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The Treaty establishing a constitution for Europe: An Overview

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Introduction

- As part of the European Council meeting in Brussels on 17-18 June 2004 the heads of government and of state of the EU's 25 member states concluded negotiations on a Treaty establishing a Constitution for Europe. Much of the coverage of the intergovernmental conference (IGC) that drew up the text of this 'Constitutional Treaty' has focused on a limited number of issues on which differences and divisions existed among the member states: the extension of majority voting, the rules for majority voting, the allocation of votes, the presence of 'God' in the preamble. The draft constitution is about far more than these issues and deserves to be seen as such.
- Equally its content deserves far more objective coverage than has been the case so far. In the United Kingdom, much of what has been said and written about the Constitutional Treaty, notably in the press, has been ill-informed and concerned with the conviction that the Constitutional Treaty will undermine national identity and lead inexorably to some form of oppressive EU super-state. In the absence of a prominent and coherent campaign on the part of the government to inform people of the issues being dealt with by the IGC, popular awareness and understanding of the Constitutional Treaty is at best limited and ill-informed and, at worst, characterised by distrust and hostility verging at times on the hysterical.
- This briefing note seeks to provide a more objective presentation and preliminary analysis of the Constitutional Treaty. It consists of three sections. The first sets out, in brief, the process that led to agreement on the Constitutional Treaty in Brussels on 17-18 June. The second section then presents the broad content of the Constitutional Treaty and what it means for

the EU, its member states, and their populations. The third section presents in more detail what is new in the Constitutional Treaty.¹

1. How we got where we are

The Constitutional Treaty has its origins firmly in the two main existing treaties on which the EU is based – the Treaty of Rome (1957) and the Treaty on European Union (1992) – and the various recent treaties that have amended these (e.g. Treaty of Amsterdam, Treaty of Nice).² It should therefore be viewed very much as the outcome of the most recent stage in an ongoing process of treaty reform.

This most recent stage was heralded by the Treaty of Nice which called for a debate on the future of Europe. The call was taken up by the European Council at Laeken in December 2001 and led to the establishment of the European Convention in February 2002. Presided over by the former French President, Valéry Giscard d'Estaing, the European Convention adopted in July 2003 a 'Draft Treaty establishing a Constitution for Europe'.³ This was then used as the basis for discussions on reforming the existing treaties during the IGC that opened in October 2003.⁴

Under the Presidency of the Italian government, these discussions initially saw considerable progress towards agreement on the adoption of a Constitutional Treaty. This raised the prospect of concluding the IGC at the December 2003 European Council. However, there remained a range of issues on which agreement was still outstanding. Notable among these was the proposed new system of calculating a qualified majority – the double majority system – which the Polish and Spanish governments refused to adopt. Unsurprisingly, the European Council failed to bring the IGC to a close.

Indeed, sensing that a 'cooling off' period was required before negotiations could resume, the Irish government refrained from establishing conclusion of the IGC as one of the goals of its Presidency of the Council of Ministers. A change of government in Spain and the adoption by the Polish government of a more compromising position on the double majority issue meant that the Irish Taoiseach, Bertie Ahern, was able to report to the European Council in March 2004 that the prospects for concluding the IGC were now such that the Irish Presidency would resume negotiations. This it did, and, following several rounds of negotiations, the Constitutional Treaty was agreed at the Brussels European Council on 18-19 June 2004.

Although agreed, the Constitutional Treaty still has to be ratified by each of the 25 member states before it can enter into force. This is likely to take around two years and will involve a number of member states, notably the United Kingdom, holding a referendum. There is much speculation that at least one member state will fail to ratify. Conscious of this, it has been agreed that if two years after signature 80% of the member states have completed ratification and one or more member states 'have encountered difficulties in proceeding with ratification',

¹ The briefing note does not aim to be comprehensive nor can it claim to be authoritative since no complete version of the Constitutional Treaty as agreed by the European Council in Brussels on 18-19 June 2004 was available at the time of writing (20 June 2004).

² For the latest consolidated version of the two treaties, see *Official Journal of the European Union*, C325, 24 December 2003. The text has since been amended to accommodate enlargement on 1 May 2004. See *Official Journal of the European Union*, L236, 23 September 2003. Both are available via www.europa.eu.int/eur-lex/en/search/search_treaties.html. For an analysis of the treaties, see Church, C.H. and Phinnemore, D. *The Penguin Guide to the European Treaties: from Rome to Maastricht, Amsterdam and beyond* (Harmondsworth: Penguin, 2002).

³ *Official Journal of the European Union*, C169, 18 July 2003 (available at www.europa.eu.int/eur-lex/en/search/search_treaties.html). On the European Convention, see Norman, P. *The Accidental Constitution: the story of the European Convention* (Brussels: Eurocomment, 2003);

⁴ On the IGC, see the *EU Constitution Project Newsletter* produced by the Federal Trust (London) (via www.fedtrust.co.uk/eu_constitution.html), the *IGC Update* and *Irish Presidency Update* produced by the Institute of European Affairs (Dublin) (via www.iiea.com/projs.html).

the matter will be referred to the European Council. It is not specified what the European Council might do. Before ratification can begin then, however, the text of the Constitutional Treaty agreed in Brussels has to be 'tidied up' and authentic versions produced in 21 languages. It then has to be signed by representatives of each of the member states. This is likely to happen in autumn 2004.

2. Structure and Significance

The Constitutional Treaty consists of a preamble, four 'Parts' and a series of annexes, protocols and declarations (see figure 1).⁵ These contain repackaged and, in some instances, revised versions of the existing treaties on which the EU is based (i.e. the Treaty of Rome and the Treaty on European Union) as well as the Charter of Fundamental Rights of the Union. Given the repackaging, there is considerable truth in the argument that the outcome of the IGC represents a tidying up and simplification of the EU's existing treaty base designed to facilitate greater understanding of the EU. If attention is focused on the most constitution-like element of the Constitutional Treaty – Part I – then there can be no doubt that there is as much clarity in the Constitutional Treaty as in most national constitutions.

The Constitutional Treaty represents more, however, than simply a tidying up exercise. It contains a number of new treaty provisions as well as amendments to existing ones. Many of these are designed to confirm and clarify existing principles and practices. Others represent extensions of the EU's competences. Where the institutions are concerned, some new bodies and posts are created and there are alterations in the distribution of powers. These have a two-fold purpose: ensuring that the enlarged EU of 25 member states continues to function, and making the EU more democratically accountable. Contrary to the view of some, the effect is not a fundamental change to the EU. The existing institutional structure remains essentially intact and there is no major expansion of EU competences. There is for example, no 'great leap forward' as there was with either the Single European Act (1986) that facilitated the realisation of the internal market or the Treaty on European Union (1992) that provided for economic and monetary union and established the common foreign and security policy.

Preamble
Part I
Part II – The Charter of Fundamental Rights of the Union
Part III – The Policies and Functioning of the Union
Part IV – General and Final Provisions
Annexes
Protocols
Declaration
Figure 1: The Structure of the Constitutional Treaty

The Constitutional Treaty will, however, bring about a significant change to the overall structure of the EU. It will do so by effectively abolishing the existing pillar structure of the EU.

