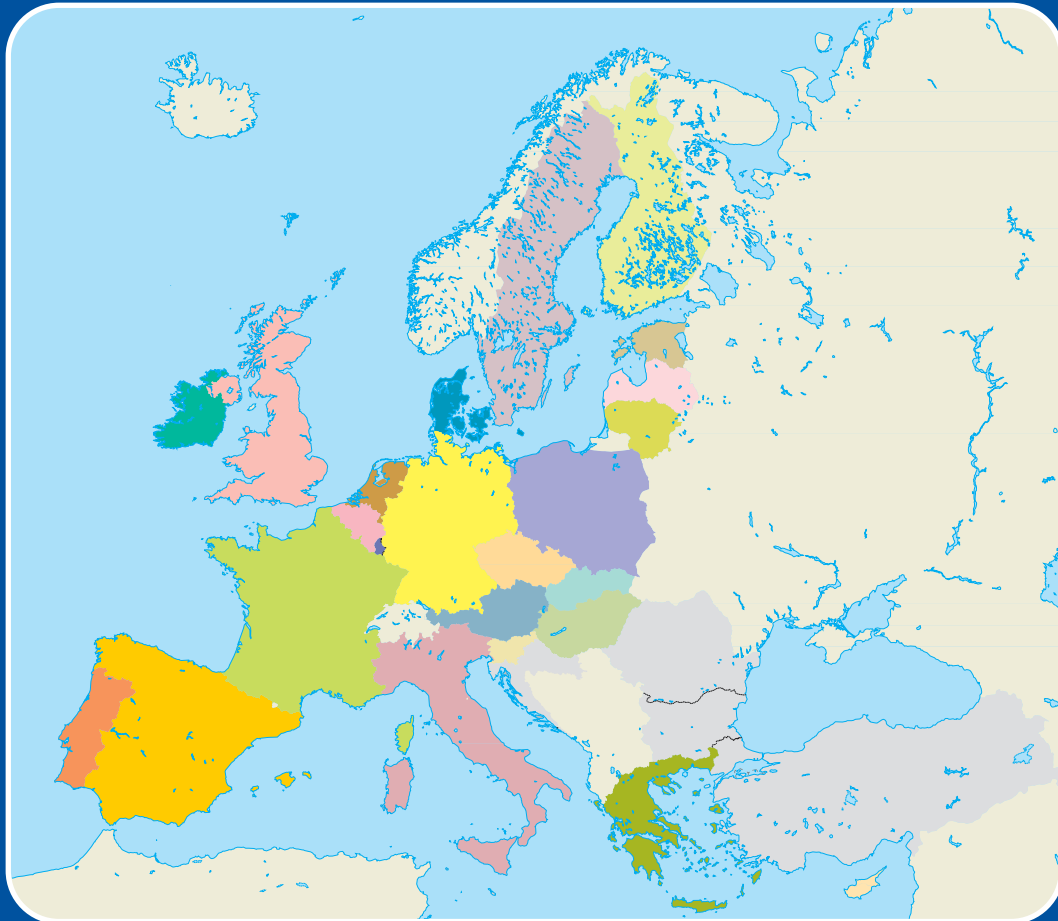




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# White Paper on the Treaty establishing a Constitution for Europe





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# **White Paper on the Treaty establishing a Constitution for Europe**

Presented to Parliament by the  
Secretary of State for Foreign and Commonwealth Affairs  
By Command of Her Majesty  
September 2004

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## FOREWORD



The EU Constitutional Treaty has been some two years in the making. The Convention on the Future of Europe launched the process, back in February 2002. The 25 Member State governments concluded it under accomplished Irish chairmanship last June. The negotiations have been accompanied by much comment and debate, in the media and Parliament.

The results are now there for all to see. There is an agreed text, on which Parliament will begin work later this year. I think it represents a good result for Britain and for Europe. We can be proud of the strong part we played in shaping the Treaty – a role widely recognised across the EU. It is an example of how a Britain strongly engaged in the European Union has much greater political influence than a Britain disengaged from Europe.

Since the formation of the European Economic Community in 1958, the organisation of Europe has undergone many changes, none greater than the accession of 10 new Member States in 2004, bringing total membership up to 25; creating the new Europe of over 450 million people is a strategic success for Britain. British governments – Conservative and Labour – have argued strongly and consistently for bringing the countries of central and eastern Europe into the EU. Enlargement has healed the artificial division of Europe which followed the Second World War, and has brought into the Union a group of countries with which we have strong, historic ties.

But as the EU has expanded, we have also developed a series of treaties which are complex and confusing, and a system of rules better suited to the original club of six than today's Union of 25. It is a sensible moment to update these treaties, and to modernise the way we do business in the EU.

The Constitution will bring real improvements to make Europe more effective, more accountable and easier to understand. For the first time, the powers, rights and duties of this Union are set out in a single treaty. It provides a voting system for the Council which is both simpler and fairer. It provides for a significant strengthening of the voice of national governments within the EU, through the creation of a permanent President of the European Council. For the first time, it gives national parliaments a power to scrutinise proposals from the Commission at the draft stage and to send them back if parliaments are not satisfied the EU needs to act. It introduces more workable arrangements for flexibility in Europe through 'enhanced co-operation' – with all countries free to take part in new areas of co-operation,

but none obliged to do so. It will streamline the European Commission. It provides for better foreign policy co-ordination between EU countries, while preserving national choice.

The Treaty also makes it plain that the European Union is not and will not be a federal superstate. Rather, it establishes clearly where the EU can and cannot act, and confirms that the EU is a union of nation states, which has only the powers given to it by these states. And contrary to the myths, the Treaty does not abolish our seat on the UN Security Council; does not threaten our control of our oil supplies or our army; and does not force us to join the euro against our will, to raise our taxes or to have our foreign policy dictated from Brussels.

Unanimous agreement is still required for the most important decisions: for tax, social security, foreign policy, defence, and decisions on the financing of the EU affecting the British budget contribution. Britain also retains the right to opt out of measures affecting our laws on asylum and immigration. This is clearly not a Treaty which reduces our powers as a nation.

Membership of the EU has enormous benefits for Britain in terms of wealth, jobs, peace and security. Around 3 million British jobs depend on our trade with other Member States, and membership has added almost 2 per cent to our GDP. We are much better able to tackle problems such as pollution, terrorism and international crime by working with our neighbours and partners than by acting alone. It is as part of the EU that we are best able to deliver the stable, safe, and prosperous world that we all want.

The final say on this Treaty will be with the British people in a referendum. I have no hesitation in commending it to the country as a success and as a major step forward in creating the kind of Europe that the British people want: a flexible Europe in which Britain remains a strong and influential power; a wider, peaceful and free Europe to which we can be proud to belong; and an effective Europe which benefits all our lives.

A handwritten signature in black ink that reads "Tony Blair". The signature is written in a cursive, slightly slanted style.

**TONY BLAIR**

September 2004

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Note: All Article numbers in this White Paper refer to the provisional text published on 19 July as a Command Paper (Cm 6289). In the final version, the numbering will be adjusted to make it completely sequential through the whole Treaty text.





## PREFACE



A new Constitution for Europe was agreed by EU Heads of State and Government at the Intergovernmental Conference on 18 June. The outcome was a success for the United Kingdom.

The Constitution will reform the newly enlarged European Union to make it more efficient, effective and open. This will allow the EU to concentrate on the issues which really matter to the people of Europe, in particular building prosperity and security on our continent. The Constitution also makes clearer than ever before

what the EU is: a union of sovereign states which exercises only those powers given to it by its members.

The Constitution will come into force once ratified under the constitutional arrangements of each Member State. In the UK, this will be by legislation considered by both Houses of Parliament and then endorsement in a referendum.

This White Paper is a successor to the White Paper entitled "A Constitutional Treaty for the EU: the British approach to the European Union Intergovernmental Conference 2003" which I published in September 2003.

That White Paper explained the background to the Intergovernmental Conference (IGC) and the Government's negotiating position. Most importantly, it set out a series of specific commitments by which the Government would be bound during the negotiations. Many of these became known as the UK's "red lines". The UK achieved all its key negotiating objectives.

This White Paper sets out the main elements of the new Constitution, and how the Government delivered upon its negotiating objectives.



