



Statewatch Reform Treaty

Likely revised text of the Treaty establishing the European Union (TEU)

Prepared by
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[Annotated version, 26 June 2007]

Introduction

The following text sets out what will likely be the text of the Treaty on European Union (TEU) following the amendments to be agreed by the planned Reform Treaty. This text is based on the relevant text of the EU's Constitutional Treaty as signed in 2004 (OJ 2004 C 310), the text of which would be inserted by the planned 'Reform Treaty' into the EU Treaty and the EC Treaty (TEC, to be renamed the 'Treaty on the Functioning of the Union', or TFEU), including amendments referred to in the mandate for the Intergovernmental Conference (IGC) which was agreed by EU leaders on 23 June. It includes also the text of the existing EU Treaty, where that text will not be amended.

This is **not** an official text. The official text of a draft Treaty is due to be circulated when the IGC officially begins (this is planned for July 23), and this text will be finalised upon conclusion of the IGC (planned for 18-19 October). Some further changes to the text are possible before its signature - which is likely on 13 December (the planned date of an EU summit meeting), if the IGC concludes as planned in October.

Any text which I consider is particularly likely to be altered is set out in square brackets. Additions from the existing TEU are set out in bold/underline; deletions are either set out in ~~strikeout~~ or set out or explained in italics. I have also indicated points where the text would differ from the equivalent provisions of the Constitutional Treaty.

It is not clear whether the Articles of the revised TEU will have titles. Under the existing TEU, they do not, but under Part I of the Constitutional Treaty, they did. I have assumed that they will not.

The numbering of the Treaty Articles is likely to change, although the IGC mandate does include numbering for the first few Articles, which I have followed. I have included only provisional numbers at present, and have retained the existing numbering where possible for ease of reference. These numbers will obviously change, and the wording of the text relating to the decision-making process is provisional, as it is not clear how the Reform Treaty drafters will refer to decision-making processes.

The annotations in italics compare the text of the Reform Treaty to the current Treaty rules, and also explain the changes to the Constitutional Treaty text which EU leaders have agreed in the IGC mandate for negotiations on the Reform Treaty.

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE CZECH REPUBLIC, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE REPUBLIC OF ESTONIA, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE

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

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

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

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

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

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

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

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

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

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

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

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

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

RESOLVED to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity,

IN VIEW of further steps to be taken in order to advance European integration,

HAVE DECIDED to establish a European Union and to this end have designated as their Plenipotentiaries:

The new addition to the preamble is taken from the preamble to the Constitutional Treaty, as agreed in the IGC mandate.

TITLE I: COMMON PROVISIONS

Article 1

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

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

~~The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty. Its task shall be to organise, in a manner demonstrating~~

consistency and solidarity, relations between the Member States and between their peoples.

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

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

Article 2

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

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

Article 3

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

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

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

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

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

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

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

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

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

This clause is taken from Article I-3 of the Constitutional Treaty, as amended to delete a reference to competition, to include a reference to monetary union and the euro, and to define the area of 'freedom, security and justice'. The latter two amendments are taken from the text of the current Article 2 TEU, which this clause replaces. The current Article 2 TEU reads as follows:

The Union shall set itself the following objectives:

- to promote economic and social progress and a high level of employment and to achieve balanced and sustainable development, in particular through the creation of an area without internal frontiers, through the strengthening of economic and social cohesion and through the establishment of economic and monetary union, ultimately including a single currency in accordance with the provisions of this Treaty;
 - to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17;
 - to strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union;
 - to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime;
 - to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community.
- The objectives of the Union shall be achieved as provided in this Treaty and in accordance with the conditions and the timetable set out therein while respecting the principle of subsidiarity as defined in Article 5 of the Treaty establishing the European Community.

The IGC mandate also includes the agreed text of a Protocol on the internal market and competition.

Article 4

1. In accordance with Article [7b], competences not conferred upon the Union in the Treaties remain with the Member States.

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

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

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

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

This text is taken from Article 1-5 of the Constitutional Treaty, amended to add a new first paragraph (I have updated the cross-reference) and a new line to the end of paragraph 2, as agreed in the IGC mandate. The first paragraph is identical to Article 7b(2).

Paragraph 2 could be regarded as the successor to the current Article 6(3) TEU, which provides that, 'The Union shall respect the national identities of its Member States.'