⁵ The analysis presented here is based on documents discussed at and press reports of the European Council on 17-18 June 2004 and the meeting of the Council of Ministers on 14 June 2004. For the documents, see IGC 2003: *Meeting of Heads of State or Government, Brussels, 17/18 June 2004*, CIG 85/04, 18 June 2004; IGC 2003: *Meeting of Heads of State or Government, Brussels, 17/18 June 2004*, CIG 84/04, 18 June 2004; IGC 2003: *Meeting of Heads of State or Government, Brussels, 17/18 June 2004*, CIG 83/04, 18 June 2004; IGC 2003: *Meeting of Heads of State or Government, Brussels, 17/18 June 2004*, CIG 82/04, 16 June 2004; IGC 2003: *Meeting of Heads of State or Government, Brussels, 17/18 June 2004*, CIG 81/04, 16 June 2004; IGC 2003: *Ministerial Meeting, Luxembourg, 14 June 2004*, CIG 80/04, 12 June 2004; IGC 2003: *Presidency proposal following the Ministerial meeting on 24 May 2004*, CIG 79/04, 10 June 2004; IGC 2003. See also Meeting of Focal Points (Dublin, 4 May 2004) – Working Document, CIG 73/04, 29 April 2004; 2003 IGC: *Draft Treaty establishing a Constitution for Europe*, CIG 50/03, 25 November 2003. All documents are available at the IGC website of the Council of Ministers: <http://ue.eu.int>.

No longer are the common foreign and security policy (pillar II) and police and judicial cooperation in criminal matters (pillar III) so distinct from the central supranational pillar I. Instead, Pillar III activities will effectively be 'communitarized', i.e. moved from being essentially intergovernmental activities to ones on which member states (in the Council) act on the basis of Commission proposals and in cooperation with the European Parliament. And, although much of what happens under the common foreign and security policy will remain subject to national vetoes, it will become more institutionalised and more integrated with the rest of the EU's external activities (primarily through the creation of a Union Minister for Foreign Affairs who will also be a member of the Commission).

The sense that this will create a more coherent EU is emphasised in the creation of a full-time President of the European Council. Moreover, the conferral of legal personality on the EU as a whole, as opposed to just the European Communities (i.e. Pillar I), creates a greater sense of cohesiveness. That said, abandonment of the pillar structure will not result in the supranational Court of Justice having jurisdiction in all areas. Certain police operations and national measures concerning the maintenance of law and order and the safeguarding of internal security will remain beyond its remit as will most aspects of the common foreign and security policy and all aspects of the common security and defence policy. As such, the departure from the existing structure will not be as radical as many have predicted.

The fact that the Constitutional Treaty will not bring about radical change to the EU is evident from the text. This is because the overwhelming majority of the provisions are taken from the treaties that the Constitutional Treaty will replace. Many are identical in either wording or spirit to those that already exist. What has changed, however, is how the provisions are presented. As noted earlier, the Constitutional Treaty will see the existing Treaty of Rome and the Treaty on European Union replaced by a text comprising four Parts. This will be preceded by a preamble and supplemented by a range of detailed annexes and protocols as well as political declarations. As such, the Constitutional Treaty draws heavily on the proposals contained in the draft Treaty establishing a Constitution for Europe adopted by the European Convention in July 2003.

2.1 Constitutional Treaty

Preamble

The preamble establishes the origins of and rationale for the Constitutional Treaty and the EU and is based on the preamble proposed by the European Convention. It refers to the inspiration provided by Europe's 'cultural, religious and humanist' inheritance; the belief in a post-Cold War Europe promoting further 'civilisation, progress and prosperity'; and the conviction that the peoples of Europe, despite their 'own national identities and history', are 'determined to transcend their ancient divisions and, united ever more closely, to forge a common destiny'. Europe, it is maintained in rather tortuous language, offers its peoples 'the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope'.

Despite the efforts of Poland and other member states, there is no reference to either 'God' or Christianity specifically. Also of note is the non-incorporation of the phrase 'ever closer union among the peoples of Europe' that appears in the preambles to the Treaty of Rome and the Treaty on European Union.

2.2 Constitutional Treaty

Part I

Part I, which is untitled, sets out the fundamentals of the EU in nine Titles (see figure 2). It therefore outlines the aims and objectives of the EU, its competences and policies and how decisions are to be taken.

The first of the nine titles, Title I formally establishes the Union, sets out its values and states its objectives. It then emphasises the EU's respect for the national identities and the essential functions of the member states, affirms the commitment of the EU and the member states to cooperate, and sets out the essential obligations of the member states: to ensure implementation of their obligations, to support the achievement of the EU's tasks and to avoid jeopardising attainment of the EU's objectives. Title I also confirms the existing principle of the primacy of EU law in areas where the EU exercises competence. The provision, but not the principle, is new. Similarly, a provision on symbols (flag, anthem, currency, Europe day) appears for the first time, although in practice the symbols have long been recognised. What is new, however, is the proposed EU motto: 'United in diversity'.

Part I	
Title I	Definition and Objectives of the Union
Title II	Fundamental Rights and Citizenship of the Union
Title III	Union Competences
Title IV	The Union's Institutions and Bodies
Title V	The Exercise of Union Competence
Title VI	The Democratic Life of the Union
Title VII	The Union's Finances
Title VIII	The Union and its Immediate Environment
Title IX	Union Membership

Figure 2: The Structure of Part I

The second Title is drawn from existing treaty provisions and confers EU citizenship on the nationals of the member states and sets out their rights as EU citizens. These are limited here to movement, residence, voting, consular representation and petition. What is new in Title II is that it commits the EU to acceding to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

By contrast, Title III on EU competences does contain new provisions. These spell out the principles that underpin the allocation and exercise of competences to and by the EU. Here, and primarily to reflect existing practice, considerable emphasis is placed on the principle of conferral, i.e. that powers are conferred on the EU by the member states and that the EU has no competences by right. Indeed, where competences are not conferred on the EU they remain with the member states. Despite its enunciation for the first time, the principle of conferral is not at all new but has always underpinned the allocation of competences to the EU which, it should be recalled, has always been a treaty-based organization 'owned' by the member states, the 'Masters of the Treaties' as the German Federal Constitutional Court has called them.

In addition to conferral, Title III also presents the principles, already present in the existing treaties, of subsidiarity and proportionality. The first states that in areas that do not fall within its exclusive competence the EU shall act (e.g. legislate) only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States. The second principle requires that the content and form of any EU action (e.g. legislation) shall not exceed what is necessary to achieve the EU's objectives.

The actual competences of the EU are then set out. They are divided into four broad categories and supplemented by a 'flexibility' clause.

- First, there are the 'exclusive' competences where only the EU may act. There are six of these: the customs union, competition rules governing the internal market, monetary policy for the eurozone, the conservation of marine biological resources under the common fisheries policy, the common commercial policy and the conclusion of certain international agreements. None is a new competence.
- Second, there are the 'shared' competences where the member states may act if the EU has either not acted or has ceased to act. The list of shared competences – internal market, aspects of social policy, economic, social and territorial integration, agriculture and fisheries, the environment, consumer protection, transport, trans-European networks, energy, the area of freedom, security and justice, common safety concerns in public health, research, technological development and space, and development and humanitarian aid – reflects, for the most part, existing practice and, with the exception of energy, territorial cohesion and space, current treaty provisions. Indeed, only with regard to 'space' has the EU not been active to date and even here the competence is not 'shared' on the same basis as are others. As with research and technological development and development and humanitarian aid, the exercise by the EU of its 'space' competence may not result in Member States being prevented from exercising their competence in the area.
- Third, there are those areas where the EU's competence involves only supporting, coordinating or complementary action. The EU does not therefore take any competence from the member states and any action may not involve the harmonisation of member states' laws or regulations. The areas are the protection and improvement of human health, industry, culture, tourism (new), education, youth, sport (new), vocational training, civil protection, and administrative cooperation (new). In addition, in the areas of economic policy and employment, the member states agree to coordinate their national policies 'within arrangements' provided by the EU. Where economic policy is concerned, the EU is to adopt broad guidelines.
- Fourth, there is the common foreign and security policy where the EU is charged with defining and implementing a common foreign and security policy. This covers all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence. The wording is far from new, but taken directly from the Treaty on European Union.
- The flexibility clause, which is based on a provision of the Treaty of Rome dating back to 1958, allows the EU, in the absence of an explicit competence, to take 'appropriate measures' where necessary to achieve one of its objectives. Such measures require the unanimous approval of the member states in the Council and the approval of the European Parliament.