**Jack Straw**

September 2004



# PART I

## Why does the EU need a constitution?

1. The European Economic Community (EEC), one of the predecessors of the European Union, came into being in 1958. It had just 6 Member States. The EEC operated on the premise that working together would enable neighbours to tackle cross-Europe issues. It had a Council of national Ministers from the Member States. It had a Commission to enforce the Treaty and propose new legislation, a Court of Justice to resolve disputes, and an Assembly of national parliamentarians to reinforce democratic accountability. Member States collectively agreed to confer certain powers (competences) on these institutions. By the time the UK joined the EEC in 1973, the principle of primacy (that European law takes precedence over national law) was also firmly established.
2. That was the shape of the European Union over 30 years ago. It is still recognisable today. There have been four main treaties agreed since the UK joined the EU. The changes these progressively introduced are set out in the box on page 12. Until now, those changes have not been brought together in a single treaty.
3. The most significant change to the EU in the last thirty years is how much it has grown. From the 6 founder members, the EU now has 25 Member States. Very soon, with Bulgaria and Romania, it will have 27. Turkey and Croatia are also candidates to join this unique success story. One in eight members of the United Nations are also members of the EU. Its GDP is over 20% of the world's total. It is the world's biggest multinational single market. The Union has its own currency, comparable to the dollar and yen in market power. It has a global foreign policy role, but a particular interest in supporting democracy, prosperity and stability in its neighbours: to the east: Russia and countries of the former Soviet Union; to the south east: the Balkans and the Middle East; and to the south shore of the Mediterranean: from Egypt to Morocco.
4. The EU's rules and its institutions have not kept pace with this growth. The fact that the Union has achieved so much with those institutions is a tribute to the wisdom of its founders – Monnet, Schuman, and Spaak. Yet it is undoubtedly time to review where the Union has reached, and ensure that its institutions are fit for purpose, and that its rules are up-to-date, effective, and comprehensible. That is why it became clear to the Member States, and to those involved in the Convention, that the Union needed a Constitution which would make it more effective, more capable, and more open to its citizens.

## Successive Enlargements

1958	1973	1981	1986	1995	2004	Candidates
Belgium	Denmark	Greece	Portugal	Austria	Cyprus	Bulgaria
France	Ireland		Spain	Finland	Czech Republic	Croatia
Germany	UK			Sweden	Estonia	Romania
Italy					Hungary	Turkey
Luxembourg					Latvia	
Netherlands					Lithuania	
					Malta	
					Poland	
					Slovakia	
					Slovenia	

## What has the EU done for us?

**Wealth:** The EU now gives the UK access to a vast single market of some 450 million people across Europe – more than the US and Japan combined. We export three times as much to other EU Member States as to the US, and more to France and Germany than to the whole of the developing world.

**Jobs:** More than *three million jobs* in UK companies are estimated to be linked to exports to other EU Member States. Each previous enlargement of the EU has resulted in greater prosperity and research suggests that the same will follow from the EU's biggest ever enlargement. Two million people in Britain are employed by foreign investors – many attracted to the UK by our EU membership.

**Peace and stability:** The EU, along with other international organisations like NATO and the United Nations, has helped to make a repeat of the First and Second World Wars unthinkable. As the Union enlarges, it *reinforces peace, democracy and freedom* across Europe. When the UK joined the European Community in 1973, Spain, Portugal and Greece were ruled by dictatorships, and most of the ten countries who recently joined the EU were Soviet satellites. All of these countries are now free, democratic EU partners.

**Security:** 30 years ago law enforcement co-operation with the rest of Europe was slow and ineffective. Escaping abroad often meant escaping justice. Europol (an EU criminal intelligence organisation) and Eurojust (an EU body for co-ordinating investigations and prosecutions) have led to the arrest of drug traffickers, child pornographers and leads relevant to detecting and preventing Al Qa'ida terrorist activity. Fugitives from British justice can now be brought back quickly to the UK as a result of the European Arrest Warrant.

**Fighting Crime:** In June 2004, EU Ministers agreed to spend 45 million euro on a programme to combat illegal and harmful content on the internet. Amongst other things, the programme will support hotlines allowing users to report internet content they regard as illegal or harmful (particularly to children) and fund technological advances allowing users to filter or limit the amount of such material they receive. The internet's boundaries do not end at our borders; it makes sense to act together with our EU partners to tackle these problems.

**Freedom to work and travel across Europe:** In 1973, 'the Continent' appeared to many a distant and rather inaccessible place. You often needed a visa to travel there. British people now have the right to travel, work, study and live visa-free throughout the EU. UK residents will make around *forty million trips* to other EU countries this year. 100 000 Britons are currently working in other EU Member States. 234 000 UK pensioners draw their pensions in other EU countries. On average, 10 000 UK students study abroad in the EU each year. And, contrary to fears expressed at each enlargement, many more Britons have gone to live elsewhere in the EU than EU nationals have to the UK.

**Consumer benefits:** The EU has also introduced rules to protect consumers. British *citizens have guaranteed rights* whenever they buy anything throughout the European Union. Many prices have been driven down thanks to the EU. The cost of making a call or taking a flight across Europe has been cut in recent years because of EU rules encouraging liberalisation and greater competition. And the single market has helped bring us greater choice in our shops.

**A better deal on holidays:** Today, Britons travelling to the continent enjoy benefits that were unheard of when the UK joined the EU in 1973. British travellers are covered for *emergency hospital treatment* on holiday in the EU. The blue EU channel allows travellers to move more quickly through customs. Package tour operators also have to meet certain advertising criteria thanks to EU rules – if they change your holiday, or cancel it, they must provide compensation.

**A cleaner environment:** Pollution respects no national borders. Co-operation with EU partners is *helping to combat global warming* and other threats to our environment and quality of life. Since the UK joined the EU noxious emissions have been cut, making our streets and countryside less polluted. For example, in 1973, sulphur dioxide emissions (one of the key pollutants forming acid rain) were measured in the UK at 6.1 million tonnes. By 1999, these had fallen to 1.2 million tonnes. Important habitats have been protected to provide safe homes for endangered species. And beaches, rivers and drinking water have become much cleaner.

## **How was the EU Constitution negotiated and how will it come into force?**

5. The EU is a treaty-based organisation. This means that all EU actions are based on treaties which have to be unanimously agreed between Member States. The EU cannot take any action unless Member States have ratified the treaty which allows it to do so. The EU Constitution is the latest in the series of EU Treaties stretching back to the Treaty of Rome. It sets out a Constitution for the EU as an organisation and does not replace the constitutions of its Member States.
6. The Constitution was agreed in two phases. The first was the Convention on the Future of Europe, which worked from February 2002 until July 2003. It was established by the Laeken European Council in December 2001 to propose reforms to the EU's institutional structures in preparation for enlargement, and to reconnect the EU with its citizens. Delegations from 28 European countries, national parliamentarians, MEPs and a broad spectrum of political groups started work in February 2002. Following a year and a half of long and vigorous debates in an open, public forum, they produced a draft treaty establishing a Constitution for Europe. The Thessaloniki European Council in June 2003 agreed that this was a "good basis" for the Intergovernmental Conference (IGC).
7. The second phase was the Intergovernmental Conference. An IGC is a Conference of all the Member States of the European Union, which agrees changes to the Treaties to be put to national ratification. All such changes have to be agreed unanimously. The IGC on the EU Constitution began in October 2003 under the Italian Presidency. Despite getting close to consensus on most issues, the IGC did not reach final agreement at the December 2003 European Council, mainly because it proved impossible to agree upon a satisfactory voting system for the Union. After a pause for reflection, Member States agreed that formal negotiations should resume in May under the Irish Presidency. Agreement on the new Treaty was reached at the 17-18 June 2004 European Council.
8. After agreement at the IGC, Member States must now ratify the Treaty according to their own constitutional procedures. The provisional text of the Treaty is already available, and has been published by the Government as a Command Paper (Cm 6289). The Treaty is currently being translated into all the EU's official languages. It will be signed, in Rome, on 29 October. The Member States have agreed a target date of 1 November 2006 for the Constitution to enter into force.

## **The UK's negotiating success at the IGC**

At the European Council on 18 June, amendments to the Convention's draft EU Constitution were set out in two documents, CIG 81/04 and CIG 85/04. These two documents superseded all other proposals for amendments made by either Presidency during the IGC. In total, these documents cover amendments on 80 different areas in the Treaty.

The UK advocated the amendments in 39 of the 80 areas covered (see chart at Annex 2). Examples range from criminal law, tax and social security to the provisions on animal welfare and the solidarity clause. These amendments were either initiated by the UK, initiated jointly with other Member States, or pushed by other Member States and supported by the UK.

The UK remained neutral on 38 areas where others had pushed for amendments which were of no substantive concern to the UK.

In the remaining three areas, the UK originally opposed the amendments, but we secured changes at the European Council which made them acceptable (e.g. provisions for the Union's accession to the European Convention on Human Rights).

In short, nearly half the final changes to the Treaty were secured at UK instigation: a measure of the influence the UK had on its final form.

9. In the UK, that process will be by a positive decision of both Parliament and people. A Bill will be presented to Parliament in the new Parliamentary session to give effect to the Constitution in UK law through amendment of the 1972 European Communities Act, and to provide that those changes to the Act can only come into force after approval in a referendum. The Bill will be fully debated in Parliament, and this process of Parliamentary scrutiny of the Bill will inform the public debate. No decision has yet been taken about the date of the referendum, though it will obviously be after the Parliamentary process is complete.
10. The process will be different in other Member States. At the time of going to press some have said they will also hold referendums: France, the Netherlands, Ireland, Portugal, Luxembourg, Spain, the Czech Republic and Denmark. Others have not yet decided, or will hold a vote in their own national parliaments instead.
11. The Constitution cannot come into force until every Member State has ratified it according to its own constitutional procedures. If any Member State were to find itself unable to ratify, the Constitution could not come into force. In that situation, the Union would obviously be faced with a considerable political crisis. The Member States have agreed that, in those circumstances, there would need to be further European Council discussion.

### **Where does the Treaty apply?**

The EU Constitution will apply to most of the UK's Overseas Territories by virtue of and to the extent described in Title IV (Articles III 186-192) which sets out the basis for the relationship between the European Union and the non-European countries and territories of the UK, France, Netherlands and Denmark.

