Protocol No 11
29.	Protocol on economic, social and territorial cohesion (in substance same as Protocol annexed by Treaty of Maastricht)	Corresponding amendments made by Protocol No 11
30.	Protocol on special arrangements for Greenland (in substance same as Protocol annexed to EC Treaty by 1985 Treaty amending EC Treaty with regard to Greenland)	Corresponding amendments made by Protocol No 11
31.	Protocol on Article 40.3.3 of the Constitution of Ireland (in substance same as Protocol annexed by	Corresponding amendments made

	Treaty of Maastricht)	by Protocol No 11
32.	Protocol relating to Article I-9(2) on the accession of the Union to the European Convention on Human Rights (new, makes clear that accession to ECHR may not affect EU's competences or the Institutions' powers)	Inserted as Protocol No 5
33.	Protocol on the Acts and Treaties which have supplemented or amended the Treaty establishing the European Community and the Treaty on European Union (new, but entirely technical Protocol to make clear which Acts and Treaties are repealed by the Constitutional Treaty)	Not taken over
34.	Protocol on the transitional provisions relating to the institutions and bodies of the Union (new, sets out transitional arrangements in period 2004-2009)	Inserted as Protocol No 10
35.	Protocol on the financial consequences of the expiry of the ECSC Treaty (corresponds to Protocol annexed by Treaty of Nice dealing with residual assets of ECSC after its winding up in 2002)	Corresponding amendments made by Protocol No 11
36.	Protocol amending the Treaty establishing the European Atomic Energy Community (Euratom) (new, makes technical changes to reflect changes in Constitutional Treaty)	Inserted as Protocol No 12

The draft Reform Treaty has a number of additional Protocols which were not attached to the Constitutional Treaty. These are:

- No 6 on the internal market and competition
- No. 7 on the application of the Charter of Fundamental Rights to the United Kingdom
- No. 8 on the exercise of shared competences
- No. 9 on services of general interest.

Formal minutes

Tuesday 2 October 2007

Members present:

Michael Connarty, in the Chair

Mr David S Borrow	David Heathcoat-Amory
Mr William Cash	Kelvin Hopkins
Ms Katy Clark	Mr Lindsay Hoyle
Jim Dobbin	Angus Robertson
Nia Griffith	Mr Anthony Steen

The Committee deliberated.

Ordered, That the correspondence between Members of the Committee and the Chairman relating to the date and time of the Committee's meeting be published.—(*Mr William Cash.*)

Motion made and Question put, That the Committee regrets the date of its recall during a party conference and requires that, in future, the dates of meetings during parliamentary recesses are agreed by consensus. — (*Mr David Heathcoat-Amory.*)

The Committee divided.

Ayes, 3	Noes, 7
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Kelvin Hopkins
	Mr Lindsay Hoyle
	Angus Robertson

Draft Report, proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 21 read and agreed to.

Resolved, That the Report be the Thirty-fourth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House

The Committee further deliberated.

Draft Report, proposed by the Chairman, brought up and read.

Draft Report, proposed by Mr William Cash, brought up and read as follows:

1. The Reform Treaty, as compared to the Original Constitutional Treaty, requires a referendum of the electorate of the United Kingdom because it is the equivalent to the Constitutional Treaty, even if not the same. It is a distinction without a proper difference.
2. A referendum is required for the following constitutional reasons: the Reform Treaty with the merger of the TEC, based on the Treaty of Rome (which was the genesis of the European Economic

Community), followed by the Single European Act on the one hand and the TEU (with its genesis in the Maastricht Treaty which deals with European government, followed by Nice and Amsterdam), on the other, into a Union with an overarching single legal personality and a self-amending text is “substantial constitutional change”, even “fundamental change” in terms that warrant a referendum according to the government’s own criteria.

3. The present Minister for Europe stated to the Foreign Affairs Select Committee on 12 September that a referendum would be required if a Treaty created “substantial constitutional change”. The former Prime Minister stated that a new Treaty “should not be proposing the characteristics of a Constitution”. The former Foreign Secretary stated to the European Scrutiny Committee on 7 June that the government was intending a Treaty “that was very different from the Constitutional Treaty”. The correlation between the Constitutional Treaty and the Reform Treaty in terms of the specific provisions incorporated into the latter demonstrates that this statement can now no longer be substantiated. The government has also stated that a referendum would be required where there is “fundamental change” and where the structure of the relationship between the United Kingdom and the European Union is altered by virtue of the European Treaty. The fundamental nature, not only of the merger of the Treaties, but also the individual proposals in the Reform Treaty, alters the relationship by way of substantial, even fundamental, constitutional change. There are also specific provisions arising in respect of the Charter of Fundamental Rights, the Common Foreign and Security Policy, the legal obligations imposed on the United Kingdom Parliament, measures relating to the criminal law, and measures related to Title IV which are deeply contentious and would require specific exclusion from having effect in UK law which for the avoidance of doubt could only be achieved by excluding their effect by the use of a statutory provision preceded by the words “Notwithstanding the European Communities Act 1972”. Such a formula would be essential but the government, by all accounts, would not be prepared to employ such wording, thereby putting the vital national interests of the electorate in jeopardy.