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

This Article replaces the current Article 3 TEU, which could be regarded as being subsumed within the new Title III on institutions (see below). It read as follows:

The Union shall be served by a single institutional framework which shall ensure the consistency

*and the continuity of the activities carried out in order to attain its objectives while respecting and building upon the *acquis communautaire*.*

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

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

Article 5

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

It is not clear from the IGC mandate whether this provision of the current TEU will be retained, or whether it will be deleted on the grounds that it is subsumed within the institutional Title.

Article 6

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

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

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

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

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

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

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

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

Paragraph 3 of this Article replaces the current Article 6(2) TEU, which provides as follows: 'The Union

shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.’ The change in wording does not appear to change the meaning. The general principles have been established and developed by the Court of Justice since the early 1970s.

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

Article I-10 of the Constitutional Treaty, concerning EU citizenship, will not be inserted into the TEU. The citizenship provisions will be left in the TEC/TFEU instead.

Article 7

1. On the reasoned initiative of one third of the Member States, or of the European Parliament or on a proposal from the Commission, the Council may adopt a [European decision] determining that there is a clear risk of a serious breach by a Member State of the values mentioned in Article 2. The Council shall act by a majority of four fifths of its members after obtaining the consent of the European Parliament.

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

2. The European Council, on the initiative of one third of the Member States or on a proposal from the Commission, may adopt a [European decision] determining the existence of a serious and persistent breach by a Member State of the values mentioned in Article 2, after inviting the Member State in question to submit its observations. The Council shall act unanimously after obtaining the consent of the European Parliament.
3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may adopt a European decision suspending certain of the rights deriving from the application of the Constitution to the Member State in question, including the voting rights of that Member of the Council representing that State. The Council of Ministers shall take into account the possible consequences of such a suspension for the rights and obligations of natural and legal persons.

In any case, that State shall continue to be bound by its obligations under the Treaties.

4. Subsequently, the Council, acting by a qualified majority, may adopt a European decision varying or revoking measures adopted under paragraph 3 in response to changes in the situation which led to their being imposed.

This text is the same as the current Article 7 TEU, with some minor amendments made by the Constitutional Treaty (see Article I-59 of that Treaty), such as the name of the type of act adopted, plus decision-making by the European Council, rather than the Council made up of heads of government (this is a distinction without a difference). According to the IGC mandate, paras 5 and 6 of Article I-59 will be inserted into Article 309 EC, so they are not reproduced here.

Article 7a

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

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

This clause is taken from Article I-56 of the Constitutional treaty, which will be inserted here. It is new as compared to the current Treaties, although paragraph 2 reflects long-standing practice.

[Article 7b]

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

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

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

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

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

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

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

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

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

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

[Current Titles II to IV, Articles 8 to 10 TEU, to be deleted]

The IGC mandate clearly implicitly assumes that these three Articles of the current TEU will be deleted. However, this would appear to be a technical error, since these Articles contain the text of the amendments to the Community Treaties made by the original version of the Treaty on European Union in 1993.

TITLE II: Provisions on democratic principles

From this point on, most of the Treaty provisions are new; I have therefore refrained from placing them all in bold and underline.

[Article 8]

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

This text is taken from Article I-44 of the Constitutional Treaty.

[Article 9]

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

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

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.

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

[Article 10]

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.
3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.
4. Not less than one million citizens coming from a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit an appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

This text is taken from Article I-46 of the Constitutional Treaty. The 'legal base' for the adoption of legislation on this issue will be moved to Article 27 of the TEC/TFEU, according to the IGC mandate. This is surely a technical error, since Article 27 concerns customs union. The line on the 'legal base' read as follows: 'A European law [Regulation] shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which they must come'.

[Article 10a]

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

- a) through being informed by the institutions of the Union and having draft European legislative acts forwarded to them in accordance with the Protocol on the role of national parliaments in the European Union;
- b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article [III-260], and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles [III-276 and III-273];
- d) by taking part in the revision procedures of the Treaties, in accordance with Article [IV-443 and IV-444];
- e) by being notified of applications for accession to the Union, in accordance with Article [49];
- f) by taking part in the interparliamentary cooperation between national parliaments and with the

European Parliament, in accordance with the Protocol on the role of national parliaments in the European Union.