Moving on from competences, Title IV outlines the institutional framework of the EU. This comprises the same key institutions as at present: the European Parliament, the European Council, the Council of Ministers, the Commission and the Court of Justice. The Constitutional Treaty does, however, make more explicit the collective aims of the institutions. They are to practise 'full mutual cooperation', promote the EU's values of the Union, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of the EU's policies and actions. In making such aims explicit, the proposed text seeks to counter accusations that the institutions are self-serving.

Having established the institutional framework, the remainder of Title IV outlines the key purpose(s), composition and, in most instances, the decision-making norms of each of the five main institutions as well as other 'institutions and bodies'. It also sees the creation of two new positions: the European Council President and the Union Minister for Foreign Affairs.

These are discussed below. In the case of all the institutions and bodies, a more detailed presentation of their composition and roles is provided in Part III of the Constitutional Treaty.

Where the existing institutions are concerned, the European Parliament, which is to comprise no more than 750 members (compared with the current 732), and the Council, comprising representatives of the member states, are charged with jointly enacting legislation and exercising their powers with regard to the EU's budget. The European Parliament is also charged with exercising political control and of electing the President of the Commission whereas the Council also has responsibility for exercising certain policy-making and coordinating roles. It meets in a variety of formations and uses qualified majority voting – whose substantially revised definition is presented in Title IV – as its default mechanism for taking decisions. Unanimity is required in a number of instances, however.

The European Council's role is to provide the necessary impetus for the EU's development and define its general political directions and priorities. It does not normally exercise legislative functions, so remains an essentially political body, although there are exceptions. In terms of composition, it is no longer envisaged that foreign ministers will automatically participate alongside their heads of government or of state. The new European Council President and the Union Minister for Foreign Affairs will, however, participate by right. As for how decisions are taken, consensus, as is currently the case, is the default. Qualified majority voting is to be used for certain procedural issues such as the appointment of the European Council President.

Where the Commission is concerned, its established roles are confirmed: promoting the general European interest of the EU; ensure the application of the treaties (now 'Constitution'); oversee the application of EU law; execute the budget; manage programmes; exercise coordinating, executive and management functions; ensure, with the exception of the common foreign and security policy and certain other cases, the EU's external representation; initiate the EU's annual and multiannual programming; and propose legislation. In terms of composition, the Commission will continue until at least 2014 to comprise one national from each member state.

The final main institution is the Court of Justice of the European Union. This comprises the existing Court of Justice, the High Court (the current Court of First Instance) as well as specialised courts (currently 'judicial panels'), and is, as at present, responsible for ensuring respect for the law in the interpretation and application of the treaties (Constitution) and EU law. The composition of each court remains unchanged.

The remainder of Title IV presents in brief four other existing institutions and bodies, namely the European Central Bank, the Court of Auditors, the Committee of the Regions and the Economic and Social Committee.

Title V focuses on the ways in which the EU can exercise its competences. In general, where legal acts are concerned, six instruments are made available. Two – European laws and European framework laws – are legislative acts (equivalent to the current regulations and directives respectively) adopted jointly, for the most part, by the Council of Ministers and the European Parliament. The norm is that such laws can only be adopted on the basis of a proposal from the Commission. Of the other instruments, European regulations and European decisions are legally binding and are adopted without the involvement of the European Parliament and depending on competence, by the European Council, the Council, the Commission or the European Central Bank. Where the Commission is concerned, European regulations and European decisions generally implement, often on the basis of delegated authority, European laws and European framework laws. The remaining two instruments are recommendations and opinions, neither of which is legally binding. In addition to the six instruments, specific mechanisms exist for implementing the common foreign and security policy (ex pillar II) and the area of freedom security and justice (ex pillar III). Whereas the former relies heavily on member state adherence to strategic guidelines agreed by the European Council, consultation, mutual solidarity and European decisions, the emphasis with

regard to the latter is on member state cooperation, mutual confidence and the approximation 'where necessary' of national laws by European decision.

Finally, Title V, is home to two further provisions: first, the new solidarity clause that states that the EU and its member states will act in a spirit of mutual solidarity in the event of a terrorist attack or a man-made or natural disaster; and second, the provision for enhanced cooperation - the mechanism by which groups of member states may pursue closer cooperation. Both are elaborated further in Part III of the Constitutional Treaty.

Having outlined the institutions and the mechanisms through which the competences are to be exercised, the next element of Part I – Title VI – promotes the EU as a democratic entity based on the principles of the equality of its citizens, representative democracy and participatory democracy. The provisions are formally new, but in most instances simply restate the existing (official) perception and understanding of the EU. Hence, in addition to drawing attention to the significance of the European Parliament and emphasising transparency and consultation, Title VI also outlines the function of the European Ombudsman and the social partners. What is new however, is the encouragement of popular initiatives: the Commission is obliged to consider any proposal to implement the constitution that has the support of one million citizens. Prominent, but not entirely new, is a reference to the EU engaging in regular dialogue with churches and non-confessional organizations. Title VI also asserts the right to the protection of personal data.

Title VII concerns itself with outlining how the EU's institutions and activities are to be financed. The emphasis is on the existing system of own resources, agreed multi-annual financial frameworks and an annual budget in balance. Prominence is also given to the principles underpinning the financing of the EU – budgetary discipline and sound financial management – and the need to counter fraud. The procedure for adopting the multiannual framework is formalised and that for agreeing the annual budget simplified.

Title VIII switches attention to the EU's 'immediate environment' and provides a new basis for relations with those states neighbouring the EU and unlikely to become members for some considerable time, if at all. The adoption of the new provision is essentially political, coinciding with enlargement in 2004 and the launch of the European Neighbourhood policy.

Title IX is then dedicated to membership of the EU. It first sets out how states may become members. This, as is currently the case, requires a state only joining the EU to receive the unanimous approval of the existing member states and the consent of the European Parliament. Second, the Title provides for a member state that is in breach of the EU's values set out in Title I to have its voting and other rights suspended by decision of the Council of Ministers acting with the consent of the European Parliament. Finally, the Title introduces a provision whereby a member states can voluntarily withdraw from the EU. This will normally entail a withdrawal agreement accepted by a qualified majority of the remaining member states and the consent of the European Parliament and occur within two years of the state notifying its intention to withdraw.

2.3 Constitutional Treaty

Part II – The Charter of Fundamental Rights

Part II contains the Charter of Fundamental Rights adopted in 2000 and proclaimed at the Nice European Council in December of the same year. The substantive content of the Charter remains essentially unchanged from when it was drawn up. Hence, it still contains a range of rights arranged under eight headings: dignity, freedoms, equality, solidarity, citizens' rights and justice. Each is drawn from existing texts and documents to which the member states are signatories: e.g. the Treaty of Rome, the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The incorporation of the Charter into the Constitutional Treaty does change its formal status. It will now become legally binding and subject to interpretation by the Court of Justice assuming the Constitutional Treaty enters into force. Concern at such a development has meant that, primarily at the UK's insistence, a number of provisions clarifying the interpretation and application of the Charter have been inserted. The first of these confirms that where the rights result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions. A second confirms that those Charter principles implemented by legislative and executive acts adopted by the EU and the member states when implementing EU law shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality. Third, full account is to be taken of national laws and practices as specified in this Charter. A fourth provision draws attention to a set of explanations guiding interpretation of the Charter drawn up by the Convention that drafted the Charter and updated by the Praesidium of the European Convention. Due regard is to be given to these explanations by the courts of the EU and of the Member States. So as to ensure awareness of these new provisions, the preamble to the Charter also records the significance of the explanations.