4. The Reform Treaty on all these tests requires a referendum. It would be a deceit of the electorate (even by the criteria for a referendum set out by the Government) to refuse to hold one, unless the Treaty itself was rejected by the Prime Minister in the IGC on 18/19 October as he should. Unless this occurs, refusal to hold a referendum would be a breach of trust with respect to the Reform Treaty (let alone past promises about the original Constitutional Treaty made in 2004) and would run clearly contrary to the assertions of the present Prime Minister that he is committed to restoring good governance, democracy and trust.

5. The accumulation of the existing Treaties since 1972 combined with the merger described above, has in itself culminated in such fundamental change as warrants a referendum. There are tens of millions of people which have not had an opportunity to express their view on our continuing membership of the European Union. The Labour government to its credit provided a referendum on continuing membership of the then European Economic Community, following its enactment of the Referendum Act of 1975.

6. Contrary to the assertions of the present Foreign Secretary, Parliamentary sovereignty is not diminished but actually is enhanced by the granting of a referendum by parliamentary enactment. The electorate and not Members of Parliament nor the Government are the ultimate source of parliamentary authority, sovereignty and democracy all of which Members of Parliament and members of the Government merely hold on trust subject to re-election at a general election every five years. This Reform Treaty and the merger of all the existing Treaties into a Union of European government, also contains a self-amending text which would effectively obstruct any future referendum arising out of a future IGC. All this clearly requires Members of Parliament to hand back to the voters an impartial question authorised by Parliament and across the political divide a decision in a referendum as to the manner in which the electorate as a whole wishes to be governed.

7. This Reform Treaty therefore must not be put into effect by a Prerogative Act of a former Prime Minister signing the Treaty and departing and then a new Prime Minister implementing into UK law the decision through the Whips in Parliament, without a referendum.

8. It would be a constitutional outrage, in the absence of a rejection of this Treaty to do otherwise.

9. The IGC has not yet taken place so that an opportunity for the Prime Minister and the Government to review the present decision not to have a referendum and even to reject the Treaty is still open. This is particularly the case as the decision expressed and the announcement made by the Foreign Secretary not to

have a referendum has been taken without the government even sitting down at the IGC on the latest text on 18/19 October 2007. This announcement was also made even before the European Scrutiny Committee had reported on the text. The Committee is specifically charged by Parliament under its own standing orders to report on the political/legal importance of the proposed Reform Treaty and has not cleared the text (the opinion of the European Commission – COM(07)412) the government’s action in seeking to pre-empt the Committee’s assessment of this document in its report amounts to the contempt of the Committee. Moreover, this announcement is apparently in compliance with the so-called binding mandate of the Member States of the European Union of 19 June 2007. This certainly cannot constitutionally bind the Prime Minister, the United Kingdom Parliament or the electorate of the United Kingdom. The Government has erroneously accepted the Commission’s opinion on the ICG. The Committee therefore calls on the Government either to reject the Treaty or to hold a Referendum. This is on the basis that on both political and legally important grounds, the Government has misleadingly denied that the Reform Treaty is a Constitutional Treaty of the first order, amounting to substantial and even fundamental change to the Constitution of the United Kingdom and to the structure of the relationship between the United Kingdom and the European Community and the European Union.

10. The Committee does not clear the Commission’s opinion on the IGC from the scrutiny and requests the Foreign Secretary and the legal adviser to attend the Committee in good time before 18 October 2007.

Motion made and Question proposed, That the Chairman’s draft Report be read a second time, paragraph by paragraph.—(*Jim Dobbin.*)

Amendment proposed, to leave out the words “Chairman’s draft Report” and insert the words “draft Report proposed by Mr William Cash”.—(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided..

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 7

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Kelvin Hopkins
Mr Lindsay Hoyle
Angus Robertson

Main Question put and agreed to.

Ordered, That the Chairman’s draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 4 read and agreed to.

Paragraph 5 read, amended, and agreed to.

Paragraphs 6 and 7 read and agreed to.

Paragraph 8 read.

Amendment proposed in line 6, after “referendum.” to insert “We note that in 1975 the then Government held a referendum, the Bill for which was entitled ‘An Act to Provide for the Holding of a Referendum on the United Kingdom’s Membership of the European Economic Community’.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 9 read.

Amendment proposed, in line 10, at end add “We do not consider that, in the event, the Reform Treaty is ‘very different’ from the Constitutional Treaty.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraphs 10 to 12 agreed to.

A new paragraph — (*Mr William Cash*) — brought up and read, as follows:

“We draw attention to the General Observations on the IGC Mandate which whilst stating that the constitutional concept consisting in repealing all the existing Treaties and replacing them by a single text called ‘Constitution’ is abandoned, the Reform Treaty incorporates the innovations from the 2004 IGC and crucially merges the TEU and the TEC into a Union having a single legal personality. The Reform Treaty provides that the word ‘Community’ is to be replaced by the word ‘Union’ and that the ‘two Treaties constitute the Treaties on which the Union is founded and that the Union replaces and succeeds the Community’. This merger is at the very least the kind of ‘substantial constitutional change’ to which the Minister for Europe refers in his evidence to the Foreign Affairs Select Committee on Wednesday 12th September, 2007. We are further concerned that an attempt has been made in the so-called IGC Mandate to bind the Intergovernmental Conference as ‘the exclusive basis and framework for the work of the IGC’. We would expect the Government to make clear that this is not a legal obligation but merely a proposal. We refer below to the Constitutional nature of the Reform Treaty. We are gravely disturbed by the failure of the Government to explain the above in the White Paper.”