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

TITLE III: PROVISIONS ON INSTITUTIONS

[Article 10b]

1. The Union shall be served by an institutional framework which shall aim to:

- advance its objectives,
- promote its values,
- serve its interests of the Union, those of its citizens and those of its Member States,
- ensure the consistency, effectiveness and continuity of its policies and actions

2. This institutional framework comprises:

The European Parliament,
The European Council,
The Council of Ministers (hereinafter 'Council'),
The European Commission (hereinafter 'Commission'),
The Court of Justice of the European Union.

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

This is Article I-19 of the Constitutional Treaty. It is derived from Articles 5 TEU and 7(1) TEC. At least the latter provision will presumably be repealed.

[Article 10c]

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

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

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter for further elections, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, [a European decision] establishing the composition of the European Parliament, respecting the principles set out in the first paragraph above.

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

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

This is Article I-20 of the Constitutional Treaty, and is based on certain current TEC provisions, with amendments. It is possible that some provisions may be (re-) inserted into the TEC/TFEU.

[Article 10d]

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define the general political directions and priorities thereof. It shall not exercise legislative functions.

2. The European Council shall consist of the Heads of State or Government of the Member States,

together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, the members of the European Council may decide to be assisted by a minister and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene a special meeting of the European Council.

4. Except where the Treaties provides otherwise, decisions of the European Council shall be taken by consensus.

5. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.

6. The President of the European Council:

- shall chair it and drive forward its work,
- shall ensure its preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
- shall endeavour to facilitate cohesion and consensus within the European Council,
- shall present a report to the European Parliament after each of the meetings of the European Council.

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

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

8. Within the European Council, its President and the President of the Commission do not vote.

This is Articles 1-21 and 1-22 of the Constitutional Treaty, along with Article 1-25(4), redrafted as the IGC mandate suggests. It can be compared to the current Article 4 TEU (see above). It is possible that some provisions may be inserted into the TEC/TFEU, and that a different approach will be taken to redrafting..

[Article 10e]

1. The Council shall, jointly with the European Parliament, exercise legislative and budgetary functions. It shall carry out policy-making and coordinating functions, as laid down in the Treaties.

2. The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote.

3. Except where the Treaties provide otherwise, decisions of the Council shall be taken by qualified majority. A qualified majority shall be defined as at least 55% of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65% of the population of the Union.

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

4. The Council shall meet in different configurations. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation.

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

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

7. A Committee of Permanent Representatives of the Governments of the Member States shall be

responsible for the preparation of the work of the Council.

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

This is Articles I-23 to I-25 of the Constitutional Treaty, which were based on certain current TEC provisions, with amendments. It excludes several provisions which the IGC mandate specifies will be inserted into the TEC/TFEU: the rules on QMV in the European Council, the legal bases for adopting the list of Council configurations, and on the Presidency of these configurations, and an exceptional rule on qualified majority voting when the Council does not act on a Commission proposal. It has also been redrafted for conciseness, as the IGC mandate suggests, although it is possible that the Treaty drafters will follow a different approach to redrafting. It is possible that some other provisions may be inserted into the TEC/TFEU.

The IGC mandate agreed to delay the application of the new rules on Council voting. It is assumed that, as with the Constitutional Treaty, the details of this agreement will be set out in a Protocol to the Treaties.

[Article 10f]

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure that the Treaties and the measures adopted by the institutions pursuant thereto are applied. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall implement the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.
2. Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.
3. The Commission's term of office shall be five years.
4. The Members of the Commission shall be chosen on the ground of their general competence and European commitment and their independence shall be beyond doubt.
5. The first Commission appointed after the entry into force of the Reform Treaty shall consist of one national of each Member State, including its President and the Union Minister for Foreign Affairs who shall be one of its Vice-Presidents.
6. As from the end of the term of office of the Commission referred to in paragraph 5, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two-thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this figure.

They shall be selected among the nationals of the Member States on the basis of a system of equal rotation between the Member States.
7. In carrying out its responsibilities the Commission shall be completely independent. Without prejudice to paragraph 10, the Members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or agency. They shall refrain from any action incompatible with their duties or the performance of their tasks.
8. The Commission, as a body, shall be responsible to the European Parliament. Under the procedures set out in [Article III-243], the European Parliament may vote on a censure motion on the Commission. If such a motion is carried, the Members of the Commission shall resign as a body and the High Representative shall resign from the Commission.
9. Taking into account the elections to the European Parliament and after having held the appropriate

consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If he or she does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

10. The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in Article [I-25(4) and (6)] second subparagraph.

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

11. The President of the Commission shall:

- (a) lay down guidelines within which the Commission shall carry out its tasks;
- (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;
- (c) appoint Vice-Presidents, other than the High Representative, from among the Members of the Commission.

