



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 26 June 2007**

**11222/07**

**POLGEN 75**

**COVER NOTE**

|           |                                                         |
|-----------|---------------------------------------------------------|
| from :    | General Secretariat of the Council                      |
| to :      | Delegations                                             |
| Subject : | Amendment of the Treaties on which the Union is founded |

Delegations will find attached a copy of a letter from Mr Wilhelm Schönfelder, Permanent Representative of Germany, to Mr Javier SOLANA, Secretary-General/High Representative, concerning the amendment of the Treaties on which the Union is founded.

[dated 25 June 2007]

Sir,

The German Government has instructed me to submit to the Council, in accordance with Article 48 of the Treaty on European Union, a proposal for the amendment of the Treaties on which the Union is founded. The proposal is annexed to this letter.

(Complimentary close)

(s.) W. SCHÖNFELDER  
Permanent Representative

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**EXTRACT OF THE EUROPEAN COUNCIL PRESIDENCY CONCLUSIONS OF**  
**21/22 JUNE 2007**

**TREATY REFORM PROCESS**

- "8. The European Council agrees that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on. The period of reflection has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution.
9. Against this background, the European Council welcomes the report drawn up by the Presidency (doc.10659/07) following the mandate given to it in June 2006, and agrees that settling this issue quickly is a priority.
10. To this end the European Council agrees to convene an Intergovernmental Conference and invites the Presidency without delay to take the necessary steps in accordance with Article 48 of the TUE, with the objective of opening the IGC before the end of July as soon as the legal requirements have been met.
11. The IGC will carry out its work in accordance with the mandate set out in the Annex to these conclusions. The European Council invites the incoming Presidency to draw up a draft Treaty text in line with the terms of the mandate and to submit this to the IGC as soon as it opens. The IGC will complete its work as quickly as possible, and in any case before the end of 2007, so as to allow for sufficient time to ratify the resulting Treaty before the European Parliament elections in June 2009.

12. The IGC will be conducted under the overall responsibility of the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council. The Representative of the Commission will participate in the Conference. The European Parliament will be closely associated with and involved in the work of the Conference with 3 representatives. The General Secretariat of the Council will provide the secretariat support for the Conference.
  13. Having consulted the President of the European Parliament, the European Council invites the European Parliament, in order to pave the way for settling the issue of the future composition of the European Parliament in good time before the 2009 elections, to put forward by October 2007 a draft of the initiative foreseen in Protocol 34 as agreed in the 2004 IGC.
  14. The incoming presidency is invited to ensure that the candidate countries are kept fully and regularly briefed throughout the Intergovernmental Conference."
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## IGC MANDATE

The present mandate will provide the exclusive basis and framework for the work of the IGC that will be convened according to paragraph 10 of the European Council conclusions.

### I. GENERAL OBSERVATIONS

1. The IGC is asked to draw up a Treaty (hereinafter called "*Reform Treaty*") amending the existing Treaties with a view to enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned. The *Reform Treaty* will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC, as set out below in a detailed fashion.

2. The *Reform Treaty* will contain two substantive clauses amending respectively the *Treaty on the European Union (TEU)* and the *Treaty establishing the European Community. (TEC)*. The *TEU* will keep its present name and the *TEC* will be called *Treaty on the Functioning of the Union*, the Union having a single legal personality. The word "Community" will throughout be replaced by the word "Union"; it will be stated that the two Treaties constitute the Treaties on which the Union is founded and that the Union replaces and succeeds the Community. Further clauses will contain the usual provisions on ratification and entry into force as well as transitional arrangements. Technical amendments to the *Euratom Treaty* and to the existing *Protocols*, as agreed in the 2004 IGC, will be done via Protocols attached to the *Reform Treaty*.

3. The *TEU* and the *Treaty on the Functioning of the Union* will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice<sup>1</sup>.