Gibraltar is unusual because, whilst it is not part of the United Kingdom, it is part of the European Union. The new Treaty will preserve continuity of Gibraltar's status in the EU. The exemptions from the "acquis communautaire", the obligations of Member States, originally set out in the UK Act of Accession, will remain. But, as a natural consequence of the collapse of the pillar structure (see paragraph 16), JHA Title VI measures on police and judicial cooperation, which previously were applied to Gibraltar on a case-by-case basis, will apply automatically.

### **Previous Treaties and what they did**

The Member States have agreed successive Treaties to extend the benefits of co-operation to other areas.

The **Single European Act** of 1986 set out to complete the Single Market and initiated co-operation in foreign policy. It also strengthened the role of the European Parliament introducing a "co-operation procedure" in ten policy areas and requiring the Parliament's approval for the accession of new Member States, as well as for the conclusion of association agreements with countries outside the EU. It set up the Court of First Instance and conferred powers on the Commission to implement Council rules. It introduced the concept of the convergence of economic and monetary policies, and added the objective of harmonisation of health and safety of workers, and the policies of economic and social cohesion, research and technological development and the environment. The Act extended qualified majority voting (QMV) to 12 new or existing articles.

The **Treaty of Maastricht** of 1992 restructured the European Union into a "three-pillars" system. It renamed the European Economic Community as the European Community (first pillar) and established a European Union founded on the European Communities. It established the Common Foreign and Security Policy (pillar two), co-operation in Justice and Home Affairs (pillar three) and paved the way for the single currency. Maastricht also extended the Union's competence to new policy areas, including economic and monetary policy, social policy, education, vocational training and youth, culture, public health, consumer protection, Trans-European Networks, industry and development. It established



the concept of Union citizenship and banned all restrictions on movement of payments within the framework of the new provisions. It also provided for an Ombudsman and established a Committee of the Regions. Maastricht introduced the "co-decision" procedure for the European Parliament, and extended or introduced QMV to 30 policy areas.

The **Treaty of Amsterdam** of 1997 added provisions on social policy and employment. It also moved asylum, immigration and civil justice policy to the first pillar. It incorporated the Schengen agreement in a protocol, added a protocol on subsidiarity and proportionality and endorsed the progressive framing of a common defence policy. It provided for closer co-operation between sub-groups of Member States, though not in foreign policy. Amsterdam simplified and extended the co-decision procedure. Amsterdam extended QMV to 16 new and existing policy areas and added a provision on suspending certain rights of Member States if the Council finds a Member State to be in serious breach of principles of liberty, democracy, respect for human rights and fundamental freedoms and rule of law.

The **Treaty of Nice** of 2001 adjusted the institutions in the light of the EU's enlargement. It reweighted the system of Council voting and altered the number of seats in the European Parliament, as well as streamlining the structure and functioning of the European Commission. Nice developed the provisions for enhanced co-operation including extending it to foreign policy but not defence and extended QMV to a further 31 areas. A declaration on the future of the Union, annexed to the Final Act of the Intergovernmental Conference which negotiated the Treaty of Nice, began the process which has led to the drafting of the Constitution.

## **PART II**

### **What does the Constitution do?**

#### **The overall picture**

12. The Constitution is a means to an end, not an end in itself. It aims to create a more efficient and hence more effective Europe, better able to concentrate on the issues that really matter to the people of Europe, like boosting jobs and prosperity, tackling cross-border issues like crime and pollution, and representing Europe's interests in the world.
  
13. The new EU Constitution, if approved by Member States, will do several things:
  - It will make the EU simpler to understand, with the Union's main Treaties reorganised into one, more coherent Treaty with a clearer definition of the EU's powers.
  
  - It will involve national parliaments much more in the EU's debates, thus bringing Europe much closer to the citizen.
  
  - It will modernise the EU's institutions and streamline its decision-making, rebalancing the powers within the Union, and giving Member States firmer control.
  
  - It will provide a mechanism which, for the first time ever, would allow the EU to stop exercising certain powers, and return these to the Member States.
  
  - Finally, after 20 years of change, it will establish rules which should serve for many years as the foundation of the Union.

## What will the Constitution not do?

There are a number of misconceptions about what the EU Constitution will do. The Constitution will not:

- force the UK to join the single currency (euro)
- abolish British border controls
- change Britain's tax rates, or allow them to be changed without Britain's agreement
- force Britain to pay for other countries' pensions
- change the amount Britain pays to the European Union
- enable the EU to change or override UK law on industrial action
- put additional burdens on business
- require Britain's foreign policy to be determined in Brussels
- create a European Army
- force Britain's troops to be sent anywhere without the British Government's agreement
- abolish the permanent British seat on the United Nations Security Council
- give Britain's oil resources to the EU
- change the EU's powers on human rights

## The detail

14. The rest of this Part explains the changes the Constitution will bring to the existing Treaty framework.

## **i Treaty structure, competences, and subsidiarity**

### **The shape of the Treaties**

15. The EU is currently governed by two main Treaties – the Treaty on European Union and the Treaty on the European Communities (which have themselves been changed by a series of subsequent Treaties). These set out a "three-pillar" system and several different ways of producing many different kinds of laws. The EU's powers ("competences") are set out in an unclear way. Moreover, certain principles, though long established and recognised, and essential to the EU's operation, such as that of the primacy of EU law, were not hitherto explicitly mentioned in the treaties.
16. The Convention considered how it could simplify and make more comprehensible the Treaties. The main elements of their recommendations were accepted by the Member States. The agreed Constitution therefore does the following:
  - abolishes the three-pillar structure, merging the two main Treaties into one, and giving the Union a single legal personality, while at the same time ensuring that special arrangements governing the Common Foreign and Security Policy (CFSP) and some areas of Justice and Home Affairs (JHA) remain. (This was the outcome the Government committed itself to achieve in the September 2003 White Paper: paragraphs 46 and 49);
  - states much more clearly the nature of the EU. Article I-9.2 sets out plainly that the EU draws its powers from the Member States, not the other way round. For the first time, it also explicitly states that powers not explicitly conferred upon the Union remain with the Member States;
  - sets out, again for the first time, in Articles I-12 to 14, a clear definition of the different types of competence: where the Member States have chosen to confer exclusive competence on the EU; where the competences are shared between the Union and Member States; and where the EU can take only supporting, coordinating or complementary action to help the Member States achieve their goals;
  - clarifies and reduces the number of the Union's legal instruments; and
  - makes it explicit, in Article I-59, that Member States may leave the EU if they wish.

## The powers of the Union

17. The Constitution mostly clarifies rather than alters the current division of powers. But there are also for the first time separate areas of competences in a few areas: energy, tourism, sport and administrative co-operation.
18. There is already some limited activity in most of these areas, but it has been taken under other legal bases. The Government undertook in the September 2003 White Paper to consider whether the conferral of such specific powers on the EU was the best way to pursue Union objectives. The Government is content that the new competences meet the requirements it set out – that is, that they improve legal certainty and are appropriately drafted – and therefore that it has delivered on the White Paper commitment (paragraph 56).

### **New legislative instruments**

**European law:** a legislative act of general application which is binding and directly applicable.

**European framework law:** a legislative act binding as to the result to be achieved but national authorities can choose what form and method to take.

**European regulation:** a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It can be either binding and directly applicable, or binding but leaving national authorities free to choose what form and method to take.

**European decision:** a non-legislative act which is binding.

**Recommendations and opinions:** not binding.

## **Primacy**

Article I-5a of the new Treaty states that "the Constitution... shall have primacy over the law of the Member States". This reflects existing ECJ case law, as the Declaration attached to the Article affirms – case law dating back to at least 1964. The legal primacy of European law was accepted by Parliament when we joined the EEC.

The House of Lords' EU Select Committee has observed that "It is not surprising that the Constitutional Treaty includes a statement of the primacy of the Union law. The doctrine is a well established and key element of the Community's legal order."

Put quite simply, if Governments of Member States agree a legally binding decision among themselves, then they have to implement it. If, for example, Member States could pick and choose which EU regulations they enforced, there could be no single market.

## **Subsidiarity and national parliaments**

19. The Government explained in the September 2003 White Paper the importance it attached to the principle of subsidiarity: that is, the principle whereby, in policy areas where competence is shared between Union and Member States, the Union should only get involved where it could add value – in other words, where Member States and sub-Member State authorities such as the UK's Devolved Administrations could not achieve the same objectives acting on their own.
  