Question put, That the paragraph be read a second time.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph disagreed to.

Paragraphs 13 to 19 read and agreed to.

Paragraph 20 read.

Amendment proposed, in line 5, at end add “Of course, the legal impact of primacy which has been established as a matter of principle of European Law increases in importance according to the legal functions to which it is attached. Primacy therefore has assumed greater importance and effect as the Treaties have evolved.”— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Kelvin Hopkins
Angus Robertson

Paragraph agreed to.

Paragraph 21 read.

Amendment proposed, in line 15 to leave out “concerned” and to insert “of the clear view”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4

Mr William Cash
Mr David Heathcoat-Amory
Kelvin Hopkins
Mr Anthony Steen

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Mr Lindsay Hoyle
Angus Robertson

Another Amendment proposed, in line 19, After “law” to insert “and that will amount to fundamental constitutional change.”— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 21, at end to add “The Committee also notes that future changes to policies within existing competencies and extensions of QMV and co-decision without calling a new IGC would tend to prejudice future calls for a referendum on new Treaties.”— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 22 read and agreed to.

Paragraph 23 read.

Amendment proposed, line 9, at end to insert “She thereby implied that the Court of Justice would continue to exercise its jurisdiction over the EU as a whole including, in respect of the Charter, the UK.”—(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Kelvin Hopkins	Jim Dobbin
Mr Anthony Steen	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 24 agreed to.

Paragraph 25 read.

Amendment proposed, in line 9, leave out “could be interpreted as” and insert “is”.— (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Another Amendment proposed, in line 16, at end insert “The Committee further notes that the Minister for Europe conceded in evidence to the Foreign Affairs Select Committee on the 12th of September, 2007 that the

European Court of Justice would have jurisdiction in respect of aspects of the CFSP, which is unacceptable.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraphs 26 to 28 agreed to.

Paragraph 29 read.

Amendment proposed, in line 5, after “characteristics” to insert “(recalling that the former Foreign Secretary, Mrs Beckett, told the Committee on the 7th of June, 2007, in the context of the former Prime Minister’s phrase referring to ‘the characteristics of a constitution’, that the Government was seeking a ‘very different’ Treaty from that proposed as the Constitutional Treaty, which clearly has not been achieved.)” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 30 read.

Amendment proposed, in line 18 after “consequence” to insert “it is thought that” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Another Amendment proposed, in line 19, at end add “The Committee notes that this abolition of the third pillar would be irreversible, as it reflects vitally important aspects of UK criminal law and procedure where in future, the UK does participate in such JHA measures and under ECA 1972 would be legally binding on the UK. It is therefore essential to reject these provisions as they stand.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 8

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Kelvin Hopkins
Mr Lindsay Hoyle
Angus Robertson
Mr Anthony Steen

Paragraph agreed to.

Paragraph 31 agreed to.

Paragraph 32 read, amended and agreed to.

Paragraphs 33 and 34 agreed to.

Paragraph 35 read.

Amendment proposed, in line 7, leave out “except with the UK’s agreement” and insert “The Committee requires clear evidence as to the means which the Government will take to exclude a European public prosecutor having any role in the UK.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 36 read and agreed to.

A new paragraph — (*Mr William Cash*) — brought up and read, as follows:

“The Committee insists that to avoid any doubt that the Charter would extend to enable any court to strike down UK law that the Government must include in any Bill implementing these provisions the words ‘notwithstanding the European Communities Act 1972’ so that no UK or European court could apply the Charter as against UK law.”

Question put, That the paragraph be read a second time.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph 37 read and agreed to.

Paragraph 38 read.

An Amendment made.

Another Amendment proposed, in line 13, after “agree.” to insert “The Committee regards such a collective power of other national parliaments as amounting to a serious interference with the sovereignty of the United Kingdom Parliament and rejects any such proposal for this reason.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 20, leave out “is not helpful to” and insert “obstructs”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Kelvin Hopkins
Angus Robertson

Paragraph agreed to.

Paragraph 39 read and agreed to.

Paragraph 40 read.

Amendment proposed, in line 13, after “scope.” to insert “The Committee therefore objects to the conferring of legal personality on this scale in the way proposed.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 13, after, 'scope.' to insert, "The Committee is concerned at this significant widening of the ability of the Union to conclude international agreements binding on the UK." —(*Mr David Heathcoat-Amory.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2	Noes, 6
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Mr Lindsay Hoyle
	Angus Robertson

Paragraph agreed to.

Paragraph 41 read.

Amendment proposed, in line 3, after 'QMV', to insert, "into at least 50 new areas". —(*Mr David Heathcoat-Amory.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 6
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Kelvin Hopkins	Jim Dobbin
Mr Anthony Steen	Nia Griffith
	Mr Lindsay Hoyle
	Angus Robertson

Another Amendment proposed, in line 8, at end, to add, "At present QMV has a more demanding requirement of 74% of the weighted votes in the Council, so the ability of the UK and most other member states to block unwelcome proposals will be significantly reduced." —(*Mr David Heathcoat-Amory.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 42 read.