4. As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the *TEU* and the *Treaty on the Functioning of the Union*, as specified in this mandate. Modifications to these innovations introduced as a result of the consultations held with the Member States over the past 6 months are clearly indicated below. They concern in particular the respective competences of the EU and the Member States and their delimitation, the specific nature of the Common Foreign and Security Policy, the enhanced role of national parliaments, the treatment of the Charter of Fundamental Rights and a mechanism, in the area of police and judicial cooperation in criminal matters, enabling Member States to go forward on a given act while allowing others not to participate.

## II. AMENDMENTS TO THE EU TREATY

5. Clause 1 of the *Reform Treaty* will contain the amendments to the present *TEU*.

In the absence of indications to the contrary in this mandate, the text of the existing Treaty remains unchanged.

6. The text of the first recital as agreed in the 2004 IGC will be inserted as a second recital into the Preamble.

7. The *TEU* will be divided into 6 Titles: *Common Provisions (I)*, *Provisions on democratic principles (II)*, *Provisions on institutions (III)*, *Provisions on enhanced cooperation (IV)*, *General Provisions on the Union's External Action and specific Provisions on the Common Foreign and Security Policy (V)*, and *Final Provisions (VI)*. Titles I, IV (present VII), V and VI (present VIII) follow the structure of the existing *TEU*, with amendments as agreed in the 2004 IGC.<sup>2</sup> The two other titles (II and III) are new and introduce innovations agreed in the 2004 IGC.

### Common Provisions (I)

8. Title I of the existing *TEU*, containing inter alia Articles on the Union's values and objectives, on relations between the Union and the Member States, and on the suspension of rights of Member States, will be amended in line with the innovations agreed in the 2004 IGC (see Annex 1, Title I).

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<sup>1</sup> Whilst the Article on primacy of Union law will not be reproduced in the *TEU*, the IGC will agree on the following Declaration: "The Conference recalls that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law." In addition, the opinion of the Legal Service of the Council (doc. 11197/07) will be annexed to the Final Act of the Conference.

<sup>2</sup> The content of Title VI on police and judicial cooperation in criminal matters will be put into the Title on the Area of freedom, security and justice in the Treaty on the Functioning of the Union (*TFEU*), see below under "Amendments to the EC Treaty".

9. The Article on fundamental rights will contain a cross reference<sup>3</sup> to the *Charter on fundamental rights*, as agreed in the 2004 IGC, giving it legally binding value and setting out the scope of its application.

10. In the Article on fundamental principles concerning competences it will be specified that the Union shall act only within the limits of competences conferred upon it by the Member States in the Treaties.

#### Provisions on democratic principles (II)

11. This new Title II will contain the provisions agreed in the 2004 IGC on democratic equality, representative democracy, participatory democracy and the citizens' initiative. Concerning national parliaments, their role will be further enhanced compared to the provisions agreed in the 2004 IGC (see Annex 1, Title II):

- The period given to national parliaments to examine draft legislative texts and to give a reasoned opinion on subsidiarity will be extended from 6 to 8 weeks (the *Protocols on national Parliaments and on subsidiarity and proportionality* will be modified accordingly).
- There will be a reinforced control mechanism of subsidiarity in the sense that if a draft legislative act is contested by a simple majority of the votes allocated to national parliaments, the Commission will re-examine the draft act, which it may decide to maintain, amend or withdraw. If it chooses to maintain the draft, the Commission will have, in a reasoned opinion, to justify why it considers that the draft complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national parliaments, will have to be transmitted to the EU legislator, for consideration in the legislative procedure. This will trigger a specific procedure:
  - before concluding first reading under the ordinary legislative procedure, the legislator (Council and Parliament) shall consider the compatibility of the legislative proposal with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national parliaments as well as the reasoned opinion of the Commission;
  - If, by a majority of 55% of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration. (the *Protocol on subsidiarity and proportionality* will be modified accordingly).

A new general Article will reflect the role of the national parliaments.

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<sup>3</sup> Therefore, the text of the Charter on fundamental rights will not be included in the Treaties.