Related to the Charter, the Constitutional Treaty provides for the EU to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession is not automatic since it will require unanimous agreement among the member states. Accession, it is made clear, shall not, however, affect the Union's competences as defined in the Constitution. A protocol and declaration elaborate on the mechanisms to be used to ensure this.

2.4 Constitutional Treaty

Part III – The Policies and Functioning of the Union

Whereas Part I sets out the fundamentals of the European Union, Part III contains the details, whether in terms of key principles, policy competences, external relations or the institutional framework and organization of the EU. It is divided into seven titles (see figure 3). In doing so, it includes the bulk of the existing Treaty of Rome along with the policy elements of the Treaty on European Union. Few of the provisions are new with most be inserted straight from previous treaties. Some of these have, however, been amended. Where the policies are concerned, the purpose has been either to enhance or clarify the EU's competences or the change mechanism by which decisions are taken (e.g. moving from unanimity to qualified majority voting, or involving the European Parliament more in the process). Where the institutional framework is concerned, the amendments reflect the changes to the institutions signalled in Title IV of Part I (see above).

Title I	Provisions of General Application
Title II	Non-Discrimination and Citizenship
Title III	Internal Policies and Action
Title IV	Association of the Overseas Countries and Territories
Title V	The Union's External Action
Title VI	The Functioning of the Union
Title VII	Common Provisions

Figure 3: The Structure of Part III

Title I contains eight provisions of 'general application' to the EU's activities. These all draw on existing practice and contain a number of principles underpinning what the EU does. Hence, the EU is committed to:

- ensure consistency between its different policies and activities
- aim to eliminate inequalities and promote equality between men and women;

- promote a high level of employment, adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.
- aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation
- integrate environmental protection into the definition and implementation of its policies and activities with a view to promoting sustainable development
- take consumer protection requirements into account in defining and implementing its policies and activities
- pay full regard to the welfare requirements of animals in formulating and implementing the agriculture, fisheries, transport, internal market, research and technological development and space policies
- ensure that 'services of a general economic interest' (essentially public services) operate on the basis of principles and conditions which enable them to fulfil their missions

Title II picks up on the third of these – non-discrimination – as well as the prohibition of non-discrimination based on nationality and the notion of EU citizenship set out in Titles I and II respectively of Part I. It describes the measures that may be taken and also

Title III is by far the longest and sets out in detail the various internal policy competences of the EU (see figure 4). As indicated in Part I of the Constitutional Treaty, these comprise a range of policies. In a limited number of cases, the EU has exclusive competence. In others, it shares competence with the member states. Title III does not, however, detail the policy areas according to competence, but more according to their centrality to the EU's activities. Hence, it starts with the internal market, followed by economic and monetary policy. It then turns to policies in other areas (e.g. employment, environment, and research and technological development and space) before presenting provisions governing the Area of Freedom, Security and Justice. A final chapter details the areas where the EU has supporting, coordinating or complementary action.

Title IV contains provisions governing the EU's relations with those non-European countries and territories (e.g. Greenland, New Caledonia, Netherlands Antilles, Falkland Islands) that have special relations with Denmark, France, the Netherlands and the United Kingdom.

Title V then deals with the Union's external policies, namely the common foreign and security policy, the common commercial policy, cooperation with third countries (e.g. development cooperation and humanitarian aid) and relations with international organizations. In doing so, it covers the EU's involvement in foreign, security and defence issues, the EU's power to conclude agreements with non-member countries, and implementation of the solidarity clause.

With the policy competences and responsibilities of the EU established, Title VI turns to how the EU is to function. Its initial focus is on the main institutions. These are the five listed in Part I – the European Parliament, the European Council, the Council of Ministers, the European Commission and the Court of Justice – as well as the European Central Bank and the Court of Auditors. For each, there are provisions detailing composition, responsibilities, powers and procedures. The Title then introduces the EU's two advisory bodies – the Committee of the Regions and the Economic and Social Committee – and the European Investment Bank before setting out the Provisions common to all the institutions and bodies as well as other offices and agencies. These contain the rules governing decision-making in the EU and the enforcement of decisions, and establish certain principles – openness, efficiency and transparency – underpinning these activities as well as the administration of the EU. The next issue dealt with in the title is the EU's finances: the principle of a five-year multi-annual framework; how the annual budget is to be determined, implemented and discharged; and how the EU is to combat fraud. Finally, Title VI sets out the mechanism by which enhanced cooperation can be used.

I – Internal Market
<i>Establishment and functioning of the Internal Market</i>
<i>Free movement of persons and services</i>
<i>Free movement of goods</i>
<i>Capital and payments</i>
<i>Rules on competition</i>
<i>Fiscal provisions</i>
<i>Common provisions</i>
II - Economic and Monetary Policy
<i>Economic policy</i>
<i>Monetary policy</i>
<i>Institutional provisions</i>
<i>Provisions specific to Member States which whose currency is the euro</i>
<i>Transitional provisions</i>
III - Policies in Other Areas
<i>Employment</i>
<i>Social policy</i>
<i>Economic, social and territorial cohesion</i>
<i>Agriculture and fisheries</i>
<i>Environment</i>
<i>Consumer protection</i>
<i>Transport</i>
<i>Trans-European networks</i>
<i>Research and Technological Development, and Space</i>
<i>Energy</i>
IV – Area of Freedom, Security and Justice
<i>General provisions</i>
<i>Policies on border checks, asylum and immigration</i>
<i>Judicial cooperation in civil matters</i>
<i>Judicial cooperation in criminal matters</i>
<i>Police cooperation</i>
V – Areas where the Union may take Coordinating, complementary or supporting action
<i>Public health</i>
<i>Industry</i>
<i>Culture</i>
<i>Education, youth, sport and vocational training</i>
<i>Civil protection</i>
<i>Administrative cooperation</i>
Figure 4: Internal Policies and Action

Title VII contains a set of common provisions dealing with a range of items including position of the outermost regions of the EU, property ownership in the EU, staff regulations, statistics, the EU's contractual liability, languages, privileges and immunities. All the provisions in the Title VII are drawn from the existing Treaty of Rome.

2.5 Constitutional Treaty

Part IV – General and Final Provisions

The purpose of Part IV is to establish the legal status of the Constitutional Treaty and provide for its ratification and revision. Hence, it repeals the treaties on which the EU is currently based (i.e. the Treaty of Rome and the Treaty on European Union as amended), provides for the EU established by the Constitutional Treaty to succeed the current EU, confirms the Constitutional Treaty's application to the existing 25 member states, establishes that it is concluded for an unlimited period, and lists the 21 languages in which authentic versions of the text exist. Provision is also made for the Treaty to be translated into any other languages (e.g. Catalan) that enjoy official status in a member state. Ratification and revision require unanimity among the member states.

2.6 Constitutional Treaty

Annexes, Protocols and Declarations

Finally, the Constitutional Treaty has attached to it a series of annexes and protocols. These are, for the most part, revised versions of existing annexes and protocols attached to the Treaty of Rome and the Treaty on European Union. Several new protocols form part of the Constitutional Treaty. These concern transitional provisions, the Eurogroup, permanent structured cooperation under the common security and defence policy, the European Atomic Energy Community. Finally, there are a number of political declarations by member states and by the intergovernmental conference.

3. What's new and what's changed

Some of the key changes that the Constitutional Treaty will bring about have already been discussed. Others, many of which featured prominently in the European Convention's debates and the intergovernmental conference, have either gone unmentioned so far or have only received brief comment.

Administrative Cooperation

Following on from the experience of Twinning arrangements between the member states and those states that joined the EU in 2004, the Constitutional Treaty introduces provision promoting the improvement of member states administrative capacity to implement EU law. Action in this area may the exchange of information and of civil servants as well as supporting training schemes. No Member State is obliged to participate and EU laws may not involve the harmonisation of national laws. EU action is to be determined using the co-decision procedure.