A Member of the Commission shall resign if the President so requests. The High Representative shall resign, in accordance with the procedure set out in Article [I-27(1)], if the President so requests.

This is Articles I-26 and I-27 of the Constitutional Treaty, which are based on certain current TEC provisions, with amendments. It excludes the provision on the legal base for adopting the rules on rotation of the Commission, which the IGC mandate specifies will be inserted into the TEC/TFEU. It has also been redrafted for conciseness, as the IGC mandate suggests, although it is possible that the Treaty drafters will follow a different approach to redrafting. It is possible that some other provisions may be inserted into the TEC/TFEU.

[Article 10g]

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his or her term of office by the same procedure.
2. The High Representative shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The High Representative shall preside over the Foreign Affairs Council.
4. The High Representative shall be one of the Vice-Presidents of the Commission. He or she shall ensure the consistency of the Union's external action. He or she shall be responsible within the Commission for responsibilities falling to it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

This is Article I-27 of the Constitutional Treaty, amended to change the title of the 'Union Minister for Foreign Affairs'. I have assumed that the full title need only be set out once in each Article in which the High Representative is mentioned. It would be better still, in the interests of readability, to set out his or her full title only once in the Treaty.

[Article 10h]

1. The Court of Justice of the European Union shall include the Court of Justice, the General Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Treaties.

Member States shall provide rights of appeal sufficient to ensure effective legal protection in the fields covered by Union law.

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

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

The judges and the Advocates-General of the Court of Justice and the judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles [III-260 and III-261]. They shall be appointed by common accord of the governments of the Member States for a term of six years. Retiring judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall in accordance with the provisions of [the Treaties]:
 - rule on actions brought by a Member State, an Institution or a natural or legal person;
 - give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
 - rule in other cases provided for in the Treaties.

This is Article I-29 of the Constitutional Treaty, incorporating the current Article 220 TEC and aspects of the current Article 221 TEC, and referring to . It is possible that some provisions may be (re-inserted into the TEC/TFEU.

Title IV: Provisions on Enhanced cooperation

[Article 10i]

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the procedures laid down in this Article and in Articles [III-322 to III-329].

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with [Article III-324].

2. The [European decision] authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine of the Member States participate in it. The Council shall act in accordance with the procedure laid down in Article [III-325].
3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.

Unanimity shall be constituted by the votes of the representatives of the participating Member States only.

A qualified majority shall be defined as a majority of the members of the Council representing the participating Member States, comprising at least three fifths of the population of the participating Member States.

Where the Council does not act on a Commission proposal, or on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, the required qualified majority shall be defined as a majority of two thirds of the members of the Council representing the participating Member States, comprising at least three fifths of the population of the participating Member States.

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

This takes over Article I-44 of the Constitutional Treaty, as set out in the IGC mandate.

TITLE V

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

In accordance with the IGC mandate, the provisions on the Common Foreign and Security Policy will remain in the TEU, except for the flexibility provisions, but will be otherwise unchanged from the Constitutional Treaty, apart from an amendment to Article 11 TEU. There will also be some declarations on the nature of the CFSP.

I have retained the Constitutional Treaty numbering for ease of reference. Footnotes compare the text to the existing Treaty rules. It is not clear whether foreign policy acts will be renamed, or whether Articles I-16, I-40 and I-41 will be retained.

CHAPTER I

General provisions on the Union's External Action

[Article 10j (ex Article III-292)¹]

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

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

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

- (a) safeguard the common values, fundamental interests, security, independence and integrity of the Union;
- (b) consolidate and support democracy, the rule of law, human rights and international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;
- (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
- (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
- (f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
- (g) assist populations, countries and regions confronting natural or man-made disasters;
- (h) promote an international system based on stronger multilateral cooperation and good global governance.

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

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

¹ New; but see Arts. 11(1) EU and 131 177, and 181a EC which set out objectives in certain areas. For para 3 (sub-para 1) see Art. 178 EC, which requires other EC measures to be consistent with development policy; and for the consistency requirement (sub-para 2) see Art 3 EU.

[Article 10k (ex Article III-293)²]

1. On the basis of the principles and objectives referred to in [Article III-292], the European Council shall identify the strategic interests and objectives of the Union.