### Provisions on institutions (III)

12. The institutional changes agreed in the 2004 IGC will be integrated partly into the *TEU* and partly into the *Treaty on the Functioning of the Union*. The new Title III will give an overview of the institutional system and will set out the following institutional modifications to the existing system, i.e. the Articles on the Union's institutions, the European Parliament (new composition), the European Council (transformation into an institution<sup>4</sup> and creation of the office of President), the Council (introduction of the double majority voting system and changes in the six-monthly Council presidency system, with the possibility of modifying it), the European Commission (new composition and strengthening of the role of its President), the Union Minister for Foreign Affairs (creation of the new office, its title being changed to High Representative of the Union for Foreign Affairs and Security Policy) and the Court of Justice of the European Union.<sup>5</sup>

13. The double majority voting system, as agreed in the 2004 IGC, will take effect on 1 November 2014, until which date the present qualified majority system (Article 205(2) TEC) will continue to apply. After that, during a transitional period until 31 March 2017, when a decision is to be adopted by qualified majority, a member of the Council may request that the decision be taken in accordance with the qualified majority as defined in Article 205(2) of the present TEC.

In addition, until 31 March 2017, if members of the Council representing at least 75% of the population or at least 75% of the number of Member States necessary to constitute a blocking minority resulting from the application of Article [I-25(1) first subparagraph], or Article [I-25(2)], indicate their opposition to the Council adopting an act by a qualified majority, the mechanism provided for in the draft Decision contained in Declaration n° 5 annexed to the Final Act of the 2004 IGC will apply. As from 1 April 2017, the same mechanism will apply, the relevant percentages being, respectively, at least 55% of the population or at least 55% of the number of Member States necessary to constitute a blocking minority resulting from the application of Article [I-25(1) first subparagraph], or Article [I-25(2)].

### Provisions on enhanced cooperation (IV)

14. Title IV (former Title VII of the existing *TEU*) will be amended as agreed in the 2004 IGC. The minimum number of Member States required for launching an enhanced cooperation will be nine.

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<sup>4</sup> Including modalities of vote.

<sup>5</sup> There will be some drafting adaptations due to the merging of some provisions.

General Provisions on the Union's external action and specific Provisions on the Common Foreign and Security Policy (V)

15. In Title V of the existing *TEU*, a first new Chapter on the general provisions on the Union's external action will be inserted containing two Articles, as agreed in the 2004 IGC, on the principles and objectives of the Union's external action and on the role of the European Council in setting the strategic interests and objectives of this action. The second Chapter contains the provisions of Title V<sup>6</sup> of the existing *TEU*, as amended in the 2004 IGC (including the European External Action Service and the permanent structured cooperation in the field of defence). In this Chapter, a new first Article will be inserted stating that the Union's action on the international scene will be guided by the principles, will pursue the objectives and will be conducted in accordance with the general provisions on the Union's external action which are laid down in Chapter 1. It will be clearly specified in this Chapter that the CFSP is subject to specific procedures and rules. There will also be a specific legal basis on personal data protection in the CFSP area<sup>7</sup>.

Final Provisions (VI)

16. Title VI (former Title VIII of the existing *TEU*) will be amended as agreed in the 2004 IGC. There will in particular be an Article on the legal personality of the Union<sup>8</sup>, an Article on voluntary withdrawal from the Union and Article 48 will be amended so as to bring together the procedures for revising the Treaties (the ordinary and the two simplified procedures). This Article, in its paragraph on the ordinary revision procedure, will make it clear that the Treaties can be revised to increase or reduce the competences conferred upon the Union. In Article 49, on conditions of eligibility and the procedure for accession to the Union, the reference to the principles will be replaced by a reference to the Union's values and the addition of a commitment to promoting such values, an obligation to notify the European Parliament and national parliaments of an application for accession to the Union and a reference to take into account the conditions of eligibility agreed upon by the European Council (see Annex 1, Title VI). The usual final provision will also be adapted (territorial scope, duration, ratification and authentic texts and translations).<sup>9</sup>

**III. AMENDMENTS TO THE EC TREATY**

17. Clause 2 of the *Reform Treaty* will contain the amendments to the present *TEC*, which will become the *Treaty on the Functioning of the European Union*.