20. The Convention proposed a mechanism to make sure the principle is enforced. The IGC approved this mechanism – thus delivering on the Government's commitment in the September 2003 White Paper (paragraph 60). It strengthens the role of national parliaments in Europe. Under this mechanism, national parliaments will gain the power to send any legislative proposal back for review, if one-third of them agree that it infringes the principle of subsidiarity. National parliaments will consult, where appropriate, regional parliaments with legislative powers. The subsidiarity mechanism is set out in the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

21. The importance of this is twofold. First, it will be very difficult to ignore the strongly-held views of one-third of the national parliaments. In practice any proposal meeting such opposition would be very unlikely to prosper, not least because, if a third of national parliaments were against any proposal, so too would their Governments be, and it would be hard to put together the qualified majority needed to pass the law in question. So the protocol gives real teeth to subsidiarity.
22. Secondly, it gives the national parliaments a direct say in the EU's law-making procedures for the first time. At present, there is no obligation on Member States or the Commission even to inform national parliaments about draft EU laws, still less to let them have any power. Under the new mechanism, all national parliaments must be notified independently, and given six weeks to respond.
23. It is obviously for national parliaments, including the UK Parliament, to decide how they wish to make use of this new power. The Government hopes that it will give parliaments an incentive to work together even more closely than now, to maximise their effectiveness at EU level, and thus make the EU more attuned to the views of the EU's electorates. The Government welcomes the progress already made by Parliament's Scrutiny Committees in giving thought to how this mechanism can be made to work effectively, and how the devolved parliaments and assemblies can be consulted on its use.

### **Regions and devolution**

The Treaty recognises the importance of the role of the regions in strengthening the democratic legitimacy of the EU. It gives the regions and local government a stronger role through consultation by the European Commission on proposals at the pre-legislative stage. The Committee of the Regions has also been strengthened by the Treaty. For example, it will now be able to take subsidiarity questions directly to the ECJ.

## **A lighter form of Treaty revision**

24. Hitherto, changes to the Treaties on which the EU is based have required an IGC and ratification by all Member States. During the Convention, some countries suggested that the EU's Member States should be able to decide to change the voting procedure for a given policy from unanimity to qualified majority voting, or from another legislative procedure to co-decision, without an IGC. This idea was included in the Convention's draft Treaty. Some also thought the same should apply for changes to the details of some EU policies in Part III of the Treaty.
25. The Government's view was that such Treaty changes should only be possible by unanimity, and that the British Parliament should keep its role in approving them. During the IGC, this view was accepted by all other Member States. As a result, the Constitution will continue to allow for changes to the Treaty from unanimity to qualified majority voting, or from other legislative procedures to co-decision, or for changes to the details of EU policies in certain areas, without a formal IGC. But as set out in Article IV-7b, these changes must be agreed unanimously, and in the UK they would require parliamentary approval.
26. These provisions also, for the first time, allow the EU to cease exercising shared competences without an IGC. If the Member States wanted the EU to stop exercising a competence, they could use the new Treaty revision procedures to eliminate the relevant powers in Title III of Part III. But unanimity and ratification in accordance with national constitutional requirements would, of course, still be necessary.

### **A Flexible Europe: enhanced co-operation**

Sometimes some of the EU's Member States might want to work together more closely in a certain area, while others do not. The EU must be flexible enough to allow for this. The Constitution in Article I-43 simplifies the procedures (called 'enhanced co-operation') which allow a group of Member States to work together without affecting those that don't want to.

At least a third of Member States must want to co-operate. They must work towards the Union's objectives, in a way that does not undermine the single market. They must also be open to others who want to join in at any time. In foreign policy or defence, this kind of co-operation can only start if all Member States agree.



## ii Institutions

27. The reformed institutional arrangements in the Constitution will provide a solid framework for the EU in the years to come. They will ensure all the Union's institutions work more effectively, while helping to rebalance power away from the centre to the Member States. As the House of Lords EU Committee concluded in its 21st report on 15 May 2003, "...the balance of power in the European Union is going to shift from the Commission in favour of the Member States if the [Convention's] proposals ... are adopted." In all but details, they have been.

### **President of the European Council**

28. The most important change in the Union's institutional arrangements is the creation of a President of the European Council (Article I-21). He or she will be elected by the members of the European Council by qualified majority, for a mandate of two and a half years, renewable once.

29. The President will chair the European Council, drive forward its work, ensure its preparation and continuity on the basis of the work of the General Affairs Council, and facilitate cohesion and consensus. The President will also have a role in the most high-level aspects of the Union's external relations.

30. The President cannot hold a national mandate at the same time. Nor can the President also hold the job of President of the Commission.

31. The Government strongly supports this reform, as it explained in the September 2003 White Paper (paragraph 50). It will bring much greater coherence and consistency to the EU's actions. Moreover, it will give the Member States much greater capacity to give direction and momentum to the EU's agenda.

### **The Presidency system**

32. The Constitution provides for the replacement of the existing six-monthly rotating Presidency by a "Team Presidency" system. Under it, all Councils apart from the Foreign Affairs Council (which will be chaired by the European Union Foreign Minister) will be chaired by a team of three Member States holding the Presidency for 18 months. In principle, one Member State will preside over all the Councils for 6 months, supported by others in the Team, though the Member States concerned may agree alternative arrangements amongst themselves. The details of rotation will be set out in a separate Council Decision (currently included in the Declaration re Article I-22).

33. The Team Presidency system will provide a longer-term, more stable decision-making structure and therefore ensure greater coherence and consistency in the work of various sectoral Councils.
34. The Convention's proposal for a Legislative Council, to agree Union legislation formally, was not accepted by the IGC. Instead, sectoral Councils will continue to legislate in their own policy areas. The Government supports this arrangement.

### **The Union Minister for Foreign Affairs**

35. The Constitution establishes the new post of Union Minister for Foreign Affairs (Article I-27). This merges the existing roles of the Commissioner for External Relations and the High Representative for the Common Foreign and Security Policy. The Foreign Minister will be appointed by the European Council, by qualified majority. The Foreign Minister's task will be to conduct the CFSP and to ensure the consistency of the Union's external action. He or she will chair the Foreign Affairs Council and will be able to present common policies in international organisations – just as the Member State who holds the Presidency does currently – but this does not affect the UK's permanent membership of the UN Security Council or its right to speak in a national capacity.
36. The 30 June European Council agreed that the current High Representative, Javier Solana, would become the Foreign Minister when the Constitution entered into force.
37. In the September 2003 White Paper, the Government said that it saw advantages in this new post, but needed to be clear that it was properly accountable to Member States in the Council (paragraph 52). The Constitution makes this point clear. The Foreign Minister conducts the CFSP "as mandated by the Council" (Article I-27.2). Moreover, in his Commission role, the Foreign Minister is bound by Commission rules and procedures only for issues clearly within Commission competence and to the extent that this is consistent with his responsibility to develop the CFSP as mandated by the Council. The Government has therefore delivered on its White Paper commitment.

### **The voting system**

38. The Constitution will introduce a new system of qualified majority voting which is set out in Article I-24. It will operate from November 2009. It is a 'dual majority' system which means that a minimum number of Member States representing a minimum percentage of the EU's population is required to pass legislation.

39. Under the formula in the Constitution set out in Article I-24, 55% of Member States (i.e. 15 of the EU's then likely membership of 27) representing 65% of the EU's population will need to support a proposed law in order for it to pass. That is, 45% of the Member States, or Member States representing 35% of the EU's population can block. However, there is a further special mechanism. Under it, if Member States representing at least 3/4 of either of those figures indicate their opposition to a proposal, the Council must delay a decision and do all in its power to reach a satisfactory solution. This mechanism will be set out in a separate Council Decision (currently to be found in the Declaration re Article I-24). It lasts until 2014 and thereafter can be removed by QMV.
40. In the September 2003 White Paper (page 33), the Government said that, whilst it was content with the Nice system of voting, it would consider any new proposal on its merits. The Government is happy with the new mechanism. It provides a reasonable balance between passing and blocking legislation, and ensures that the rights of small groups of Member States can be asserted when they need to be.

### **QMV**

Since we joined the EU, successive British Governments have recognised that it was in the UK's interest for a range of decisions to be taken by vote, but that in those circumstances the majority required should be significantly greater than the simple majority used in the British Parliament and local authorities. This system of special majorities was established in the Treaty of Rome and is known as qualified majority voting (QMV). But the UK has always insisted that certain key UK national interests could only be protected by the requirement of unanimity, so that the UK would maintain a veto in these areas. The UK's negotiating position on this was set out in the September 2003 White Paper, paragraph 66. As this text explains, the Government was successful in delivering this position.

The EU Constitution will move 15 Articles (or sub-paragraphs) from a unanimous voting mechanism to QMV and introduces 24 new Articles (or sub-paragraphs) at QMV. In comparison, QMV was extended to 12 new or existing areas by the Single European Act; to 30 areas by Maastricht; to 16 areas by Amsterdam; and to 31 areas by Nice. However, the significance of the changes made by each Treaty cannot be measured by the number of articles involved. For example, the quantitatively few extensions to QMV made by the Single European Act, especially in areas related to the Single Market, proved to be hugely significant in substance. The Government will produce a detailed analysis of the successive extension of QMV in due course.

## **Commission**

41. The Constitution envisages, from 2014, a reduction in the number of Commissioners to two-thirds of the number of Member States (Article I-25.6), selected from all Member States on a basis of equal rotation. The Government has consistently supported a stronger and more effective Commission, and is therefore content with this change.
42. There is no substantive change to the mechanism for choosing the Commission President.