Amendment proposed, in line 24, to leave out from "parliaments" to end of paragraph and add "The Committee considers that the Government should not allow these provisions to proceed." — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraphs 43 and 44 read and agreed to.

Paragraph 45 read.

Amendment proposed, in line 17, to leave out “is not convinced” and to insert “believes” and after “conclusion” leave out “does not apply” and insert “applies”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 18, to leave out from “Treaty” to end of paragraph. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 46 read.

Amendment proposed, in line 4, after “text.” to insert “The Committee notes that in the original Constitutional Treaty the Euratom Treaties were amended and therefore that Constitutional Treaty itself was an amending Treaty. The Committee draws attention to this because of the continuous but erroneous assertion by the Government that the Reform Treaty differs from the Constitutional Treaty because the Reform Treaty is an amending Treaty as compared to the Constitutional Treaty. This does not in any way alter the Committee’s proposition that the Reform Treaty is substantially equivalent to the Constitutional Treaty, even if it is not the same.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Mr Lindsay Hoyle
Angus Robertson

Another Amendment proposed, in line 6, at end add “The intention is also to merge the existing Treaties into a Union with a single personality and to replace the word ‘Community’ with the word ‘Union’.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 47 read and agreed to.

Paragraph 48 read.

Amendment proposed, in line 9, at end add “Furthermore, a Declaration does not have the force of law.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 9

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Mr David Heathcoat-Amory
Kelvin Hopkins
Mr Lindsay Hoyle
Angus Robertson
Mr Anthony Steen

Paragraph agreed to.

Paragraph 49 read.

Amendment proposed, in line 5, leave out from “constitution” to end of paragraph and insert “The Committee believes that the Government both in law and in political judgement has so far failed to achieve its own expressed intention, subject to the final negotiations at the IGC on 18th /19th October 2007, of achieving what the former Foreign Secretary asserted as a ‘very different Treaty’ from the original Constitutional Treaty,

nor has it avoided the ‘characteristics of a constitution’ which was the phrase used by the former Prime Minister during the negotiating process. Indeed, far from it, apart from the issue of the red lines, to which the present Prime Minister is also committed, the Reform Treaty not only has constitutional characteristics but these are substantial, indeed fundamental, and alter the structure of the relationship between the United Kingdom and the European Union and thereby the relationship of the United Kingdom Government and Parliament to the electorate.” —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1	Noes, 5
Mr William Cash	Mr David S Borrow
	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 50 read.

Amendment proposed, in line 11, leave out “even likely to be misleading in so far as they might suggest” and insert “misleading by suggesting”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Kelvin Hopkins	Jim Dobbin
Mr Anthony Steen	Nia Griffith
	Angus Robertson

Another Amendment proposed, in line 13, leave out from “must” to end of paragraph and add “accept that the proposals in the current draft of the Reform Treaty are the equivalent, if not the same, in terms of constitutional characteristics and substantial and fundamental constitutional change and that this must be made clear at the IGC on the 18th/19th October. If it were the Government’s intention to conclude such a Treaty then, in accordance with the statement of the then Foreign Secretary on the 7th of June that ‘that would require a referendum’, the Committee would expect that the Prime Minister would commit the Government to holding a referendum on the Reform Treaty. The Committee notes that the then Government held a referendum in 1975.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Kelvin Hopkins	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraphs 51 to 55 read and agreed to.

Paragraph 56 read.

Amendment proposed, in line 1, leave out “possible”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash

Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow

Ms Katy Clark

Jim Dobbin

Nia Griffith

Angus Robertson

Paragraph agreed to.

Paragraph 57 read and agreed to.

Paragraph 58 read.

Amendment proposed, in line 4, leave out “It could be argued that”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash

Mr David Heathcoat-Amory

Noes, 5

Mr David S Borrow

Ms Katy Clark

Jim Dobbin

Nia Griffith

Angus Robertson

Another Amendment proposed, in line 12, after “generally.” to insert “Therefore we insist on a clear commitment from the Government that any Bill to implement the Treaty and the Charter will include a provision stating that the Charter shall not take effect in UK law notwithstanding the European Communities Act 1972. This would put the matter beyond doubt as the Government has continuously stated to be its intention.”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 5

Mr David S Borrow

Ms Katy Clark

Jim Dobbin

Nia Griffith

Angus Robertson

Paragraph agreed to.

Paragraph 59 read, and agreed to.

Paragraph 60 read.

Amendment proposed, in line 7, at end add “In these circumstances, the Committee insists on a clear commitment from the Government that any Bill to implement the Treaty and the Charter will include a provision stating that the Charter shall not take effect in UK law notwithstanding the European Communities Act 1972. This would put the matter beyond doubt as the Government has continuously stated to be its intention.” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1	Noes, 5
Mr William Cash	Mr David S Borrow
	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Angus Robertson

Paragraph agreed to.

Paragraph 61 read and agreed to.

Paragraph 62 read.