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<sup>6</sup> The IGC will agree on the following Declaration: "*The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.*

*The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.*

*It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security."*

<sup>7</sup> With regard to the processing of such data by the Member States when carrying out activities which fall within the CFSP and ESDP and the movement of such data.

<sup>8</sup> The IGC will agree on the following Declaration: "*The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.*"

<sup>9</sup> Articles 41, 42, 46 and 50 of the *TEU* will be deleted, Article 47 being placed, as amended in the 2004 IGC, in the CFSP Chapter.

18. The innovations as agreed in the 2004 IGC will be inserted into the Treaty by way of specific modifications in the usual manner. They concern the categories and areas of competences, the scope of qualified majority voting and of codecision, the distinction between legislative and non legislative acts, provisions *inter alia* on the Area of freedom, security and justice, the solidarity clause, the improvements to the governance of the euro, horizontal provisions such as the social clause, specific provisions such as public services, space, energy, civil protection, humanitarian aid, public health, sport, tourism, outermost regions, administrative cooperation, financial provisions (own resources, multiannual financial framework, new budgetary procedure).

19. The following modifications will be introduced compared to the results of the 2004 IGC (see Annex 2):

- a) A new Article 1 will state the purpose of the Treaty on the functioning of the Union and its relation with the EU Treaty. It will state that the two Treaties have the same legal value.
- b) In the Article on categories of competences, placed at the beginning of the *TEC*, it will be clearly specified that the Member States will exercise again their competence to the extent that the Union has decided to cease exercising its competence.<sup>10</sup>
- c) In the Article on supporting, coordinating or complementary action, the introductory sentence will be amended so as to underline that the Union carries out actions to support, coordinate or supplement the actions of the Member States.
- d) In Article 18(3), as amended in the 2004 IGC, the phrase on the adoption of measures on passports, identity cards, residence permits and similar documents will be removed and transferred to a similar legal basis on this issue to be placed in the Title on the Area of freedom, security and justice, in the Article on border checks.
- e) In Article 20 (diplomatic and consular protection), as amended in the 2004 IGC, the legal basis will be amended so as to provide in this field for adoption of directives establishing coordination and cooperation measures.
- f) In Article 286 (personal data protection), as amended in the 2004 IGC, a subparagraph will be inserted stating that the rules adopted on the basis of this Article will be without prejudice to those adopted under the specific legal basis on this subject which will be introduced in the CFSP Title (the IGC will also adopt a declaration on personal data protection in the areas of police and judicial cooperation in criminal matters, as well as, where appropriate, specific entries in the relevant Protocols on the position of individual Member States clarifying their applicability in this respect).

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<sup>10</sup> (a) The IGC will also agree a Declaration in relation to the delimitation of competences: *"The Conference underlines that, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union, competences not conferred upon the Union in the Treaties remain with Member States.*

*When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular to better ensure the constant respect for the principles of subsidiarity and proportionality. The Council may request, at the initiative of one or several of its Members (representatives of Member States) and in accordance with Article 208, the Commission to submit proposals for repealing a legislative act.*

*Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article [IV-443] of the Treaty on European Union, may decide to amend the Treaties on which the Union is founded, including either to increase or to reduce the competences conferred on the Union in the said Treaties."*

(b) The following Protocol will be annexed to the Treaties:

*"With reference to Article[ I-12(2)] on shared competences, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area."*