Area of Freedom, Security and Justice

In addition to changes regarding judicial cooperation in civil and criminal matters (see below), the Constitutional Treaty provides for the European Council to define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice. It also calls on national parliaments to ensure that proposals and legislative initiatives regarding the area of freedom, security and Justice comply with the principle of subsidiarity and proportionality. In addition, provision is included for the member states, in collaboration with the Commission, to conduct 'objective and impartial evaluation' of the implementation of the EU in order to facilitate full application of the principle of mutual recognition. In the specific area of border controls, asylum and immigration, a new emphasis is placed on member states proceeding on the basis of solidarity and a fair sharing of responsibility, including in the financing of measures. It should be recalled that in this area, the United Kingdom and Ireland have an opt-out.

Budget procedure

The Constitutional Treaty alters the procedure by which the annual budget of the EU is agreed by the Council and the European Parliament. Where the European Parliament proposes amendments to the draft agreed by the Council and these are not acceptable to the Council, a Conciliation Committee comprising members of the Council and MEPs is convened to agree a budget. If the Council subsequently fails to endorse the outcome of the Conciliation Committee, the final say over the annual budget is left to the European Parliament. The European Parliament's room for manoeuvre will be limited given the need to establish the budget within the ceilings of the multi-annual financial framework agreed by the member states.

Civil Protection

Linked to the solidarity clause, the Constitutional Treaty entails new provisions regarding civil protection. Here the EU is required to encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or

man-made disasters within the EU. Action is to focus on supporting and complementing member state action at national, regional and local level in risk prevention, in preparing civil-protection personnel and in responding to natural or man-made disasters; promoting swift, effective operational cooperation between national civil-protection services; and promoting consistency in international civil-protection work. Measures are to be adopted using co-decision and may not involve the harmonisation of national.

Co-decision

This is renamed the 'ordinary legislative procedure' and becomes the default decision-making procedure for internal, but not external policies (e.g. common foreign and security policy). The role of the European Parliament in most decision-making is therefore increased to one of co-legislator with the Council. However, there are various areas where the Council is still obliged only to consult the European Parliament.

Commission – appointment of President

The amended procedure for appointing the President of the Commission involves the European Council proposing, by a qualified majority, a candidate to the European Parliament. The candidate, who is currently appointed president by the European Council, will be elected by the European Parliament by a majority of its members. If the candidate does not obtain the required majority, the European Council will have one month to propose a new candidate who shall be elected by the European Parliament following the same procedure. Once the President has been elected, the Council and the president-elect will adopt a list of potential Commissioners on the basis of suggestions made by the member states. The list, complete with the names of the Commission President and the Union Minister for Foreign Affairs, will then be presented to the European Parliament for a vote of approval. Assuming the European Parliament approves the list, the European Council, acting by a qualified majority shall appoint the Commission. A declaration adds that MEPs and representatives of the European Council will consult on the candidates for the post of President of the Commission, focusing on their backgrounds of the candidates for President of the Commission and taking account the outcome of the elections to the European Parliament. A further declaration encourages the idea that the distribution of the three main posts within the EU – the President of the European Council, the President of the Commission and the Union Minister for Foreign Affairs – be distributed evenly among member states: appointments are to 'respect the geographical and demographic diversity of the Union and its Member States'.

Commission – size

As envisaged by the European Convention, the size of the Commission will be reduced, but only from 2014. Prior to that, the Commission (including the Commission President and the Union Minister for Foreign Affairs) will continue to comprise one national from each member state. From 2014 onwards – assuming the Constitutional Treaty enters into force before 2009 and the European Council does not unanimously agree otherwise – the size of the Commission will correspond to two-thirds of the number of member states. In an EU of 27 members, therefore, there will be 18 members of the Commission. These will be selected on the basis of equal rotation among the member states. Hence, each member state will have a national of theirs in two out of every three Commissions. Which member states provide members of the Commission when will be determined by a unanimous decision of the European Council. The rotation is to reflect 'satisfactorily the demographic and geographical range' of all member states. Fears that the absence of a national in the Commission might mean that the political, economic and social realities of a member state might be overlooked by the Commission are addressed in a declaration requiring the Commission to implement 'appropriate organisational arrangements' to ensure that such realities are considered.

Common Commercial Policy

Here the involvement of the European Parliament has been increased so that it now co-decides the framework for implementing policy. Generally, agreements with non-member states are concluded by the Council acting by a qualified majority. Unanimity has been retained, however, for trade in services, the commercial aspects of intellectual property, and foreign direct investment, but only where the EU internally acts by unanimity. The existing

unanimity requirement for trade in cultural, audiovisual, social, educational and health services has been subjected to narrow interpretations, thus extending the scope of qualified majority voting.

Common Foreign and Security Policy (CFSP) - qualified majority voting

Under the CFSP, the default decision-making requirement for policy and strategy decisions remains unanimity in the Council. With the creation of a Union Minister for Foreign Affairs, however, it is envisaged that the Council will act by a qualified majority when adopting a European decision defining an EU action or position proposed by the Union Minister for Foreign Affairs. Given the sensitivities of some member states about the use of qualified majority voting, a member state may, for 'vital and stated reasons of national policy' require a proposal to be referred to the Union Minister for Foreign Affairs who will consult in attempt to reach a solution. In the absence of such, the matter is referred to the European Council for a decision by unanimity.

Common Foreign and Security Policy (CFSP) – relationship with other policy areas

A new provision asserts that the implementation of the CFSP shall not affect the application of procedures and the powers of the EU's institutions in other areas of EU activities. Likewise, policies resulting from such activities shall not affect the application of procedures and the powers of the EU's institutions regarding the CFSP.

Common Foreign and Security Policy (CFSP) – strategy and coherence

In an attempt to provide coherence to the CFSP and to EU external actions generally, the European Council is called on, acting by unanimity, to identify the strategic interests and objectives of the Union and adopt the necessary decisions for their achievement. At the level of implementation, any common approach decided by either the European Council or the Council is to be coordinated by the Union Minister for Foreign Affairs and the Ministers for Foreign Affairs of the member states. The diplomatic missions of the member states and the EU's delegations in third countries and at international organisations shall also cooperate.

Common security and defence policy

As part of the common foreign and security policy, the Constitutional Treaty introduces a series of new provisions designed to build on existing EU competences in the development of a security and defence policy. The focus of the policy is very much on peacekeeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter with tasks being undertaken using capabilities provided by the Member States and not a standing EU army. To this end, the Council, acting unanimously, can define the objectives and scope of specific tasks. It is then for the Union Minister for Foreign Affairs to ensure implementation. Beyond this, the Constitutional Treaty states that 'a common defence' may result if the European Council decides. There are a number of provisos, however: a common defence must respect member states obligations towards NATO and be compatible with NATO's security and defence policy. Moreover, any European Council decision must be taken by unanimity meaning that each member state retains a veto over a common defence. For those member states keen on moving towards a common defence the option exists, however, for 'permanent structured cooperation' involving interested member states to be established by the Council acting by a qualified majority. A dedicated protocol on the criteria to be used and the necessary military capabilities of the 'permanent structured cooperation' forms part of the Constitutional Treaty. Also as part of the common security and defence policy, the Constitutional Treaty introduces a mutual assistance clause in the event of a member state being the victim of armed aggression on its territory. In such cases, the other Member States will be obliged to provide 'aid and assistance by all the means in their power', subject to the provisions of the United Nations Charter and provided that such action is consistent with any commitments they might have as members of NATO. Finally, provision is made for the establishment of a European Armaments, Research and Military Capabilities Agency. Participation is not compulsory but is open to all member states. The Agency has the task of contributing to the development of the member states' military capability.