Amendment proposed, in line 4, leave out “would seek more” and insert “insists on”. — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 5
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Kelvin Hopkins
	Angus Robertson

Another Amendment proposed, in line 10, leave out “would seek to clarify with the Government what protection there is for their” and insert “insists that the Government provides” — (*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2	Noes, 7
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Kelvin Hopkins
	Mr Lindsay Hoyle
	Angus Robertson

Another Amendment proposed, in line 14, leave out from “charter” to end of paragraph and insert “In the circumstances, the Committee insists that the Government commits that any Bill to implement the Treaty and

the Charter will include a provision stating that the Charter shall not take effect in UK law notwithstanding the European Communities Act 1972. This would put the matter beyond doubt as the Government has continuously stated to be its intention.” —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2	Noes, 7
Mr William Cash	Mr David S Borrow
Mr Anthony Steen	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Kelvin Hopkins
	Mr Lindsay Hoyle
	Angus Robertson

Paragraph agreed to.

Paragraph 63 read, amended and agreed to.

Paragraph 64 read.

Amendment proposed, in line 7, after “welcomes the” to insert “apparent”. —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3	Noes, 7
Mr William Cash	Mr David S Borrow
Mr David Heathcoat-Amory	Ms Katy Clark
Mr Anthony Steen	Jim Dobbin
	Nia Griffith
	Kelvin Hopkins
	Mr Lindsay Hoyle
	Angus Robertson

Another Amendment proposed, in line 10, at end add “However, the Committee insists that for the avoidance of doubt a provision should be included in any Bill implementing the Treaty excluding the jurisdiction of the ECJ, notwithstanding the ECA 1972.” —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1	Noes, 6
Mr William Cash	Mr David S Borrow
	Ms Katy Clark
	Jim Dobbin
	Nia Griffith
	Angus Robertson
	Mr Anthony Steen

Paragraph agreed to.

Paragraph 65 read, amended and agreed to.

Paragraph 66 read and agreed to.

Paragraph 67 read.

Amendment proposed, in line 12, leave out from “acceptable” to end of paragraph and insert “The Committee insists that the Government achieves this agreement at the IGC.” —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Mr Lindsay Hoyle
Angus Robertson

Paragraph 68 read.

Amendment proposed, leave out lines 1 to 19 and insert “The Committee does not welcome the provisions in the Reform Treaty on the role of national parliaments because the provisions are based on the collective vote of all national parliaments in the EU, which impinges on the sovereignty of the United Kingdom Parliament to make decisions on European legislative proposals in its own right. The Committee reaffirms the supremacy of the United Kingdom Parliament notwithstanding the European Communities Act 1972.”. —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 69 read and agreed to.

Paragraph 70 read.

Amendment proposed, in line 8, at end insert “The Committee regards the Minister’s statement as totally inadequate. The legal obligation proposed on national parliaments must be rejected in its application to the United Kingdom at least. In this context, we draw particular attention to footnote 57 and note that the Committee regards it as inconceivable that the European Court of Justice should be entitled to adjudicate against the United Kingdom Parliament.” —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Mr David Heathcoat-Amory

Noes, 7

Mr David S Borrow
Ms Katy Clark
Jim Dobbin

Nia Griffith
Kelvin Hopkins
Mr Lindsay Hoyle
Angus Robertson

Paragraph agreed to.

Paragraph 71 read and agreed to.

Paragraph 72 read.

Amendment proposed, in line 2, leave out from “we” to “what” in line 7 and insert “regard the Reform Treaty as having ‘constitutional characteristics’ amounting to at least ‘substantial constitutional change’ and even ‘fundamental change’ of the kind described by the Minister for Europe and the former Prime Minister.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 2

Mr William Cash
Kelvin Hopkins

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 8, at end add “We further consider that the constitutional changes brought about in the Reform Treaty are themselves substantial and even fundamental and alter the structure of the constitutional relationship between the United Kingdom and the European Union and between the United Kingdom Government and Parliament and the electorate. For these reasons and in line with the statement by the former Foreign Secretary in her evidence to us on the 7th of June that the Government was seeking a Treaty ‘very different’ from that proposed as the ‘Constitutional Treaty’ and the phrase of the former Prime Minister that ‘it should not be proposing the characteristics of a constitution’ and having failed on both counts that a referendum on this Treaty, if not rejected by the Prime Minister at the IGC, is required as indicated by the former Foreign Secretary on that occasion.” — *(Mr William Cash.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Another Amendment proposed, in line 8, at end add, “In our view, the UK’s ‘red line’ opt outs do not substantially alter the overall effect of the Treaty, particularly as the final arbiter in any dispute over interpretation will be the ECJ.” — *(Mr David Heathcoat-Amory.)*

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 5

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson

Paragraph agreed to.

Paragraph 73 read.

Amendment proposed, in line 4, at end add, “In our view, a Bill to implement this Treaty with these provisions relating to the Charter under Protocol No.7 must be expressed in terms which clearly exclude the Charter from having effect in United Kingdom law notwithstanding the European Communities Act 1972.”
—(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 1

Mr William Cash

Noes, 6

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Angus Robertson
Mr Anthony Steen

Paragraph agreed to.

Paragraph 74 read and agreed to.

Paragraph 75 read, amended and agreed to.