- g) In Article 42 (aggregation of insurance periods and export of social security benefits), an addition will be made to stress that the procedure is halted in the brake system if the European Council does not take any action within 4 months (see point 1) of Annex 2).<sup>11</sup>
- h) Article 60 (freezing of assets to combat terrorism), as amended in the 2004 IGC, will be transferred towards the end of the Chapter on general provisions in the Title on the Area of freedom, security and justice.
- i) On the issue of services of general economic interest (cf. Article 16, as amended in the 2004 IGC) a Protocol will be annexed to the Treaties.<sup>12</sup>
- j) In the Chapter on general provisions applying to the area of freedom, security and justice, insertion of a provision about cooperation and coordination by Member States in the field of national security (see point 2)(a) of Annex 2).
- k) In the Chapter on judicial cooperation in civil matters, paragraph 3 of the Article on such cooperation, as agreed in the 2004 IGC, will be modified so as to give a role to national parliaments in the "passerelle" clause on family law (see point 2)(b) of Annex 2).
- l) In the Chapters on judicial cooperation in criminal matters and on police cooperation, as amended in the 2004 IGC, in the Articles on mutual recognition of judgments, minimum rules on definition of criminal offences and sanctions, the European Public Prosecutor, and police cooperation, a new mechanism will be inserted enabling Member States to go forward with adopting measures in this field while allowing others not to participate (see point 2)(c) and (d) of Annex 2). Moreover, the scope of the Protocol on the position of the United Kingdom and Ireland (1997) will be extended so as to include, in relation to the UK, and on the same terms, the Chapters on judicial cooperation in criminal matters and on police cooperation. It may also address the application of the Protocol in relation to Schengen building measures and amendments to existing measures. This extension will take account of the UK's position under the previously existing Union acquis in these areas. Ireland will determine in due course its position with regard to that extension.
- m) In Article 100 (measures in case of severe difficulties in the supply of certain products), a reference to the spirit of solidarity between Member States and to the particular case of energy as regards difficulties in the supply of certain product will be inserted (see point 3) of Annex 2).

<sup>11</sup> The IGC will also agree a Declaration in relation to this Article: "*The Conference recalls that in that case, in accordance with Article [I-21(4)], the European Council acts by consensus*".

<sup>12</sup> The following Protocol will be annexed to the Treaties:

*"Protocol on services of general interest*

*The High Contracting Parties,*

*Wishing to emphasise the importance of services of general interest*

*Have agreed upon the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the Union:*

*Article 1*

*The shared values of the Union in respect of services of general economic interest within the meaning of Article 16 EC Treaty include in particular:*

- the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organizing services of general economic interest as closely as possible to the needs of the users;*
- the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;*
- a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights;*

*Article 2*

*The provisions of the Treaties do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest."*

- n) In Article 152 (public health), as amended in the 2004 IGC, point (d) on measures concerning monitoring, early warning of and combating serious cross border threats to health will be transferred to the paragraph on adoption of incentive measures (the IGC will also adopt a declaration clarifying the internal market aspect of measures on the quality and safety standards for medicinal products and devices).
- o) In the Article on European space policy, agreed in the 2004 IGC, it will be specified that measures adopted may not entail harmonisation of the laws and regulations of the Member States.
- p) In Article 174 (environment), as amended in the 2004 IGC, the particular need to combat climate change in measures at international level will be specified (see point 4) of Annex 2).
- q) In the Article on energy, agreed in the 2004 IGC, a reference to the spirit of solidarity between Member States will be inserted (see point 5) of Annex 2), as well as a new point (d) on the promotion of interconnection of energy networks.
- r) At the beginning of the Part on the Union's external action, an Article will be inserted stating that the Union's action on the international scene will be guided by the principles, will pursue the objectives and will be conducted in accordance with the general provisions on the Union's external action which are laid down in Chapter 1 of Title V of the *TEU*.
- s) In the Article on the procedure for concluding international agreements, it will be added that the agreement on the accession of the Union to the ECHR will be concluded by the Council, by unanimity and with ratification by Member States.
- t) Article 229 A (extension of ECJ jurisdiction on disputes relating to European intellectual property rights) will remain unchanged.
- u) In Article 249 (definition of EU acts: regulation, directive and decision), in a new Section 1 on the Union's legal acts, the definition of a decision will be aligned with the one agreed in the 2004 IGC.
- v) As a consequence of dropping the denominations "law" and "framework law", the innovations agreed in the 2004 IGC will be adapted, while maintaining the distinction between what is legislative and what is not and its consequences. Accordingly, after Article 249, three Articles will be introduced on, respectively, acts which are adopted in accordance with a legislative procedure, delegated acts and implementing acts. The Article on legislative acts will state that acts (regulations, directives or decisions) adopted under a legislative procedure (ordinary or special) will be legislative acts. The terminology in the Articles on delegated and implementing acts, as agreed in the 2004 IGC, will be adapted accordingly.
- w) In Article 308 (flexibility clause), as amended in the 2004 IGC, a paragraph will be added stating that this Article cannot serve as a basis for attaining objectives pertaining to the CFSP, and that any acts adopted pursuant to this Article will have to respect the limits set out in Article [III-308, second subparagraph].<sup>13</sup>