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

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

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

**CHAPTER II
COMMON FOREIGN AND SECURITY POLICY**

Article 11³

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

The common foreign and security policy is subject to specific procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor the compliance with Article [III-308] and to review the legality of certain decisions as provided for by Article [III-376, second subparagraph].

2. The Member States shall support the common foreign and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.

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

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

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

- (a) defining the general guidelines;
- (b) adopting European decisions on:
 - (i) actions of the Union,
 - (ii) positions of the Union,
 - (iii) implementation of actions and positions;

² Para 1 is based on Art. 13(2) and 13(3), sub-para 2 EU on 'common strategies'; note that the renaming of these acts as 'European decisions' makes clear that they are binding; explicitly clear that they can cover all of current three pillars; explicit reference to thematic common strategies.

³ Paras 1 and 2 are Art. 11 EU, as amended by Article III-294 CT, with a further change to para 1 as agreed in the IGC mandate. The CFSP objectives were removed from Article 11 TEU to [Art III-292]; also a reference to the High Representative was added by the CT. Para 3 is an updated version of Art. 12 EU.

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

Article 11a [III-295]⁴

1. The European Council shall define the general guidelines for the common foreign and security policy, including for matters with defence implications.

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

2. The Council shall adopt the [European decisions] necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines and strategic lines defined by the European Council.

[Article 11b (ex-III-296)⁵

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

2. For matters relating to the common foreign and security policy, the Union shall be represented by the High Representative. He shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his or her mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States.⁶

[Article 11c (ex-III-297)]⁷

1. Where the international situation requires operational action by the Union, the Council shall adopt the necessary [European decisions]. Such decisions shall lay down the objectives, the scope, the means to be made available to the Union, if necessary the duration, and the conditions for implementation of the action.

If there is a change in circumstances having a substantial effect on a question subject to such a [European decision], the Council shall review the principles and objectives of the action and adopt the necessary [European decisions]. As long as the Council has not acted, the [European decision on action by the Union] shall stand.

2. Such [European decisions] shall commit the Member States in the positions they adopt and in the conduct of their activity.

Whenever there is any plan to adopt a national position or take national action pursuant to a [European decision] as referred to in paragraph 1, information shall be provided in time to allow, if necessary, for prior consultations within the Council. The obligation to provide prior information shall not apply to arrangements which are merely a national transposition of [European decisions].

In cases of imperative need arising from changes in the situation and failing a new [European decision], Member States may make the necessary arrangements as a matter of urgency, having regard to the general objectives of the [European decision] referred to in paragraph 1. The Member State concerned shall inform the Council immediately of any such arrangements.

5. Should there be any major difficulties in implementing a [European decision] as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate

⁴ Para. 1, sub-para 1 is Art. 13(1) EU. Para. 1, sub-para 2 is new, but confirms practice and is based on ability to call Council quickly in Art. 22(2) EU. Para. 3 is Art. 13(3) EU, sub-para 1.

⁵ New; replaces Art. 18 EU (representation) and Art. 26 EU (High Representative).

⁶ There will be a Declaration on the creation of a European External Action Service.

⁷ Art. 14 EU on Joint Actions; identical in substance except for deletion of Art. 14(4) on possible request to Commission to make proposals for implementation.

solutions. Such solutions shall not run counter to the objectives of the action or impair its effectiveness.

[Article 11d (ex-III-298)]⁸

The Council shall adopt European decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to the positions of the Union.

[Article 11e (ex-III-299)]⁹

1. Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer to the Council any question relating to the common foreign and security policy and may submit proposals to it.
2. In cases requiring a rapid decision, the High Representative, of his or her own motion or at the request of a Member State, shall convene an extraordinary meeting of the Council within forty-eight hours or, in an emergency, within a shorter period.

[Article 11f (ex-III-300)]¹⁰

1. [European decisions] referred to in this Chapter shall be adopted by the Council acting unanimously. Abstentions by members present in person or represented shall not prevent the adoption of such decisions.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the [European decision], but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position.

If the members of the Council qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from paragraph 1, the Council shall act by qualified majority:
 - (a) when adopting [European decisions] on Union actions and positions on the basis of a [European decision] of the European Council relating to the Union's strategic interests and objectives, as referred to Article III-[293(1)];
 - (b) when adopting a [decision on a Union action or position], on a proposal which the High Representative has put to it following a specific request to him from the European Council made on its own initiative or that of the High Representative;
 - (c) when adopting any [European decision] implementing a Union action or position;
 - (d) when adopting a [European decision] concerning the appointment of a special representative in accordance with [Article III-302].