Paragraph 76 read.

An Amendment made.

Another Amendment proposed, in line 8, leave out “resisted” and insert ‘rejected’. —(*Mr William Cash.*)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 3

Mr William Cash
Mr David Heathcoat-Amory
Mr Anthony Steen

Noes, 7

Mr David S Borrow
Ms Katy Clark
Jim Dobbin
Nia Griffith
Kelvin Hopkins
Mr Lindsay Hoyle
Angus Robertson

Paragraph 77 read, amended and agreed to.

Annex agreed to.

Resolved, That the Report, as amended, be the Thirty-fifth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several Memoranda were ordered to be reported to the House for printing with the Report.

Ordered, That the provisions of Standing Order No.134 (Select committees (reports)) be applied to the Report.

[Adjourned till this day at 1.30 p.m.]

List of written evidence

1	Letter dated 11 July 2007 from Michael Connarty MP	Ev 1
2	Letter dated 16 July 2007 from Jim Murphy MP	Ev 1
3	Letter dated 19 July 2007 from Michael Connarty MP	Ev 2
4	Letter dated 19 July from Michael Connarty MP	Ev 2
5	Letter dated 25 July 2007 from Jim Dobbin MP	Ev 3
6	Letter dated 31 July 2007 from Jim Murphy MP	Ev 3

Written evidence

**Letter from the Chairman of the Committee to Mr Jim Murphy MP, Minister for Europe,
Foreign and Commonwealth Office, 11 July 2007**

The Committee was most grateful for your evidence on 4 July on the Annual Policy Strategy and the IGC Mandate.

On the latter subject, there were three areas where it was indicated that we might wish to follow up the evidence session by asking for written clarification. There is, however, a preliminary point concerning the transparency (or rather the lack of it) with which the IGC process is conducted. You indicated a readiness to explore what could be provided to the Committee during the IGC, and it would be helpful if you could expand on that offer so that it can be discussed and considered by the Members of the Committee. Press reports indicate that the Portuguese Presidency is aiming to produce a draft Treaty text by the end of July (by 24 July, I believe), and the Committee would clearly expect to receive a copy of this text. In any event, the Committee would also expect to be informed of developments during the IGC.

In relation to the substance of the IGC Mandate, the Members of the Committee were struck by the evidence that those representing the UK did not see the draft IGC Mandate until 5:00pm on 19 June, even though the European Council was due to commence just over 48 hours later. The Committee would therefore be grateful to be told whether the responsible Ministers and their departments were consulted about the draft mandate during that brief period, and for an account of such consultations. The Committee would also be grateful for the Government's views on whether it is acceptable for a process which has taken two years then to be "bounced" into the European Council in two days.

The second point concerns the Charter, and more particularly the Protocol which appears at footnote 19 to Annex 1 to the Presidency conclusions. This states, in Article 1(2) "In particular, and for the avoidance of doubt, nothing in [Article IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law". This is to be compared with the text quoted by the then Prime Minister to the House on 25 June which did not refer to Title IV or to any square brackets (see Official Report 25 June col.21). The Members of the Committee would be grateful if you would explain the significance of the reference to Title IV of the Charter being in square brackets. Is the Protocol meant to be understood in the sense that only Title IV does not create justiciable rights, or is some other meaning intended?

The third point also concerns the Charter and your reply to a question from Mr Heathcoat-Amory on the interpretation by the ECJ, in the light of the Charter, of measures adopted at EU level. You appeared to acknowledge that the ECJ already interprets such measures in a uniform way and that interpretations by the ECJ in the light of the Charter would be binding on the UK in respect of measures to which the UK has already agreed. It would be helpful to know if it is the Government's position that, by reason of the Protocol set out in footnote 19 to Annex 1 to the Presidency conclusions, the same consequence would not apply to new measures (ie those adopted after the Protocol comes into force).

I am copying this letter to Lord Grenfell and Simon Burton in the House of Lords; Les Saunders in the Cabinet Office; and Tom Hines, Scrutiny Co-ordinator, and Guy Janes, Select Committee Liaison Officer, in the FCO.

**Letter from Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office
to the Chairman of the Committee, 16 July 2007**

At the Evidence Session on 4 July, I was asked whether the Protocol to be annexed to the Reform Treaty applied to all the Titles of the Charter of Fundamental Rights, or just Title IV.

I can confirm that the Protocol does indeed apply to all the Charter's Titles. Article 1.1 of the Protocol states that the Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.

This Article covers all Titles. Article 1.2 refers to Title IV alone. It says that "in particular, and for the avoidance of doubt, nothing in [Title IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law".

With the Protocol, the Government secured confirmation that a binding Charter will have no new impact on UK domestic law. In particular, the Charter will not extend the ECJ's or national courts' power to challenge or reinterpret UK employment and social legislation. Nor will it change the rights that we already apply in the UK through our Human Rights Act.

As I said during the Evidence Session, the Charter will not create any new rights but will bring together existing rights found under the ECHR, current EC Treaties and other instruments.

I hope that this clarifies matters.