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<sup>13</sup> The IGC will also agree two Declarations in relation to this Article:

- 1) *"The Conference declares that the reference in Article 308 to objectives of the Union refers to the objectives as set out in Article [I-3(2) and (3)] and to the objectives of Articles [I-3(4)] with respect to external action under Part III, Title V of the Treaty. It is therefore excluded that an action based on Article 308 would only pursue objectives set out in Article [I-3(1)]. In this connection, the Conference notes that in accordance with Article [I-40(6)], legislative acts may not be adopted in the area of Common Foreign and Security Policy."*
- 2) *"The Conference underlines that, in accordance with the settled case-law of the Court of Justice of the European Union, Article 308, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, Article 308 cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose."*

- x) After Article 308, an Article will be inserted excluding from the coverage of the simplified revision procedure those legal bases which were not covered by this procedure in the texts as agreed in the 2004 IGC.

20. In addition, a number of provisions agreed in the 2004 IGC will be located in the *Treaty on the Functioning of the Union* (see list in Part B of Annex 2).

#### **IV. PROTOCOLS AND THE EURATOM TREATY**

21. The new Protocols agreed in the 2004 IGC<sup>14</sup> will be annexed to the existing Treaties (i.e. Protocol on the role of national Parliaments in the European Union, Protocol on the application of the principles of subsidiarity and proportionality, Protocol on the Euro Group, Protocol on permanent structured cooperation in the field of defence and Protocol on the accession of the Union to the ECHR).

22. A Protocol annexed to the *Reform Treaty* will amend the existing Protocols, as agreed in the 2004 IGC (including the deletion of 10 of them).

23. A Protocol annexed to the *Reform Treaty* will make the necessary technical amendments, as agreed in the 2004 IGC, to the *Euratom Treaty*.

#### **V. DECLARATIONS**

24. In addition to the Declarations referred to in the present mandate, the Declarations as agreed by the 2004 IGC will be taken over by the present IGC, to the extent they relate to provisions or protocols examined during the present IGC.

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<sup>14</sup> Some of these Protocols are not necessary due to the fact that the existing Treaties are not repealed and are therefore not listed. It is underlined that all existing Treaties, including the Accession Acts, remain in force.

**Title I - Common provisions**

The purpose of this Annex is to clarify the exact drafting where necessary

1) *Insertion in the Preamble of the EU Treaty of the following second whereas clause<sup>\*15</sup>:*

"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,"

2) *In Article 1, insertion of the following sentences:*

*At the end of the first subparagraph:* "... on which the Member States confer competences to attain objectives they have in common."

*To replace the last subparagraph:* "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."

2bis *Insertion of an Article 2 on the values of the Union.\**

3) *Replacement of Article 2 on the Union's objectives, renumbered 3, with the following text:<sup>16</sup>*

"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.

3bis. The Union shall establish an economic and monetary union whose currency is the euro.

4. 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.

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

<sup>15</sup> Throughout this Annex, this sign (\*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.

<sup>16</sup> The following Protocol will be annexed to the Treaties:

*"Protocol on internal market and competition*

*The High Contracting Parties, considering that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted*

*Have agreed that,*

*to this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 308 of the Treaty on the Functioning of the Union."*

- 4) Replacement of Article 3 by an Article 4 on the relations between the Union and the Member States\*, with the addition of the following at the beginning and of a sentence at the end of the present paragraph 1, renumbered 2:

"1. In accordance with Article [I-11], 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 ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.

(present paragraph 2 renumbered 3)".