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

3. [In accordance with Article I-40(7)], the European Council may decide unanimously that the

⁸ Art. 15 EU on Common Positions; identical in substance.

⁹ Amends Art. 22 EU to give Council Presidency and Commission powers to High Rep.

¹⁰ Amends Art. 23 EU; changes are: revised threshold for abstainers blocking decision (para. 1, sub-para. 2); the prospect of QMV following a proposal from the High Rep, in certain conditions (para 2(b)); the 'emergency brake' applies where *vital* reasons, rather than *important* reasons, of national policy are at stake; the Foreign Minister has a mediating role when the brake is pulled; and the European Council has the power to extend QMV (para. 3), but note this does not apply to defence (para. 4).

Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

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

[Article 11g (ex-III-301)]¹¹

1. When the Union has defined a common approach within the meaning of [Article I-40(5)], the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

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

[Article 11h (ex-III-302)]¹²

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

[Article 11i (ex-III-303)]¹³

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

[Article 11j (ex-III-304)]¹⁴

1. [In accordance with Article I-40(7)], The High Representative of the Union for Foreign Affairs and Security Policy shall consult [and inform] the European Parliament [on the main aspects and the basic choices of the common foreign and security policy, including the common security and defence policy], [in accordance with Article I-40(8) and I-41(8)]. He or she shall ensure that the views of the European Parliament are duly taken into consideration. [The European Parliament shall be kept regularly informed by the High Representative of the development of the common foreign and security policy, including the common security and defence policy.] Special representatives may be involved in briefing the European Parliament.

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

[Article 11k (ex-III-305)]¹⁵

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

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

2. [In accordance with Article I-16(2)], Member States represented in international organisations or international conferences where not all the Member States participate shall keep the latter, as well as the

¹¹ New clause; but see Art. III-306 below.

¹² Art. 18(5) EU amended re High Representative appointment and control of representatives; note that in practice Joint Actions already specify that the representatives are responsible to the current High Representative.

¹³ Replaces Art. 24 EU; the procedural details have been moved to the general clause on conclusion of treaties ([Article III-325]). Note that there is no longer reference to treaties which are 'necessary' or which 'implement' the CFSP Title.

¹⁴ Art. 21 EU, slightly amended to include references to the High Representative (who replaces the Council Presidency as interlocutor), to add possibility of special representatives contacting the EP and to require a twice-annual (rather than annual) debate. Two different wordings are suggested; the final wording will depend on whether Articles I-40 and I-41 of the Constitutional Treaty are retained or not.

¹⁵ Art. 19 EU, with two amendments: the High Representative organises the coordination, and the Member States in the Security Council must allow him/her to speak on the EU's behalf.

High Representative, informed of any matter of common interest.

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

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

[Article 11.1 (ex-III-306)]¹⁶

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that the European decisions relating to Union positions and actions adopted pursuant to this Chapter are complied with and implemented. They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the provisions referred to in [Article 20 TEC/TFEU] on the rights of European citizens to protection in the territory of a third country and the measures adopted pursuant to [that Article].

[Article 11m (ex-III-307)]¹⁷

Without prejudice to [Article 207 TEC/TFEU], a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council of Ministers at the request of the Council, or of the High Representative of the Union for Foreign Affairs and Security Policy, or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the responsibility of the High Representative.

Within the scope of this Chapter, this Committee shall exercise, under the responsibility of the Council and of the High Representative, political control and strategic direction of crisis management operations, as defined in [Article III-309].

The Council may authorise the Committee, for the purpose and for the duration of a crisis management operation, as determined by the Council, to take the relevant measures concerning the political control and strategic direction of the operation.

[Article 11n (ex-III-308)]¹⁸

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers laid down by the Treaties for the exercise of the Union's competences listed in [Articles I-13 to I-15 and I-17].

Likewise, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers laid down by the Treaties for the exercise of the competence referred to in [Article I-16].

¹⁶ Art. 20 EU, amended to refer to Union delegations instead of Commission delegations, and to update cross-reference to EU citizens' consular protection rights (the obligation of Member States to negotiate agreements on this issue in the current Art. 20 EC would be replaced by a power to adopt an EU law by Council QMV and consultation of EP. This power was in turn amended by the IGC mandate.