Council of Ministers – Configurations

The Constitutional Treaty provides for the Council to meet, as is currently the case, in different configurations. Two specific Councils will be created to replace the existing General Affairs and External Relations Council: the General Affairs Council and the Foreign Affairs Council. The list of other Councils is to be decided by the European Council. The General Affairs Council, chaired by the member state holding the Presidency of the Council, will be responsible for ensuring consistency in the work of the different Councils and preparing and ensuring the follow-up to meetings of the European Council. This it is to do in liaison with the President of the European Council and the Commission. The Foreign Affairs Council, chaired by the Union Minister for Foreign Affairs, is responsible for elaborating the EU's external action on the basis of strategic guidelines laid down by the European Council and ensuring that the EU's action is consistent.

Council of Ministers – Presidency

The Presidency of the Council is to rotate between groups of three member states with each group holding the Presidency for 18 months. Within each presidency it is expected that each member state will chair each council for a period of six months. The one exception is the Foreign Affairs Council which will be chaired by the Union Minister for Foreign Affairs. Each group of three member states is to be made up on the basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union. The actual groupings are to be decided by the European Council acting by a qualified majority. A declaration envisages the decision being taken within six months of the Constitutional Treaty being signed.

Council of Ministers – Transparency

The Council is to meet in public when it deliberates and votes on draft legislative acts. Hence, Council meetings will be divided into two parts, dealing respectively with deliberations on EU legislative acts and non-legislative activities.

Court of Justice and Court of First Instance

Having undergone a major revision with the Treaty of Nice, the provisions governing the courts see only a few changes. The most obvious is the change in name of the Court of First Instance which is to be renamed the High Court. A second reform is the establishment of a panel to give an opinion on candidates' suitability to be a Judge or Advocate-General before decisions regarding their appointment by the member state governments. The panel will comprise seven persons chosen from among former members of the European Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence.

Economic, social and territorial cohesion

The revised text places greater emphasis on directing EU action towards rural areas and islands and includes new references to 'areas affected by industrial transition, and areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and island, cross-border and mountain areas.' The reference reflects the existing foci of EU cohesion policy.

Energy

Having listed energy in Part I as an area of shared competence, the provisions on energy policy are subsequently set out in Part III. Energy policy is to ensure the functioning of the energy market; ensure security of energy supply in the Union; and promote energy efficiency and saving and the development of new and renewable forms of energy. Measures are to be adopted using co-decision and after consultation of the Committee of the Regions and the Economic and Social Committee. Fears that this 'new' competence will undermine national control over energy resources are countered by a provision stating that laws 'will not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply. The only exception is where measures are adopted – by unanimity – as part of the EU's environmental policy. Similarly, member states' desire to retain full control over measures that are primarily

of a fiscal nature means that these are adopted by unanimity and with only consultation of the European Parliament.

Enhanced Cooperation

A number of significant changes are envisaged. First, the minimum number of member states participating is changed from eight to one-third of the total membership. Second, the launching of enhanced cooperation will no longer require unanimity within the Council. Instead a qualified majority will suffice. The exception will be the common foreign and security policy where Council authorisation for enhanced cooperation will still require unanimity. And third, in those policy areas where the Council acts by unanimity, member states participating in enhanced cooperation may use qualified majority voting and introduce co-decision when adopting measures. Unanimity is to be retained, however, for those matters that have either military or defence implications. The changes regarding enhanced cooperation will facilitate its use and if used extensively, especially if done so alongside the provisions on 'permanent structured cooperation' under the common security and defence policy, could lead to the emergence of a core or avant garde Europe.

Eurojust (European Judicial Cooperation Network)

The role of Eurojust has been expanded so that in addition to its existing activities (promoting cooperation between national authorities with regard to criminal investigations and prosecutions in cases of serious cross-border crime, the implementation of extradition requests) it will be able to initiate criminal investigations and prosecutions to be conducted by the competent national authorities, particularly where offences against the financial interests of the EU are concerned, and promote the resolution of conflicts of jurisdiction. At the same time the European Parliament and national parliaments are to be more closely involved in overseeing Eurojust activities.

European Central Bank – Executive Board

This will now be appointed by the European Council using a qualified majority as opposed to unanimity.

European Council – decision-making

The Constitutional Treaty introduces some changes to how decisions are taken in the European Council. First it allows any member to act on behalf of one other member. Second, it is envisaged that abstentions will not prevent the adoption by any decision that requires unanimity.

European Council – President

One of the key institutional changes that the Constitutional Treaty will bring is the creation of the full-time post of European Council President. The post holder, who may not hold any national mandate once in office, will be elected by the other members of the European Council by qualified majority for a term of two and a half years. The appointment can be renewed once. Equally, in the event of an impediment or serious misconduct, the mandate can be ended by the European Council. The President of the European Council has four key tasks: chairing the European Council and driving forward its work; ensuring proper preparation for meetings and continuity in cooperation with the President of the Commission; facilitating cohesion and consensus within the European Council; presenting a report to the European Parliament after each of European Council meeting; ensuring the external representation of the Union on issues concerning the common foreign and security policy.

European External Action Service

Despite opposition from some member states towards its creation, agreement was eventually agreed on the establishment of a European External Action Service. This is an embryo EU diplomatic service which will support the Union Minister for Foreign Affairs and will work in cooperation with the diplomatic services of the Member States. It will comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. Moves to establish the Service will begin as soon as the Constitutional Treaty is signed.

European Parliament – size

The Constitutional Treaty increases the maximum size of the European Parliament from 732 to 750 members with each member state having at least six (as opposed to the current five) MEPs. The maximum number of members per member state will be reduced to 96 (from 99 at present).

European Public Prosecutor's Office

Despite initial UK opposition, provision exists for the creation of a European Public Prosecutor's Office. This will be responsible for 'investigating, prosecuting and bringing to judgment ... the perpetrators of, and accomplices in, offences against the Union's financial interests'. These 'interests', as well as the detailed functions of the European Public Prosecutor's Office, are to be established in the law establishing the Office, a law that is to be adopted by the Council acting unanimously and after obtaining the consent of the European Parliament. Each member state therefore retains a veto over the creation of the Office and the definition of the interests. The powers of the European Public Prosecutor's may be extended to include 'serious crime having a cross-border dimension' by the European Council acting by unanimity after obtaining the consent of the European Parliament.

Eurozone

There are a number of changes relating to the eurozone and the member states that use the euro as their currency. A first empowers the Council to take measures, acting by a qualified majority, designed to strengthen the coordination of budgetary discipline and surveillance of it, establish economic policy guidelines, and determining the common positions to be adopted on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences. Second, arrangements regarding meetings of ministers from the eurozone countries – the so-called Eurogroup – are set out in a protocol. Third, future decisions on which member states may join the Eurozone and adopt the euro are to be taken by the Council, as at present, by a qualified majority. In future, however, the Council shall act on the basis of a recommendation of majority of Eurozone members representing three-fifths of the population of the Eurozone area.

Humanitarian Aid

Under the Constitutional Treaty, humanitarian assistance is given specific mention as part of the EU's external activities. Such assistance, which is already provided by the EU under the CFSP and is to complement and reinforce the work of the member states, is to be *ad hoc* and involve the relief and protection of people in third countries and victims of natural or man-made disasters. The EU may also work with non-member states and competent international organisations. As part of the humanitarian aid effort, a European Voluntary Humanitarian Aid Corps is to be established.

Intellectual Property

A new provision allows for EU instruments to provide uniform intellectual-property rights protection throughout the Union as part of the process of establishing the internal market. Such protection is to involve the setting up of centralised Union-wide authorisation, coordination and supervision arrangements. Decisions are to be taken by the Council of Ministers acting unanimously after consulting the European Parliament.