- 5) Replacement of Article 6 on fundamental rights with a text reading as follows:<sup>17-18-19-20</sup>

"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<sup>21</sup>], which shall have the same legal value as the Treaties.

<sup>17</sup> The IGC will agree the following Declaration: *"The Conference declares that:*

*1. The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.*

*2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties."*

<sup>18</sup> Unilateral Declaration by Poland:

*"The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law as well as the protection of human dignity and respect for human physical and moral integrity."*

<sup>19</sup> The following Protocol will be annexed to the Treaties:

*"The High Contracting Parties*

*Whereas in Article [xx] of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights;*

*Whereas the Charter is to be applied in strict accordance with the provisions of the aforementioned Article [xx] and Title VII of the Charter itself;*

*Whereas the aforementioned Article [xx] requires the Charter to be applied and interpreted by the courts of the United Kingdom strictly in accordance with the Explanations referred to in that Article;*

*Whereas the Charter contains both rights and principles;*

*Whereas the Charter contains both provisions which are civil and political in character and those which are economic and social in character;*

*Whereas the Charter reaffirms the rights, freedoms and principles recognised in the Union and makes those rights more visible, but does not create new rights or principles;*

*Recalling the United Kingdom's obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;*

*Noting the wish of the United Kingdom to clarify certain aspects of the application of the Charter;*

*Desirous therefore of clarifying the application of the Charter in relation to the laws and administrative action of the United Kingdom and of its justiciability within the United Kingdom;*

*Reaffirming that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter;*

*Reaffirming that this Protocol is without prejudice to the application of the Charter to other Member States;*

*Reaffirming that this Protocol is without prejudice to other obligations of the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally;*

*Have agreed upon the following provisions which shall be annexed to the Treaty on European Union:*

*Article 1*

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

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

*Article 2*

*To the extent that a provision of the Charter refers to national laws and practices, it shall only apply in the United Kingdom to the extent that the rights or principles that it contains are recognised in the law or practices of the United Kingdom."*

<sup>20</sup> Two delegations reserved their right to join in the Protocol referred to in footnote 19.

<sup>21</sup> I.e. the version of the Charter as agreed in the 2004 IGC which will be re-enacted by the three Institutions in [2007]. It will be published in the Official Journal of the European Union.

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.

6) *Insertion of an Article 7bis on the Union and its neighbours\*.*

***Title II - Provisions on democratic principles***

7) *Insertion of a new Article on the role of national parliaments in the Union reading as follows:*

"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."

***Title V - General provisions on the Union's External Action and specific provisions on the Common Foreign and Security Policy***

8) *In Article 11, insertion of a paragraph 1 reading as follows (the current text of paragraph 1 being deleted).<sup>22</sup>*

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.

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<sup>22</sup> The IGC will agree the following Declaration: "In addition to the specific procedures referred to in [paragraph 1 of Article 11], the Conference underlines that the provisions covering CFSP including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN. The Conference also notes that the provisions covering CFSP do not give new powers to the Commission to initiate decisions or increase the role of the European Parliament. The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States."

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]."

## ***Title VI - Final provisions***

- 9) *In Article 49, first subparagraph, insertion of a new last sentence, the second subparagraph remaining unchanged:*

### *"Article 49*

#### *Conditions of eligibility and procedure for accession to the Union*

*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."*

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**A. Modifications compared with the results as agreed in the 2004 IGC**

The purpose of this Annex is to clarify the exact drafting where necessary (A) and to clarify the location of certain provisions (B)

- 1) *In Article 42, insertion of amendments as agreed in the 2004 IGC, with addition of the following, at the end:*

"Where a member of the Council declares that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system, it may request that the matter be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:

- (a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure, or
- (b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted."

- 2) *Replacement, as agreed in the 2004 IGC, of Title IV with the provisions of a new Title on the area of freedom, security and justice\*, which includes Chapter 1 (general provisions), Chapter 2 (policies on border checks, asylum and immigration), Chapter 3 (judicial cooperation in civil matters), Chapter 4 (judicial cooperation in criminal matters) and Chapter 5 (police cooperation).*

- (a) *In Chapter 1 (general provisions), insertion in [Article III-262] of the following new second subparagraph:*

"It shall be open to Member States to organize between themselves and under their responsibility forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security."