**Letter from the Chairman of the Committee to Mr Jim Murphy MP, Minister for Europe,
Foreign and Commonwealth Office, 19 July 2007**

Commission opinion, pursuant to Article 48 EU Treaty on the convening of an IGC (COM(2007) 412)

As you will be aware, the Commission has issued an opinion "Reforming Europe for the 21st Century" welcoming the convening of an inter-governmental conference.

The opinion was issued in accordance with Article 48 EU Treaty and is a document published for communication to the Council. As such, it is a "European Union document" under Standing Order 143(1)(ii) and the Committee would expect it to be formally deposited and an Explanatory Memorandum to be provided to explain the Government's position on it.

The Explanatory Memorandum is, of course, a matter for you, but the Committee would find it helpful if particular attention could be paid to the question of the exclusive nature of the IGC mandate, the relative status of the EU and EC Treaties (with particular reference to Article 47EU), and to the discussion by the Commission of the effect of the Charter (with particular reference to the situation in the UK). There are in addition the specific questions on the IGC mandate about which I wrote to you on 11 July.

I am copying this letter to Lord Grenfell and Simon Burton in the House of Lords; Les Saunders in the Cabinet Office; and Tom Hines, Scrutiny Co-ordinator, and Guy Janes, Select Committee Liaison Officer, in the FCO.

**Letter from the Chairman of the Committee to the Rt. Hon. David Miliband MP, Secretary of State for
Foreign and Commonwealth Affairs, Foreign and Commonwealth Office, 19 July 2007**

The IGC Mandate and the proposed Reform Treaty

As you will know from the evidence session with your predecessor on 7 June, one of this Committee's key concerns has been the lack of transparency with which the process of discussion on institutional reform, and which has now led to the adoption of the IGC Mandate, has been conducted.

Since that time, we have learned that the draft mandate, which formed the basis of discussion and agreement at the European Council, was first seen by those representing the UK little more than 48 hours before that Council began. It seems scarcely credible that Member States should have been given so little time to consider a detailed and complex text, but it certainly had the effect that any kind of consideration by Parliament became impossible.

It now appears the intention of the Portuguese Presidency to press for adoption of a treaty text as early as mid-October, which will again put the United Kingdom Parliament (and, no doubt, the parliaments of other Member States) in a very difficult position for conducting effective scrutiny.

Jim Murphy has indicated a readiness to explore what could be provided to the Committee during the IGC, and the Committee has asked him to expand on that offer so that it can be discussed and considered by the Members of the Committee. The Committee has also informed Mr Murphy that it would expect to receive a copy of the draft Treaty text which the Portuguese Presidency is expected to produce on or around 24th July.

The Presidency timetable clearly suggests that there will be IGC material in existence by early October. It is the Committee's view that this should be considered by the House before any agreement is reached. The Committee therefore invites you to appear before it on a suitable date around 10 October to explain further the Government's position on the draft Treaty text as it will then stand.

I understand that the Foreign Affairs Committee have also asked you to give evidence prior to the anticipated conclusion of the IGC and that requests for evidence sessions by two committees of the House may cause difficulties. For our part we would be willing to hold a joint session with the Foreign Affairs Committee if that would be more convenient and I shall be writing to the Chairman of the FAC accordingly.

I am copying this letter to Lord Grenfell and Simon Burton in the House of Lords; Les Saunders in the Cabinet Office; and Tom Hines, Scrutiny Co-ordinator, and Guy Janes, Select Committee Liaison Officer, in the FCO.

Letter from Jim Dobbin MP to Mr Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office, 25 July 2007

In the absence of the Chairman, I presided over the meeting of the Committee today.

The Committee was grateful for your letter of 16 July following your evidence on 4 July on the Annual Policy Strategy and the IGC Mandate. Your letter is not expressed to be in reply to the letter of 11 July from the Committee, and we shall look forward to your reply. The Members of the Committee asked me to pass on their disappointment that they did not have a reply to the questions of acute public interest raised in that letter in time for their meeting today.

The Committee notes your confirmation that Article 1(2) of the Protocol on the application of the Charter does indeed refer to Title IV of the Charter and not to the Charter as a whole. Article 1(2) is an “avoidance of doubt” provision, but whatever doubts were thought to be in issue about the creation of justiciable rights in the UK seem to have been addressed only in relation to Title IV. You may therefore wish to comment further on this point when you reply to the Committee’s letter of 11 July.

It also appears to be the case that the text of Article 1(2) as quoted by the then Prime Minister to the House on 25 June (which omitted any reference to Title IV) was not in fact the text agreed at the European Council.

Finally, the Committee noted that a draft Treaty text was published by the Portuguese Presidency on Monday, but that it was not available in English. This has had a serious effect on the ability of the House properly to consider the matter and to hold the Government to account before the House goes into recess. I trust that representations will be made at a suitably high level to ensure that texts are made available in English in good time to allow them to be considered.

In view of the importance of this latter issue for the proper functioning of the scrutiny system, I am copying this letter to the Minister for the Cabinet Office.

I am also copying this letter to Lord Grenfell and Simon Burton in the House of Lords; Les Saunders in the Cabinet Office; and Tom Hines, Scrutiny Co-ordinator, and Guy Janes, Select Committee Liaison Officer, in the FCO.