¹⁷ Art. 25 EU, amended to include references to the High Representative and delete reference to Art. 47 EU; but see [Art. III-308].

¹⁸ New, but in effect a successor clause to Art. 47 EU, although note different wording.

SECTION 2
THE COMMON SECURITY AND DEFENCE POLICY

[Article 11o (ex-III-309)]¹⁹

1. The tasks [referred to in Article I-41(1)], *in the course of which the Union may use civilian and military means*, shall include *joint disarmament operations*, humanitarian and rescue tasks, *military advice and assistance tasks*, *conflict prevention and peace-keeping tasks*, tasks of combat forces in crisis management, including peacemaking, and *post-conflict stabilisation*. *All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.*

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

[Article 11p (ex-III-310)]²⁰

1. Within the framework of the [European decisions] adopted in accordance with [Article III-309], the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability to undertake the task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree between themselves on the management of the task.

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

[Article 11q (ex-III-311)]²¹

1. The Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) [established by Article I-41(3)] and subject to the authority of the Council, shall have as its task to:

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

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

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

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

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

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a [European decision] defining the Agency's statute, seat

¹⁹ Para. 1 updates 'Petersberg tasks' in Art. 17(2) EU (changes are italicised). The separate decision-making provision of para. 2 is new.

²⁰ New; note that Art. 27b EU rules out application of enhanced cooperation to defence matters.

²¹ This is a new clause; but note that the EU established such an agency in 2004, in advance of the Constitutional Treaty being signed.

and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

[Article 11r (ex-III-312)]²²

1. Those Member States which wish to participate in the permanent structured cooperation [referred to in Article I-41(7)], which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative.
2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.
3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation, shall notify its intention to the Council and to the High Representative.

The Council shall adopt a [European decision] confirming the participation of the Member State concerned...[further provisions on voting rules, including withdrawal, and a requirement to vote by unanimity on the tasks themselves]

SECTION 3
FINANCIAL PROVISIONS

[Article 11r (ex-III-313)]²³

1. Administrative expenditure which the provisions referred to in this Chapter entail for the institutions shall be charged to the Union budget.
2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council decides otherwise.

In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under [Article III-300(1)], second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a [European decision] establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in [Article I-41(1) and III-309]. It shall act after consulting the European Parliament.

Preparatory activities for tasks as referred to in [Article I-41(1) and III-309] which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

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

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

²² New; note that Art. 27b EU rules out application of enhanced cooperation to defence matters.

²³ Paras. 1 and 2 are Art. 27(2) and (3) EU, without amendment. Art. 27(4) EU has been deleted, presumably because it is no longer necessary following restructuring of the Treaties. Para. 3 is new.

When the task planned in accordance with [Article I-41(1) and Article III-309] cannot be charged to the Union's budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

SECTION 4 DATA PROTECTION

Article 11s (new)

Without prejudice to [Article 286 TEC/TFEU], the Council shall adopt a [European decision] relating to the protection of individuals with regard to the processing of personal data falling within the scope of this Title by Union [institutions, bodies, offices and agencies], and by the Member States when carrying out activities which fall within the scope of [this Title], and the rules relating to the free movement of this data. Compliance with these rules shall be subject to the control of independent authorities.

The IGC mandate calls for a new legal base dealing specifically with data protection within the scope of the foreign policy Title, which will be kept distinct from the general legal base dealing with this issue as regards all other areas of EU law (the general legal base is currently Article 286 TEC, which will be amended in accordance with Article I-51 of the Constitutional Treaty). I have assumed that this legal base will appear in a separate Section, and will be subject to the normal foreign policy decision-making rules by default (the IGC mandate does not address these issues). Since the IGC mandate does not include the text of the new clause, I have drafted the text above, based on Article I-51(2) of the Constitutional Treaty, to indicate what the provision will probably look like.

TITLE VI: Final Provisions

Article 46

This clause will be deleted, according to the IGC mandate. It sets out restrictions on the jurisdiction of the Court of Justice as regards the current TEU. It will be replaced by a specific restriction in Article 11 TEU, as amended by the IGC mandate (see above) and a specific restriction on aspects of criminal law and policing in the TEC/TFEU (see Article III-377 of the Constitutional Treaty).

Article 47

This clause will be deleted, according to the IGC mandate. It concerns the distinctions between the three pillars. It will be replaced, according to the IGC mandate, by a clause on the distinctions between foreign policy measures on the one hand, and other measures on the other hand, as set out in Article 11 TEU, as amended by the IGC mandate, and Article III-308 of the Constitutional Treaty, to be inserted into the TEU (see above).