## **European Parliament**

43. The Constitution strengthens the role of the European Parliament, primarily by increasing the number of policy areas subject to co-decision (the agreement of both the Council and the European Parliament). The new Treaty applies co-decision to all areas where European laws and framework laws are adopted under the ordinary legislative procedure, unless an explicit provision to the contrary is made. This means that a number of areas will be transferred to co-decision by the Constitution, including laws on structural funds, some aspects of the Common Agricultural Policy (CAP), asylum and immigration, Eurojust and Europol.
44. The European Parliament's size will increase to 750 MEPs. The number of MEPs each country has will depend on population size, but each country will be allowed a minimum of 6 and a maximum of 96 MEPs. The actual number of MEPs each country has will be decided by a European Council decision, on the initiative of the European Parliament and with its consent.
45. In the September 2003 White Paper (paragraph 67-8), the Government said it was content that the European Parliament should have an appropriate role "as a general rule" in adopting European legislation. The new Constitution reflects this.

### **iii The Union's policies**

#### **Internal market**

46. The Constitution does not change the way in which the internal market functions. Like previous Treaties, it sets out the main components of the internal market and provides the framework under which action may be taken by the EU to further its establishment or to correct distortions within it. The internal market principles will continue to apply to most forms of commercial activity carried out within the boundaries of the Union in both public and private sectors.
47. The Government recognises the importance of an effective internal market to UK businesses, consumers and employees alike. The internal market remains the largest multinational single market, with a population of around 450 million. The September 2003 White Paper (paragraph 71) committed the Government to ensuring that the four freedoms underpinning the internal market – the free movement of goods, persons, services and capital – remain at the centre of all Union internal policies and their implementation. This was achieved.

#### **Competition**

48. The Constitution states that the EU shall have exclusive competence in establishing the competition rules necessary for the functioning of the internal market. Member States remain able to have additional domestic competition rules where these are not aimed at the functioning of the internal market, which rightly remains the preserve of the Union.
49. The Constitution clarifies and strengthens the relationship between EU law and the national competition authorities, such as the Office of Fair Trading (OFT). But it otherwise will not change the practical operation of the current arrangements for enforcement of competition law.

#### **Trade**

50. The Constitution also carries over the Common Commercial Policy which governs the EU's trade relations with third countries (Articles III-216-217). The scope of the Common Commercial Policy has been expanded slightly to include foreign direct investment. Furthermore, for the first time, the European Parliament will have a formal legislative role in some aspects of the conduct of the EU's trade relations.

51. The Government made clear in the September 2003 White Paper that trade agreements between the EU and third countries should not lead to an increase in the internal powers of the Union, and that voting arrangements for such agreements should mirror those required for the adoption of equivalent rules internally (paragraph 73). This has been achieved. The principle is set out clearly in Article III-217. The Constitution provides that unanimity will also be required in the respect of the negotiation and conclusion of agreements in the field of cultural and audio visual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity; and in the field of trade in the social, educational, and health services where these agreements risk seriously disturbing the national organisation of such services or prejudicing the responsibility of Member States' ability to deliver them.

### **Fisheries**

UK critics of the Common Fisheries Policy (CFP) voiced concerns during the IGC that by recognising the conservation of marine biological resources as an exclusive competence in Part I of the Constitution, Union competence had been extended in this area. In fact the Constitution does not extend Union competence in fisheries. The conservation of marine biological resources under the CFP was established as an exclusive competence of the European Community when we signed our Treaty of Accession in 1973 and came fully into force in 1979. The EU Constitution merely restates this existing situation. Co-operation with other countries is crucial for the sustainable management of marine resources. The CFP provides an effective framework for this.

## Energy

52. The Constitution includes a new chapter on energy (Article III-157). The Union has already acted in the energy field, on the basis of a variety of legal bases including Article 95 and Article 100 of the Treaty establishing the European Community (TEC). However, this is the first time in which the Union's competence has been set out explicitly in relation to energy. It reflects the importance which the EU attaches to liberalisation. The Government supports this agenda and the UK is already leading the way in establishing competitive energy markets.
53. The Government played a leading role in negotiating the final text of the chapter and believes this is a good outcome. It now strikes a good balance between protecting our abilities to control UK energy resources and allowing the EU to act where appropriate to liberalise energy markets. In particular, the Chapter preserves a Member State's right to control the exploitation of its natural resources (such as North Sea oil and gas). It is also consistent with the Government's commitment to ensure unanimity is retained for tax matters decided at EU level. The Chapter explicitly requires that any measures in the field of energy primarily of a fiscal nature must be agreed by unanimity in the Council. It also recognises the need to preserve and improve the environment, with one of its three aims being the promotion of energy efficiency and the development of renewable energy. Finally, a declaration associated with the Chapter has been included with the aim of clarifying that Member States may take action under Article III-16 to ensure security of their supply during emergencies (Declaration re Article III-157).

### **Research and Technological Development and Space**

The Constitution recognises the importance of Research and Development (R&D) in increasing the competitiveness of the European economy. It envisages the creation of a European Research Area to achieve improved levels of research effort (Article III-146). In the areas of research, technological development and space, the Union has shared competence to define and implement programmes. Funding for R&D is currently the third largest proportion of EU spending and, through its Framework Programme, the European Commission funds leading-edge collaborative R&D projects, researcher mobility and the development of infrastructure.

## Public health

54. The Constitution, in Article III-179, contains provisions on public health (as a supporting competence) which have changed slightly from the current Treaties. They do nothing to change the fact that the UK runs its own health policy. They are clearer than their predecessors in two respects:

- the Article states clearly that Member States are responsible for the organisation and delivery of their own health services and medical care;
- the Article makes clear that European Laws or framework laws cannot be used to provide for any harmonisation of the laws and regulations of the Member States.

55. The Article allows for further co-operation between Member States where it makes sense, for example in co-ordinating responses to serious cross-border threats to health such as contagious trans-national diseases or bio-terrorist attacks.

### **Economic and Monetary Union**

The UK's Protocol makes clear that the UK is under no obligation to join the single currency. The Constitution does not change the terms of this Protocol.

In principle the Government is in favour of UK membership of a successful single currency; in practice the economic tests must be met. If the five tests were passed, and the Government recommended joining EMU, it would be put to a vote in Parliament and then to a referendum of the British people.



## **Economic governance**

56. The Government committed itself in the September 2003 White Paper to oppose proposals on economic governance that might lead to unnecessary rigidities or undermine the central role of Member States in determining their economic policies (paragraph 75).
57. The Convention text proposed changes to the institutional balance between the Union and Member States in economic policy co-ordination; and to the role of the Eurogroup (informal grouping of Eurozone Finance Ministers).
58. The Government secured changes during the IGC to make it clear that Member States remain responsible for determining and co-ordinating their economic policies. Ministers within the ECOFIN Council will continue to have the greatest and final say in setting out broad economic policy guidelines as a framework for co-ordination. A provision giving the Commission power to propose economic policies for Member States with an excessive deficit has been dropped.
59. The Constitution recognises the Eurogroup as an informal body (reflecting current practice) and specifies the areas where members of the Eurogroup will vote alone, within the existing rules on multilateral surveillance and excessive deficit procedures. Decisions affecting the interests of all Member States will continue to be taken by all of them.
60. The White Paper commitment has therefore been delivered upon.

## **The Budget**

61. The Convention text set out a new procedure for agreeing the annual Budget and proposed that decisions on the "modalities" of own resources (ie, the way the EU raises its money, including the UK's abatement) should be taken by qualified majority voting.
62. The final text, in Article I-53, makes real improvements to the annual Budget procedure, to allow for genuine codecision between the Council and European Parliament. Decisions on the system of Own Resources remain subject to unanimity and national ratification, protecting the UK's rebate. The Constitution also reinforces budget discipline by providing, for the first time, a firm Treaty base for the Multiannual Financial Framework, setting binding expenditure ceilings.

## **Tax**

63. The Government committed itself in the September 2003 White Paper (paragraph 76) to ensure that tax matters would continue to be decided by unanimity, in line with its manifesto commitment. This commitment has been delivered upon. The Convention's proposals that certain aspects of indirect and company taxation could be adopted by qualified majority voting have been deleted.

## **Social Security**

64. The Government has also met its commitment to maintain unanimity in the area of social security (paragraph 66). The Convention proposed that decisions on benefits for EU citizens working in other Member States should be taken by QMV. The text of the Constitution now includes an "emergency brake" mechanism allowing any Member State to refer a proposed law to the European Council, for decision by consensus, where a measure affects fundamental aspects of its social security system, including its cost, scope or financial structure. This ensures that the UK cannot be forced to sign up to any measure that would adversely affect its social security system.

## **Social Policy**

65. The Constitution sets out a range of social policy objectives in Article I-3.3 including a highly competitive social market economy, combating social exclusion and discrimination and promoting social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child. It recognises the Union is founded on respect for rights and provides recognition at Union level of the vital role of the social partners and the importance of the tripartite social summit.

66. In relation to Union law, the Charter of Fundamental Rights showcases key social and economic rights and principles that the Union Institutions and Member States when they are implementing Union law are bound to respect and observe. However, the Charter creates no new powers for the EU, nor does it alter any of the EU's existing powers (see paragraphs 83-85).