Judicial cooperation in civil matters

Judicial cooperation in civil matters covers only those matters having cross-border implications (e.g. cooperation in the taking of evidence, eliminating the obstacles to the good functioning of civil proceedings) with decisions, except those concerning family law, being taken by the Council acting by a qualified majority. The European Parliament is fully involved via the co-decision procedure. The Constitutional Treaty will expand slightly the range of areas in which judicial cooperation can be pursued (e.g. to include support and training of the judiciary and judicial staff). The proviso that the EU's competence is restricted to matters having cross-border implications remains. It should be recalled that the United Kingdom and Ireland enjoy an opt out of measures concerning judicial cooperation in civil matters.

Judicial cooperation in criminal matters

Currently, judicial cooperation in criminal matters covers terrorism, trafficking in persons and offences against children, illicit drug and arms trafficking, corruption and fraud. The Constitutional Treaty will result in an expansion of this list of areas to include the sexual exploitation of women and children, money laundering, counterfeiting, computer crime and organised crime. In addition, the measures that may be taken will be increased to include minimum rules on the mutual admissibility of evidence between Member States; the rights of individuals in criminal procedure and the rights of victims of crime. Such decisions will be taken using co-decision. Hence the European Parliament will be involved and the Council will act by a qualified majority. However, the adoption of any minimum rules shall not prevent Member States from maintaining or introducing a higher level of protection for individuals. Moreover, where a member state fears that a framework law would affect 'fundamental aspects of its criminal justice system' it can invoke an 'emergency brake' procedure. Under this, the matter can be referred to the European Council which, within four months, must decide either to send the measure back to the Council for adoption or request a new draft measure from the Commission. If no decision is taken then after a further twelve months those states that so wish, assuming they represent at least one-third of the membership, may establish enhanced cooperation in the area concerned.

Lamfalussy Procedure

Acknowledgement is made in a declaration of the Commission's intention to continue to consult member state experts in the preparation of delegated European regulations in the financial services area in accordance with its established practice.

Multiannual financial framework

As noted above, the system for agreeing the multiannual financial framework is formalised although no agreement could be reached on adopting the framework by a qualified majority. UK fears that such a move would mean that its budget 'rebate' would come under threat meaning that unanimity is still required. It has been agreed, however, that the European Council can decide by unanimity – with the UK thus having a veto – to use a qualified majority for the adoption of the framework. The Netherlands government has indicated that it will only agree to a new multiannual framework once the country's contribution to the budget has been reduced.

National Parliaments

Provision is made in the Constitutional Treaty for national parliaments to be more fully engaged in the application of the principle of subsidiarity. A 'yellow card' procedure will be introduced allowing national parliaments to signal to the Commission that a proposal is deemed to be in breach of the principle of subsidiarity. The Commission will not be under any obligation, however, to withdraw the proposal. National parliaments will also be involved in the oversight of Eurojust activities.

Protection and welfare of animals

As noted, under the Constitutional Treaty, the EU and the member states are to pay full regard to the welfare requirements of animals when formulating and implementing the EU's agriculture, fisheries, transport, internal market, research and technological development and space policies. In doing so, due respect is to be paid to the legislative and or administrative provisions and customs of member states relating in particular to religious rites, cultural traditions and regional heritage.

Public health

The current competence of the EU (to fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education) is supplemented with a competence to adopt measures concerning the 'monitoring, early warning ... and combating [of] serious cross-border threats to health'. To this end, the EU is to 'encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas'. Accompanying

the extended competence is reference to the types of additional measures the EU may now take in the area of public health: 'measures setting high standards of quality and safety for medical products and devices for medical use'. Furthermore, the EU gains a competence to promote incentive measures protecting public health with regard tobacco and alcohol abuse. Finally, the reworded provisions on public health clarify further the fact that EU action is to respect in full member state responsibility for 'for the definition of their health policy and for the organisation and delivery of health services and medical care'. This includes 'management of health services and medical care and the allocation of the resources assigned to them'.

Qualified majority voting – coverage

Qualified majority voting is extended in line with proposals in the European Convention's draft Treaty establishing a Constitution for Europe. Opposition from various member states, notably the United Kingdom, has ensured that unanimity will be retained in at least the following areas: aspects of the common commercial policy, the common foreign security policy (except implementing measures), the common security and defence policy, enhanced cooperation, adoption of the multiannual financial framework, amendments to the Constitutional Treaty, various external agreements, aspects of social policy, allocation of structural funds, and taxation. In some cases the option to move to qualified majority exists, but any decision to do so will require unanimity.

Qualified majority voting – the 'double majority'

As envisaged, the Constitutional Treaty will eventually replace the existing complex system of weighted votes with a 'double majority' system. This will happen from 1 November 2009. Hence, for the Council to adopt a measure based on a Commission proposal, it will require the support of 55% of the member states representing 65% of the EU's population. Moreover, it will have to command the support of at least 15 member states, effectively making the 55% quota redundant until the EU has 28 members. Equally, a blocking minority must include at least four member states. Where the Council is not acting on the basis of a Commission proposal - notably in the areas of justice and home affairs, the common foreign and security policy, economic and monetary policy – a qualified majority requires the support of 72% of the member states representing 65% of the EU's population. Although the system may appear simpler, its initial operation will be made more complex by a transitional arrangement that will allow for a decision to be reconsidered if at least 75% of the blocking minority (measured in terms of either the number of member states or their population) indicate their opposition to the Council adopting the measure. In such instances, the Council is to do 'all in its power to reach, within a reasonable time ... a satisfactory solution'. The transitional arrangement will exist until at least 2014 after which the Council by a qualified majority will be able to repeal it.

Ratification

As with all previous EU treaties, ratification is required in each member state before the Constitutional Treaty enters into force. The envisaged date for this is 2007. A declaration notes, however, that if two years after the Constitutional Treaty has been signed 80% of the member states have completed ratification and one or more member states 'have encountered difficulties in proceeding with ratification', the matter will be referred to the European Council. It is not specified what the European Council might do.

Restrictive Measures

A new provision is introduced allowing for the capital movements and payment to be restricted in order to assist in the prevention and combating of terrorism and related activities. Such measures are to be adopted by the Council and may include the freezing of funds, financial assets or economic gains belonging to, or owned by, individuals, companies, groups or non-state entities.

Revising the Constitutional Treaty

(a) Traditionally formal revision of a treaty has required the convening of an intergovernmental conference. For the Constitutional Treaty revision involves a longer process entailing notification of national parliament and then the convening of a

Convention composed of representatives of national parliaments, of heads of state or government, of the European Parliament and of the Commission. The Convention will then examine proposed amendments of the Constitutional Treaty and adopt by consensus a recommendation to an intergovernmental conference. Only if the European Parliament consents will the Convention not be convened. The intergovernmental conference will then, by common accord, agree amendments. These will then have to be ratified by all the Member States before entering into force. If, two years after the treaty amending the Constitutional Treaty has been signed, 80% of the Member States have completed ratification and one or more Member States have encountered difficulties with ratification, the matter will be referred to the European Council.

- (b) As a new alternative to formal revision, the European Council can, acting unanimously and having received the consent of the European Parliament, agree that the Council in future act by a qualified majority in those areas of Part III where the existing provision requires unanimity. Only those decisions with military implications or in the area of defence are excluded. Likewise, the European Council can extend the use of co-decision (the 'ordinary legislative procedure'). In both cases, any proposed European Council decision is, however, to be notified to the national parliaments which may within six months indicate their opposition to the proposal. Only in the absence of opposition can the European Council proceed.
- (c) A further new means of amending the Constitutional Treaty is available for Title III of Part III on the internal policies and action of the EU. Here, at the request of a member state, the European Parliament or the Commission, the European Council may adopt amendments provided there is unanimous agreement to do so and the amendment does not increase the competences of the EU. Before the amendment can enter into force, it must be ratified by each member state. The procedure differs from (a) above in that there is no requirement for an intergovernmental conference.