New Article 47

The Union shall have legal personality.

Taken from Article I-7 of the Constitutional Treaty, as referred to in the IGC mandate.

Article 48

Normal revision procedure

1. The government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of this Treaty. These proposals shall be submitted to the European Council by the Council and the national Parliaments of the Member States shall be notified.

Amendments may increase or reduce the competences of the Union.

2. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments of the Member States, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of

institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 3.

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

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

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

Simplified revision procedures

4. Where [the TFEU] provides for the Council to act by unanimity in a given area or case, the European Council may adopt a [European decision] authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

5. Where [the TFEU] provides for [Regulations and Directives] to be adopted by the Council according to a special legislative procedure, the European Council may adopt a [European decision] allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure.

6. Any initiative taken by the European Council on the basis of paragraphs 4 or 5 shall be notified to the national Parliaments of the Member States. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 4 or 5 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the European decisions referred to in paragraphs 4 and 5, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

7. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of [Title III of Part III of the TFEU] on the internal policies of the Union.

8. The European Council may adopt a [European decision] amending all or part of the provisions of [Title III of Part III of the TFEU]. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.

Such a decision shall not come into force until it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The [European decision] referred to in paragraph 8 may not increase the competences conferred on the Union by [this Treaty].

This clause incorporates the current Article 48 TEU, as amended by the Constitutional Treaty, plus the additional two procedures for revision in the Constitutional Treaty (see Articles IV-443 to IV-445), consolidated into one Article as provided for by the IGC mandate. I have added headings for the sake of clarity. The final line of Article 48(1) is the suggested text of a new clause referred to in the IGC mandate; it might be questioned whether it should be spelled out also that EU powers could also be reduced by means of the simplified procedure set out in paras 7-9.

Article 49

1. Any European State which respects the values referred to in Article 2 and is committed to

promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

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

Following the IGC mandate, paragraph 1 is amended as in the Constitutional treaty. The IGC mandate also adds a final line to this para. Para 2 is unchanged.

Article 49a

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article [III-325(3)]; it shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.
4. For the purposes of paragraph 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

A qualified majority shall be defined as a majority of at least 72% of the members of the Council, representing the participating Member States, comprising at least 65% of the population of the participating Member States.

5. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 49.

Taken from Article I-60 of the Constitutional Treaty, as referred to in the IGC mandate.

Article 50

- ~~1. Articles 2 to 7 and 10 to 19 of the Treaty establishing a Single Council and a Single Commission of the European Communities, signed in Brussels on 8 April 1965, are hereby repealed.~~
- ~~2. Article 2, Article 3(2) and Title III of the Single European Act signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 are hereby repealed.~~

The IGC mandate proposes to delete this Article, but this appears to be a technical error. Repealing this Article would bring back into force redundant provisions of previous Treaties.

Article 51

This [Treaty] is concluded for an unlimited period.

The IGC mandate refers to amending this Article, perhaps to consolidate it with the identical provision of the TEC/TFEU (Article 312).

Article 52

1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.
2. This Treaty shall enter into force on 1 January 1993, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step.

The IGC mandate refers to amending this Article, which provides for the entry into force of the original TEU. It is not clear what amendment is planned.

Article 52a

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

The IGC mandate referred to a new provision on territorial scope in the TEU. At present, there is no provision on the territorial scope of the TEU, but only of the TEC (Article 299). This is the text of Article IV-440(1) of the Constitutional Treaty. The IGC mandate states that the remainder of Article IV-440 (paras 2 through 7) will be placed in the final provisions of the TEC/TFEU—presumably amending the current Article 299 EC. I assume that this provision, and the revised Article 299 TEC/TFEU, will apply to both the TEU and the TFEU.

Article 53

1. This [Treaty], drawn up in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish, Swedish, Czech, Estonian, Latvian, Lithuanian, Hungarian, Maltese, Polish, Slovak and Slovenian languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States. *[add Romanian and Bulgarian]*
2. This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.

The IGC mandate refers to amending the languages provisions of the TEU. I assume that the intention is to take over the text of Article IV-448 of the Constitutional Treaty, which alters the current rules to permit translations of the Treaty into additional languages. Again, perhaps this clause can be consolidated with the identical provision of the TEC (Article 314).