## Justice and Home Affairs

67. The Maastricht Treaty (1992) introduced co-operation on Justice and Home Affairs issues as the third pillar in the EU's pillar structure with its own separate intergovernmental arrangements. The Constitution introduces qualified majority voting as the norm for JHA issues – a welcome consequence of abolishing the pillar structure (as the Government made clear at paragraph 82 of the September 2003 White Paper).
68. This means that no single Member State will be able to block action on issues like cross-border crime, drug trafficking, illegal immigration and terrorism. These are international issues where it is in our interest to work within the EU. But because of the differences in Member States' legal traditions and systems, the Government, in its September 2003 White Paper, said that QMV would not be the most appropriate way of proceeding where significant harmonisation of criminal procedural law was concerned (paragraph 83). This commitment has been delivered upon. The Convention's proposals for blanket QMV in criminal law were replaced by an emergency brake mechanism. This means that a Member State which cannot accept a criminal procedural law proposal can 'pull the brake'. This stops the discussion in the Council and automatically refers it to the European Council where decisions are made by consensus. If it is still impossible to agree, then the enhanced co-operation provisions can be applied, without all the preliminary procedures needing to be applied. This means that if a third of Member States want to, they can go ahead by themselves. This enhanced flexibility is one of the benefits of the new Treaty.
69. The Constitution introduces the possibility of the creation of a European Public Prosecutor by unanimity. The Government sees no need for such a Prosecutor.
70. The Constitution carries over the UK's opt-in protocol on immigration, asylum and civil justice issues, ensuring that the UK retains the flexibility to decide whether to participate in individual measures on a case-by-case basis.
71. Finally, the Constitution preserves unchanged the UK's right to carry out checks at its borders.

## Common Foreign and Security Policy

72. CFSP, which was first introduced in the Maastricht Treaty in 1992, is a key instrument of the UK's foreign policy. 25 Member States delivering the same message, on issues where we agree, are more powerful than one Member State acting alone. Where we don't agree, there is no common policy. Working together can make the EU and its Member States more influential global actors.
73. The Constitution meets the Government's main objective for CFSP (paragraph 86 of the September 2003 White Paper). It makes clear that this policy is conducted by Member States - in the Council of Ministers and the European Council - and that CFSP policy decisions are taken at unanimity.
74. The Treaty also promotes coherence by linking the EU's development, trade and foreign policies more closely with a shared set of objectives such as promoting peace, prosperity, democracy and sustainable development with the primary aim of eradicating poverty. This should help the EU be more effective in the Balkans, for example, where the EU is one of the largest donors of developmental aid, closely engaged in economic and political reform and runs peacekeeping missions.

### **What is "loyal co-operation" in CFSP?**

The Treaty of Maastricht contained the phrase "the Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity." The new Treaty contains very similar language. This is known as "loyal co-operation". It means Member States should support the policies they have agreed on.

Loyal co-operation has not prevented the UK from pursuing our own foreign policy when we needed to, and nor will it do so in the future. Under the new Treaty, foreign policy will remain in the hands of Member States just as it has since a common foreign policy was set up ten years ago.

## Development

75. The September 2003 White Paper welcomed the draft Treaty's commitment to the eradication of poverty as the primary aim of EU development co-operation policy, through fostering of the sustainable economic, social and environmental development of developing countries. The Constitution now confirms this important principle. The Government would have liked the Constitution to have made it clear that the EU development policy should apply to all developing countries. However, we welcome the final text which provides a clear legal base for development assistance and humanitarian aid. The Government supported the proposed inclusion of a chapter on humanitarian aid. This has been achieved with the useful clarification that it should be based on values such as impartiality and neutrality.
76. In the IGC, the Government promoted and successfully ensured that the Union and Member States share competence for EU development policy. This means that Member States and the Commission can continue to pursue their respective development activities in parallel. The Constitution does not affect the continuation of the European Development Fund.

### **European External Action Service**

Under the Constitution the new Union Minister for Foreign Affairs will be supported by a "European External Action Service". This Service should provide effective support for the Union Minister for Foreign Affairs and improve coherence of EU external action by bringing together the officials who work on the Commission side of external relations and those from the Council Secretariat who deal with the Common Foreign and Security Policy. Staff from national diplomatic services will also be seconded into the Service. The Service will work alongside Member States' diplomatic services and overseas missions. It will build upon existing overseas offices of the Commission.

## European Security and Defence Policy

77. The September 2003 White Paper on the IGC made clear that the Government welcomed certain proposals on European defence in the Convention text. In particular, the Government supported the new definition of the range of tasks that EU-led military operations could cover (the Petersberg Tasks); the broad outlines of a proposal for a European Defence Agency; and the proposed solidarity clause which reflects the Member States' desire to assist each other in dealing with the consequences of a terrorist attack or other disaster. These proposals reflected UK input during the Convention.
78. The White Paper also noted, however, that the Government did not support all the Convention's proposals on ESDP (paragraph 95): in particular, the idea of a narrow, institutionally-focussed approach to structured co-operation, and the proposed mutual defence commitment within the European Union. Both proposals moved away from the flexible, inclusive, NATO-friendly approach to ESDP pioneered since Saint Malo and reflected in the permanent arrangements for ESDP agreed at the time of the Nice European Council in December 2000.
79. The Government therefore worked hard in the IGC, in particular with France and Germany, to change these proposals. In particular:
- the concept of structured co-operation was transformed, making it an inclusive grouping focused on capability development. It will allow any Partners who want to take on additional capability commitments, in particular to commit to developing high readiness, rapid response military forces, to do so;
  - the Government secured the deletion of any reference in the draft Treaty to an EU mutual defence commitment which would have been divisive and a duplication of NATO. The text now makes it clear that for those States which are members of NATO, NATO "remains the foundation of their collective defence" and the instrument for implementing that commitment (Article I-40.7). This is the first time an EU Treaty text has stated this so clearly.
80. The Constitution therefore provides for a developing policy based on co-operation between governments, where unanimity remains the rule on all important policy and operational issues, and where the emphasis will be on a more active, outward-looking European Union, focussed on the development of capabilities and the capacity effectively to conduct military and civilian crisis management operations.

## **Sustainable development and environmental protection**

81. The Constitution includes sustainable development as one of the Union's over-arching objectives (Article I-3.3). It also continues to require the Union to aim for a high level of protection and improvement in the quality of the environment. Environmental protection requirements must continue to be integrated into the development and implementation of all the Union's policies and activities, such as agriculture, fisheries, trade, energy and transport. Furthermore, in setting out the Union's objectives for its external action, the Constitution now includes developing international measures to preserve and improve the quality of the global environment and furthering sustainable development in developing countries.
82. The Government welcomes these provisions, which grant sustainable development and environmental protection a higher profile than in previous Treaties.

### **Animal welfare**

The Constitution's provisions regarding animal welfare reflect the existing Protocol to the Treaty of Amsterdam. This text, now set out in the body of the Treaty in Part III, obliges EU Member States and EU Institutions to take account of animal welfare considerations when formulating and implementing policies on a range of areas covered by the Constitution.

## **The Charter of Fundamental Rights and the European Convention of Human Rights**

83. The September 2003 White Paper (paragraphs 98-103) explained the background to the Charter of Fundamental Rights and the changes made during the Convention to improve clarity and legal certainty. The Government committed itself to making a final decision on incorporation of the Charter into the draft Constitutional Treaty only in the light of the overall package at the IGC. The Government also reserved its position on the related question whether the EU should itself become subject directly to the European Convention on Human Rights (ECHR).
84. During the IGC, three further significant changes were made concerning the arrangements for fundamental rights. First, a special provision was added to the Treaty requiring the Courts to have due regard to the official Explanations to the Charter. These Explanations were drawn up during the original Charter drafting process in 2000, and were enlarged and modified during the Convention. Their primary purpose is to relate the rights and principles set out in the Charter to existing agreed law. For example, they show which Charter provisions are intended to correspond with those set out in the ECHR. Secondly, a special Declaration has been added to the Treaty setting out the texts of the official Explanations in full. This should ensure transparency and accessibility regarding the true meaning of the Charter. Finally, the Constitution texts now contain, in addition to a mandate for the EU to accede to the ECHR, a special protocol and a declaration to ensure that accession does not affect the position of the individual Member States in relation to the ECHR – and that it takes proper account of the legal limitations of the EU.
85. On this basis, the Government was content to agree that the EU should become bound directly by the ECHR and that the Constitution should require all EU institutions and bodies to recognise the Charter, subject to its special rules of interpretation and application. The package will ensure that citizens' basic rights and liberties are fully in legal view at EU level, without disturbing the primary responsibilities of the Member States, or the ECHR. The Charter creates no new powers for the EU, nor does it alter any of the EU's existing powers. It will apply to Member States only when they are implementing EU law.



## PART III

### Conclusion

86. The European Union is the most successful way anyone has yet devised of managing relations between European countries whose national rivalries had, until sixty years ago, often been settled through conflict. It allows European countries to pool their combined strength for our common economic advantage, influence in the world, and peace and security. It has helped current and future members, as well as near neighbours, to achieve democratic stability and economic prosperity.
87. The Constitution sets out the rules for the enlarged European Union. Under it, the Member States have decided what powers they want to exercise in common, what limits they want to set on those powers, and what policies they want to pursue as a result. It lets us work together efficiently in a European Union of 25 and more members, and it sets the right framework for an effective Europe of nations and of citizens. In short, it is a flexible modern European Union, which has reformed to meet the challenges of the future. That is a good result for Britain and for Europe.
88. The Government will now make the case, in Parliament and in the country at large, for Britain as a strong, confident, and influential European power, that can lead reform and modernisation, shape the debates, build alliances, and win the arguments. By engaging with our European partners and friends, we get the right results for Britain and for Europe as a whole.