- (b) *In Chapter 3 (judicial cooperation in civil matters), replacement of paragraph 3 of [Article III-269] as follows:*

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the second subparagraph shall not be adopted. In the absence of opposition, the Council may adopt the decision."

<sup>23</sup> Throughout this Annex, this sign (\*) indicates that the innovations to be inserted are the same as those agreed by the 2004 IGC.

- (c) *In Chapter 4 (judicial cooperation in criminal matters), replacement of, respectively, paragraphs 3 and 4 of [Article III-270] and of [Article III-271] by the following:*

"3. Where a member of the Council considers that a draft directive as referred to in [paragraph 2 of III-270] [paragraphs 1 or 2 of III-271] would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least 9 Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply."

- (d) *In Chapter 4 (judicial cooperation in criminal matters) and in Chapter 5 (police cooperation) insertion of the following new last subparagraphs, respectively, in paragraph 1 of [III-274] and in paragraph 3 of [Article III-275]:*

"In case of absence of unanimity in the Council, a group of at least 9 Member States may request that the draft [regulation/measures] be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least 9 Member States wish to establish enhanced cooperation on the basis of the draft [regulation/measures] concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply."

[in III-275(3) only: "The specific procedure provided in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis."].

- 3) *In Article 100, replacement of paragraph 1 with the following:*

"1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy."

- 4) *In Title XIX (environment), insertion of amendments as agreed in the 2004 IGC, with the replacement of the last indent in Article 174 by the following:*

"- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

- 5) *Insertion of a new Title on energy, as agreed in the 2004 IGC, with the replacement of the introductory sentence in paragraph 1 of the Article [III-256] by the following:*

"1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to: (...)".

## **B. Clarifications on the location of certain provisions\***

- 6) *Status of churches and non-confessional organisations (end of Title II on provisions of general application);*
- 7) *Citizenship of the Union (Part Two);*
- 8) *Legal basis for adopting the arrangements for the submission of a citizens' initiative [I-47(4)] (at the beginning of Article 27);*
- 9) *Transparency of the proceedings of the Union institutions, bodies, offices and agencies (Article 255, moved in Part Two);*
- 10) *Social partners and the social dialogue (beginning of the Chapter on social policy);*
- 11) *Solidarity clause (new Title VII in the Part on External Action);*
- 12) *European Ombudsman (in Article 195);*
- 13) *Provision under which the rules on QMV in the Council also apply to the European Council ([Article I-25(3)] in the new Section Ibis on European Council);*
- 14) *Legal bases for adopting the list of Council configurations [Article I-24(4)] and the decision on the presidency of these configurations (Article I-24(7)] and replacement of Article 205(2) with the QMV rule applicable when the Council does not act on the basis of a Commission proposal [Article I-25(2)] (in Section 2 on Council);*
- 15) *Legal basis for the adoption of the rotation system for the composition of the Commission [Article I-26(6)(a) and (b)] (Section 3 on Commission);*
- 16) *European Central Bank (in Section 4bis in Part Five);*
- 17) *Court of Auditors (in Section 5 in Part Five);*
- 18) *The Union's Advisory Bodies (in Chapters 3 and 4 in Part Five);*
- 19) *Specific Title II on financial provisions (Chapters on the Union's own resources, the multiannual financial framework, the Union's annual budget, the implementation of the budget and discharge, common provisions and combating fraud);*
- 20) *A Title III and provisions on enhanced cooperation, including the transfer of Articles 27 A to 27 E and 40 to 40 B TEU and of the details on voting arrangements [Article I-44(3)];*
- 21) *Amendment of Article 309 with the details of voting rules in case of suspension of certain rights resulting from Union membership [Article I-59(5) and (6)];*
- 22) *Insertion in the General and Final Provisions of the details of territorial scope [Article IV-440(2) to (7)].*