Letter from Mr Jim Murphy MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman of the Committee, 31 July 2007

Thank you for your letter of 11 July 2007 requesting written clarification of some of the points raised during our evidence session on 4 July, and for your letter of 19 July 2007 regarding the Commission opinion on the Intergovernmental Conference (IOC).

The query in your letter of 11 July on the Charter and the Protocol secured by the UK was covered in my letter to you of 16 July. I attach a copy for ease of reference.

I agree with you on the importance of transparency and keeping Parliament informed during the IGC. I am happy to repeat a commitment I made in my recent evidence session with the Lords EU Select Committee on 12 July. All IGC papers which are not classified or circulated in confidence will be placed in the libraries of both Houses and forwarded to the Committee Clerks for information. Where there is any uncertainty over a document’s status we will press the Council Secretariat and Presidency for permission to share it with Parliament.

FCO officials have worked with your Committee Clerks to create a distribution list to enable the forwarding of Presidency papers during the IGC. The first document, the draft Reform Treaty text (French language version) was sent to our Committee, the Libraries of both Houses, the Foreign Affairs Committee and the Lords EU Select Committee on Monday 23 July. We shall forward the English language version as soon as we get it.

Both the Foreign Secretary and I stand ready to give oral evidence on the progress of the IGC. I know that your Committee clerks are in touch with FCO officials regarding dates.

As we discussed during the evidence session on 4 July, the draft IGC Mandate was circulated by the German Presidency at 5pm on 19 June. It was discussed by Ministers in the days leading up to the June European Council. The IGC, which opened on 23 July, will now consider the detail of the mandate with the

aim of agreeing a Treaty text by the 18–19 October 2007 informal meeting of Heads of State and Government in Lisbon. This is an ambitious timetable, but achievable. The Government has set out its approach to the IGC in the White Paper presented to Parliament on 23 July.

You also raised the issue of the interpretation of the Charter of Fundamental Rights by the European Court of Justice (ECJ), and how the concept of the uniform application of Union law would impact upon it.

The UK-specific Protocol which the Government secured is not an “opt-out” from the Charter. Rather, the Protocol clarifies the effect the Charter will have in the UK. The UK Protocol confirms that nothing in the Charter extends the ability of any court to strike down UK law. In particular, the social and economic provisions of Title IV of the Charter give people no greater rights than are given in UK law. Any Charter rights referring to national law and practice will have the same limitations as those rights in national law. The Protocol confirms that since the Charter creates no rights, or circumstances in which those rights can be relied upon before the courts, it does not change the status quo. Your specific question on the Protocol reference to Title IV was answered in my letter of 16 July.

In your letter of 19 July, you asked about the Commission’s view of the effect of the Charter. The Commission’s opinion states that “the Charter of Fundamental Rights will offer Europeans guarantees with the same legal status as the treaties themselves, bringing together civil, political, economic and social rights which the Union’s action must respect.” The IGC mandate provides that the Charter of Fundamental Rights text will not be included in the text of the new Reform Treaty. The Reform Treaty will include a legally binding reference to a separate Charter text (the text agreed at the 2004 ICC on the Constitutional Treaty) making the Charter binding on EU Institutions and Member States when implementing EU law. HMG supports the Charter which reaffirms rights and principles already recognised in EU and national law but makes them more visible and binding on the EU institutions.

The Commission opinion also states that the Charter “provisions will also apply in full to acts of implementation of Union law, even if not in all Member States.” This refers to the legally binding UK-specific Protocol secured in the IGC mandate.

We have submitted an Explanatory Memorandum on the Commission’s opinion of the IGC in the usual way. Your letter of 19 July also raised a number of issues regarding the Commission opinion on the convening of an IGC to draft the EU Reform Treaty. In answer to your first point, HMG supports the June 2007 European Council conclusions on the IGC mandate, also supported by the Commission in their formal opinion. The mandate provides the exclusive basis and framework for the work of the IGC. Such a mandate was necessary to ensure that the timetable for agreement of a new Reform Treaty text by the end of 2007 and ratification by mid-2009 was met. We are content with the draft IGC Mandate agreed at the June European Council. As the Prime Minister has said “we secured our negotiating objectives and we want them reflected in all the detail of the agreements over the next few months.”

You also raise the issue of the structure of the existing EU Treaties. The Reform Treaty will contain two substantive clauses amending the Treaty on the European Union (TEU) and the Treaty establishing the European Community (TEC). The Treaties will maintain their distinctive features (eg CFSP will remain in the TEU). The TEU will keep its present name and the TEC will be called the Treaty on the Functioning of the Union. The remainder of the third pillar for police and judicial co-operation in criminal matters will form part of the latter Treaty. The UK will, however, have the right to opt in to individual measures.

You make particular reference to Article 47 TEU and the relative status of the EU and EC Treaties. In accordance with the IGC Mandate, that article will not be retained but there will be new Articles in both the Treaty on the European Union and the re-named Treaty on the Functioning of the European Union which will state that the two Treaties will have the same legal value.

I am copying this letter to Lord Grenfell, Chairman of the Lords European Union Committee, copying to the Clerks of both Committees and to Les Saunders at the Cabinet Office, Tom Hines, Departmental Scrutiny Coordinator, and Guy Janes, Select Committee Liaison Officer.