# ANNEX I

## GLOSSARY

### **Amsterdam Treaty**

The Treaty of Amsterdam was agreed in 1997 and entered into force in May 1999 (see page 13).

### **Acquis**

The phrase *acquis communautaire* refers to the whole range of principles, policies, laws, practices, obligations and objectives that have been agreed within the EU. It includes the Treaties, EU legislation, judgements of the **Court of Justice** and joint actions taken in the fields of the **Common Foreign and Security Policy** and Justice and Home Affairs.

### **Charter of Fundamental Rights**

The Charter sets out the fundamental rights applicable at EU level. It was drawn up by a Convention during 2000 and was adopted at the Nice **European Council** in December 2000. The Charter is incorporated as Part II of the Constitution. See paragraphs 83-85 of this White Paper.

### **College of Commissioners**

Formal term for the body of European Commissioners known as the **Commission**.

### **Co-decision procedure**

Introduced by the Treaty of Maastricht and modified by the Treaty of **Amsterdam**, this procedure now applies to most areas of Community legislation. The Constitution will make it the routine legislative procedure (Articles I-33 and III-302). It is a complex process. It involves both the **Council** and **Parliament** proposing amendments to a piece of legislation proposed by the **Commission**. Both need to agree if the draft is to become law. It is a lengthy procedure: it can often take a year or more to approve legislation.

### **Commission**

An EU institution which is central to the EU's decision-making process and its successful conduct of business. It has the tasks of ensuring the Treaties are correctly applied, of proposing new legislation to the **Council** and **European Parliament** for approval, and of exercising implementing powers given to it by the Council. From 1 November 2004, the Commission will be made up one Commissioner from each Member State. Its new President is José Manuel Durão Barroso, the former Prime Minister of Portugal. The new British Commissioner is the Rt Hon Peter Mandelson. The Constitution envisages, from 2014, a reduction in the number of Commissioners to two-thirds of the number of Member States.

## **Common Agricultural Policy (CAP)**

The aims of the CAP are: to increase agricultural productivity; to ensure a fair standard of living for the agricultural community; to stabilise markets; to assure the availability of supplies; and to ensure that supplies reach consumers at reasonable prices. To achieve these objectives, the CAP is based on three principles: common organisation of markets; Community preference; and financial solidarity. The CAP has been successful in generating food production within the EU, but has been much criticised for its environmental consequences and its effects on developing countries. EU Agriculture Ministers agreed a significant reform of the CAP in June 2003 which helps address these impacts by breaking the link between the subsidy farmers receive and what and how much they produce, and by making subsidy conditional on meeting environmental and other standards.

## **Common Foreign and Security Policy (CFSP)**

An area of intergovernmental activity within the Union, but outside the European Communities. Under it the 25 EU Member States work together to promote their foreign policy objectives. It covers all areas of foreign and security policy. Its objectives include safeguarding common values; strengthening the security of the Union; preserving international security; promoting international co-operation; and consolidating democracy and the rule of law. See paragraphs 72-74 of this White Paper.

## **Conclusions**

Political agreements reached at the end of **European Council** meetings. European Council conclusions are produced on the authority of the Presidency only. But they are nevertheless the normal way for the European Council to signal a commitment.

## **Convention on the Future of Europe**

See paragraph 6, page 10.

## **COREPER**

Coreper stands for the Committee of Permanent Representatives. It is composed of the Member States' Ambassadors to the EU and prepares the meetings of the **Council of Ministers**.

## **Council of Ministers of the European Union**

This is the primary decision-making body of the Union. It meets in sectoral formats chaired by the Presidency and attended by the relevant national ministers (e.g. Economic/Finance (ECOFIN) and Competitiveness Councils). They are also attended by the **Commission** (usually the relevant Commissioner). Working Groups and **COREPER** prepare the Council's work. It is supported by the Council Secretariat.

## **EU High Representative**

The representative of the **Council of Ministers** for **Common Foreign and Security Policy** matters. Javier Solana was appointed High Representative for the CFSP in June 1999 by the Cologne **European Council**. He is also Secretary-General of the Council and, as such, head of the Council Secretariat. Solana was re-appointed High Representative in June 2004, and have agreed that he should be the first EU Foreign Minister when the Constitution comes into force.

## **Euratom**

The European Atomic Energy Community (EAEC), also known as Euratom, was established in 1958, at the same time as the European Economic Community. Its responsibilities include research and information, health and safety, investment and safeguards as they relate to the atomic energy industry. The Euratom Supply Agency is responsible for supply.

## **Eurojust**

Formally known as the European Judicial Co-operation Unit, Eurojust was created by the Tampere European Council in October 1999. It is a body of national prosecutors, magistrates and police officers from each **Member State** which works to ensure co-operation between national authorities and to support investigations into organised crime.

## **European Community**

See **European Union**.

## **European Council**

A summit of Heads of State or Government that has met regularly since the 1970s. It now normally meets four times a year, twice under each six-monthly Presidency. Originally an informal gathering, the European Council was given formal recognition in the **Single European Act** of 1986. It has the task of providing the EU with the necessary impetus for its development and defining the necessary general political guidelines for its work. These meetings are sometimes referred to as European Summits. The European Council will normally agree **Conclusions**. Under the new Constitution it will continue to operate by consensus unless otherwise provided for. It will also have a new President, chosen by its Members: see paragraphs 28-31 of this White Paper.

## European Court of Justice (ECJ)

The European Court of Justice is made up of Judges appointed by the **Member States**. It has the task of ensuring that the law is observed in the interpretation and application of the Treaty. It rules on questions relating to the Treaties, and on secondary legislation in direct actions and in cases referred to it by national courts. ECJ judgements are binding under national law. It also has certain powers in relation to certain **Third Pillar** measures, but no jurisdiction over **CFSP**. Its powers will be similarly restricted under the new Constitution, despite the collapse of the **Pillars**. There is also a Court of First Instance to deal with certain specified issues. This is termed "High Court" in the Convention's draft Constitution and the Provisional Text CIG 86.04 but will be called "General Court" in the final text.

## European Parliament (EP)

The European Parliament is composed of 732 members (78 from the UK), directly elected every five years in each **Member State**. This will increase to a maximum of 750 members under the Constitution with the exact number for each Member State to be decided by a European decision. Elections to the EP were most recently held in June 2004 and the EP President for the 2004-9 session is Josep Borrell (Spain, Socialist). Originally a consultative body, successive Treaties have increased the EP's role in scrutinising the activities of the **Commission** and extended its legislative and budgetary powers through **co-decision**. The Constitution will strengthen the EP's role with more policy areas subject to co-decision. The Parliament meets in plenary session in Strasbourg and, occasionally, in Brussels.

## European Union

The European Union was created by the Treaty of Maastricht in 1992 (also called the Treaty on European Union or TEU). It currently consists of three pillars. The **First Pillar** is the pre-existing **European Community**, which covers largely, though by no means exclusively, economic business. The EU institutions are fully involved in the decision-making process. The **Second Pillar** is the **Common Foreign and Security Policy**. The **Third Pillar**, after amendment by the **Treaty of Amsterdam**, covers certain police and judicial co-operation in criminal matters. The two main differences between the First Pillar and the rest is that under the latter Member States, as well as the Commission, have the right to propose policies, and that the **European Court of Justice** does not have jurisdiction, with the exception of parts of the Third Pillar under certain circumstances. The Constitution will dissolve these three pillars to create a single Treaty structure, although special arrangements governing CFSP and some areas of JHA will remain.

## **Europol**

At the Luxembourg **European Council** in December 1991, **Member States** decided to create an organisation to facilitate police co-operation in the EU. The Europol Convention came into force in October 1998. Europol currently supports operations which Member States initiate and investigate, in order to fight serious cross-border crime such as drug smuggling, people trafficking, car theft and money laundering.

## **European Security and Defence Policy**

The European Security and Defence Policy is a British initiative launched by the Prime Minister, together with the French Government, in 1998. It centres on strengthening Europe's capability for crisis management through both **NATO** and the EU. The policy is designed to give the EU the tools to take on humanitarian and peace-keeping tasks when **NATO** is not engaged. See paragraphs 77-80 of this White Paper.

## **First pillar**

See **European Union**.

## **Intergovernmental Conference (IGC)**

See paragraph 7, page 10.

## **Legal base (or basis)**

The article of the EU Treaties that gives the Union the right to act is often called the legal base. It also describes the voting procedure and type of legislative procedure (e.g. co-decision) that should be used.

## **Lisbon economic reform agenda or Lisbon process**

In Lisbon in March 2000 the **European Council** set itself a new strategic goal for the next decade: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion." Progress towards this goal is reviewed at successive spring **European Councils**.

## **Maastricht Treaty**

The Treaty of Maastricht was signed in 1992 and came into force in 1993. (See page 12 and **European Union** for further details).

## **Member State**

A country which is a member of the European Union.