Social market economy and full employment

The objectives of the EU have been reworded and in one notable instance expanded. Hence, The Union is now to work for 'a highly competitive social market economy aiming at full employment and social progress'. Currently, the objective is 'economic and social progress and a high level of employment'.

Social policy

The Constitutional Treaty neither increases the social policy competences of the EU nor extends the use of qualified majority voting. Hence unanimity is still required for measures concerning social security, the social protection of workers, the representation and collective defence of workers' interests, and the conditions of employment of third-country nationals. Instead, a declaration confirms that those areas in which the EU may promote coordinating measures – employment, labour law and working conditions, vocational training, social security, the prevention of occupational accidents and diseases, occupational hygiene, and the right of association and collective bargaining – 'fall essentially within the competence of the Member States'. Hence, any EU measures are to be of a complementary nature, strengthening cooperation between the Member States and not harmonising national systems.

Social security

The council shall use qualified majority voting instead of unanimity in the restricted areas where the EU has the competence to act with regard to social security (i.e. aggregation and payment of benefits to migrant workers and their dependents). The move to qualified majority voting is, however, subject to an 'emergency brake'. This means that where a member state believes that the measure would 'infringe the principles of its social security system or would affect the financial balances of that system', it may request that a proposed measure be referred to the European Council. The European Council will then, within four months, refer

the measure back to the Council for adoption or request a new draft measure from the Commission.

Solidarity Clause

This new provision provides for a Member State that falls victim to a terrorist attack or a natural or man-made disaster, to receive assistance, should it so request, from the other Member States. In such cases, the arrangements are to be defined by the Council acting by qualified majority. Where there are defence implications, the Council is to act unanimously. Regular assessments of the threats facing the Union are to be undertaken by the European Council.

Space

As part of the EU's research and technological development competences a new provision on the drawing up of a European space policy has been agreed. To this end the EU is to 'promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space'. In addition, the EU is to establish appropriate relations with the European Space Agency.

Sport

Alongside energy, tourism and administrative cooperation, the Constitutional Treaty grants the EU a competence with regard to sport. This essentially gives formal recognition to existing EU action which has been based on a declaration adopted at the time of the Treaty of Amsterdam. Hence, the EU is called on to contribute to the develop via 'incentive actions' 'the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen'.

Stability and Growth Pact

This has been retained amidst concerns over larger member states' adherence to its rules. These have been partly assuaged by a political declaration confirming a rule-based system as the 'best guarantee' for enforcing commitments and committing the member states to use periods of economic recovery to consolidate actively public finances and improve their budgetary positions. The declaration also emphasises the EU's aims of balanced economic growth and price stability and envisages the Commission issuing proposals for 'strengthening and clarifying' implementation of the pact. A sentence added late on notes, however, that the declaration 'does not prejudice the future debate on the ... Pact'.

State Aids

Germany has agreed that exemption from state aid rules that it enjoys regarding areas of the country affected by division may be repealed by the Council, acting by a qualified majority, five years after the Constitutional Treaty enters into force. Also, provision is made for state aids to be granted to the French overseas departments, the Azores, Madeira and the Canary islands.

Status and Equality of Member States

In line with the general emphasis it places on the centrality of the member states to the EU and European integration as a process, the Constitutional Treaty gives confirms that the EU will 'respect the equality of Member States ... as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government'. Furthermore, the EU is to 'respect their essential State functions, including those for ensuring the territorial integrity of the State, and for maintaining law and order and to safeguarding internal security'.

Statute of the European Investment Bank – Amendment

Whereas at present only a limited number of articles in the Statute may be amended by the Council without national ratification, the Constitutional Treaty will allow the Council, acting unanimously and having consulted with the European Parliament, to amend all articles.

Structural Funds

In line with current arrangements, future decisions governing the use of the Structural Funds will be adopted using qualified majority in the Council. However, following Spanish insistence, unanimity will be used for the first set of provisions following signature of the Constitutional Treaty. This means that each member state will retain a veto over arrangements for the next funding period, expected to be 2007-2013.

Taxation

The draft Treaty establishing a Constitution for Europe envisaged that, contrary to the currency requirement for unanimity within the Council, qualified majority voting could be used for harmonisation measures concerning indirect and company tax where those measures relate to administrative cooperation, the combating of tax fraud and or tax evasion provided they do not affect the fiscal regimes of the member states. During the later stages of the negotiations, an Irish Presidency proposal to retain the status quo (i.e. unanimity for all measures) was accepted.

Technological research and development

References to achieving 'a European research area in which researchers, scientific knowledge and technology circulate freely' and to industry within the EU becoming more competitive are added to the objectives of EU policy. Provision is also inserted for a European law establishing the measures necessary for the implementation of the European research area. The law is to be adopted using co-decision and after consulting the Economic and Social Committee. According to a declaration, due respect is to be paid in EU actions to the fundamental orientations and choices of the research policies of the Member States.

Tourism

Flagged as an area of potential EU competence at the time of the Treaty on European Union, tourism features in the Constitutional Treaty as a sector in which the EU can complement member state activities 'by promoting the competitiveness of Union undertakings enterprises'. To this end the EU should encourage 'the creation of a favourable environment for the development of undertakings in [the] sector [and ... promote] cooperation between the Member States, particularly by the exchange of good practice'. Measures, to be adopted using the co-decision procedure, will exclude any harmonisation of the member state laws.

Transport

A new provision has been agreed stressing that when the EU is adopting transport policy measures due account will be taken of any serious effect they might have on the standards of living and levels of employment in certain regions, and the operation of transport facilities. Also, Germany has agreed that a provision concerning exemptions from EU transport rules regarding areas of the country affected by division may be repealed by the Council, acting by a qualified majority, five years after the Constitutional Treaty enters into force.

Union Minister for Foreign Affairs

One of the major innovations of the Constitutional Treaty is the creation of the post of a Union Minister for Foreign Affairs responsible for conducting and developing the common foreign and security policy and the common security and defence policy and presiding over the Foreign Affairs Council. In fulfilling his/her mandate, the Union Minister for Foreign Affairs is to be assisted by a European External Action Service (see above). The post-holder is to be appointed by the European Council acting by a qualified majority and in agreement of the Commission President. The involvement of the Commission President here is important since the Union Minister for Foreign Affairs will be one of the Vice-Presidents of the Commission and have responsibility for Commission activities in the area of external relations and for coordinating other aspects of the Union's external action. As such, the Union Minister for

Foreign Affairs will have a foot in both the Council and the Commission. While this 'double-hatting' is designed to promote greater coherence and consistency, it does mean that the Union Minister for Foreign Affairs has to balance responsibilities towards the European Council and Council with collegiality within the Commission. The 'double-hatting' also means that the Union Minister for Foreign Affairs may be removed from post by the European Council European and is obliged to resign if the Parliament passes a motion of censure on the Commission.

Values on which the EU is founded

What were previously listed as the principles on which the EU is founded – liberty, democracy, respect for human rights, the rule of law – are now described as 'values'. This list has also been lengthened to include human dignity, equality and, as part of the respect for human rights, 'the rights of persons belonging to minorities'. As currently, these are declared as values that are common to the Member States. The new provision goes further, however, in so far as it describes society within the EU as being one 'in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail'.

Withdrawal

One of the major innovations of the Constitutional Treaty is the provision for withdrawal. This allows any member state to withdraw from the EU. In order to do so, it must notify the European Council of its intention. The European Council will then provide guidelines for the negotiation and conclusion of an agreement setting out the arrangements for withdrawal. The agreement will be concluded by the Council, acting by a two-thirds majority, after obtaining the consent of the European Parliament. Thereafter, the Constitution will normally cease to apply to the withdrawing state from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification to withdraw has been received by the European Council. If a state which has withdrawn from the Union asks to rejoin, its request will be treated as an application for membership.

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