## **Nice Treaty**

The Treaty of Nice was signed in 2001 and came into force in 2003. (See page 13 for further details).

## Presidency

This is in effect the chairmanship of the European Union. The Presidency rotates every six months among the **Member States**. The Netherlands will hold the Presidency from July to December 2004, Luxembourg from January to June 2005, the UK in the second half of 2005, and then Austria and Finland during 2006. The Presidency chairs most Working Groups, **COREPER** and meetings of the **Council of Ministers** and is important in setting the Union's agenda and working towards agreements. The new Constitution will reform the existing system: see paragraphs 32-34 of this White Paper.

## Qualified majority voting (QMV)

This is a voting mechanism in the Council under which a proposal can be adopted without every **Member State** agreeing to it. Under the definitive post-enlargement arrangements, which come into force on 1 November 2004, for a proposal to be adopted it needs 232 votes from Member States in favour, out of the total of 321 weighted votes. In addition these votes in favour have to be cast by more than 50% of Member States representing 62% of the Union's population. The UK has 29 such votes. The EU Constitution changes the voting system to a new system which will come into operation on 1 November 2009: see paragraphs 38-40 of this White Paper.

## Schengen acquis

"Schengen" is the shorthand for measures originally agreed in 1985, in the Luxembourg village of Schengen, by certain **Member States** on the gradual elimination of border controls at their common frontiers. These agreements were incorporated into the Treaties with the **Treaty of Amsterdam** in 1999. The UK and Ireland have applied to participate in the police and judicial co-operation elements of the Schengen acquis but have not sought to participate in the external border measures. The UK and Ireland are only bound by the Schengen acquis if they choose to opt in to its provisions, and have the specific right, set out in the Treaty, to maintain their border controls.

## Second pillar

Deals with **Common Foreign and Security Policy**

## Single European Act

This Treaty, which was agreed in 1986 and entered into force in 1987, was the first substantial revision of the Community Treaties (see page 12 for further details).

## **Single Market**

Shorthand for the EU's commitment to create an internal market in which all obstacles to the free movement of goods, persons, services and capital between Member States have been abolished. The Single Market was largely completed by 1992 but remains incomplete in some areas. A major aim of the **Lisbon Process** is to accelerate its full completion and implementation.

## **Subsidiarity**

The concept that action should only be taken by the Community only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the **Member States** and can therefore be better achieved at European level. This concept is enshrined in the Protocol on the Application of the Principles of Subsidiarity and Proportionality annexed to the EU Constitution.

## **Third Pillar**

See **European Union**

## **Unanimity**

A form of voting in the Council. A proposal requiring unanimity must have no **Member State** voting against (abstentions do not prevent the adoption of acts requiring unanimity). See also **qualified majority voting**

## **For further information**

[www.europe.gov.uk](http://www.europe.gov.uk)

<http://european-convention.eu.int>

[http://europa.eu.int/futurum/index\\_en.htm](http://europa.eu.int/futurum/index_en.htm)



## ANNEX 2: IGC negotiations

Source: Hansard Official Report Column No 767W, 7 July 2004. Jack Straw reply to John Redwood (Right hon Member for Wokingham).

### UK position on the final amendments to the draft EU Constitutional Treaty text

(as set out in documents CIG 81/04 and CIG 85/04)

#### Summary

1. Heads of States and Governments agreed on 68 annexes containing amendments to the draft Constitutional Treaty text at the European Council on 18 June. In total, the annexes cover amendments on 80 different areas in the Treaty and are set out in Presidency documents 85/04 and 81/04. Some of the annexes in 85/04 (e.g. Annex 16 on energy) replace earlier versions in 81/04, and others include sub annexes (e.g. Annex 56 of 81/04 and Annex 19 of 85/04).
2. The UK advocated the amendments to 39 of the 80 areas covered. Examples range from criminal law, tax and social security to the provisions on animal welfare and the solidarity clause. These amendments were either initiated by the UK, initiated jointly with other Member States, or pushed by other Member States and supported by us, but many do not fit neatly into just one of these categories. In some areas we would have liked the amendments to have gone further than those we eventually secured (e.g. team presidencies/EFM). These were not however UK "red lines".
3. We remained neutral on 38 areas where others had pushed for amendments which were of no substantive concern to us (although we had initially held reservations on some – e.g. social policy).
4. In the remaining three areas, we originally opposed the amendments, but we secured changes at the European Council which enabled us to accept them (provisions for Member States wanting to adopt the Euro and provisions on the Stability and Growth pact and provisions for the Union's accession to the European Convention on Human Rights).
5. The attached charts detail the UK's position on each of the areas of amendments set out in documents CIG 81/04 and CIG 85/04. The key to the UK positions is:

Advocated: amendments sought by us to improve the Convention text and either proposed by us or other Member States with our support.

Neutral: proposals pushed by others - not UK priorities and ultimately acceptable.

Accepted: amendments we accepted after securing changes.

## Presidency document CIG 81/04 (published on 16 June 2004)

Annex 1	Preamble	Neutral
Annex 2	The Union's values: Rights of persons belonging to minorities & Equality between women and men	Neutral
Annex 3	The Objectives of the Union	Neutral
Annex 4	Equality of Member States before the Constitution	Neutral
Annex 5	Primacy of Union law	Advocated
Annex 6	Principle of Participatory Democracy	Neutral
Annex 7	The Configurations of the Council of Ministers	Advocated
Annex 8	Draft Decision of the European Council on the Exercise of the Presidency of the Council of Ministers	Advocated
Annex 9	Technical adaptations to provisions of Part III on the European Commission	Advocated
Annex 10	Transitional provisions	Advocated
Annex 11	The Minister for Foreign Affairs	Advocated
Annex 12	European External Action Service	Advocated
Annex 13	Procedures for appointing the President of the Commission, the President of the European Council and the Union Minister for Foreign Affairs	Neutral
Annex 14	Budget Procedure	Advocated
Annex 15	Own Resources	Advocated
Annex 16	Financial Framework (Part III): phasing in	Neutral
Annex 17	Structural funds	Neutral
Annex 18	Prudential supervision of credit institutions and other financial institutions by the European Central Bank	Advocated
Annex 19	Appointment of members of the Executive Board of the European Central Bank	Neutral
Annex 20	"Lamfalussy Procedure"	Advocated
Annex 21	Simplified procedure for amending the Statute of the European Investment Bank	Neutral
<del>Annex 22</del>	<del>Provisions specific to Member States whose currency is the euro</del>	Revised: Annex 11 85/04
Annex 23	Judicial co-operation in criminal matters	Advocated

Annex 24	European Public Prosecutor's Office	Neutral
Annex 25	Judicial co-operation in civil matters	Advocated
<del>Annex 26</del>	<del>Eurojust</del>	Revised: Annex 12 85/04
Annex 27	Negotiation and conclusion of international agreements by Member States relating to the area of Freedom, Security and Justice	Advocated
Annex 28	European Court of Justice jurisdiction in CFSP	Advocated
Annex 29	Common security and defence policy	Advocated
Annex 30	Qualified majority voting in the field of CFSP	Advocated
Annex 31	Common Commercial Policy	Neutral
Annex 32	Social clause and social dialogue	Neutral
Annex 33	Social Security	Advocated
Annex 34	Social policy	Neutral
Annex 35	Taxation	Advocated
<del>Annex 36</del>	<del>Economic, social and territorial cohesion</del>	Revised: Annex 14 85/04
<del>Annex 37</del>	<del>Transport</del>	Revised: Annex 15 85/04
Annex 38	Technological research and development	Neutral
<del>Annex 39</del>	<del>Energy</del>	Revised: Annex 16 85/04
Annex 40	Public health	Neutral
Annex 41	Sport	Advocated
Annex 42	Tourism	Neutral
Annex 43	Overseas territories	Neutral
Annex 44	Protocol on Denmark	Neutral
Annex 45	Services of general interest	Neutral
Annex 46	The small neighbouring States of the Union	Neutral
Annex 47	Accession of the Union to the European Convention on Human Rights	Accepted

Annex 48	Provisions on the institutions and bodies of the Union for Bulgaria and Romania	Neutral
Annex 49	Protection and welfare of animals	Advocated
Annex 50	Capital and Payments	Neutral
Annex 51	Restrictive Measures	Advocated
<del>Annex 52</del>	<del>Languages: Authentic texts and translations</del>	Revised: Annex 17 85/04
Annex 53	Simplified procedure for revising the Constitution: Movement from unanimity to a qualified majority and from the special legislative procedure to the ordinary legislative procedure	Advocated
Annex 54	Simplified procedure for revising the Constitution: Amendment to internal policies	Advocated
<del>Annex 55</del>	<del>Enhanced Co-operation</del>	Revised: Annex 13 85/04
Annex 56 a	Non-interference between CFSP procedures and those of other areas of the Union's activities	Advocated
Annex 56 b	Public Access to documents of the European Investment Bank	Neutral
<del>Annex 56 c</del>	<del>Right to vote in elections to the EP</del>	Revised: Annex 4 85/04
Annex 56 d	Role of national parliaments. Protocols on subsidiarity and national parliaments	Neutral (change to earlier UK-advocated text is technical only)
Annex 56 e	Convergence Criteria	Advocated
Annex 56 f	Determination of the penalty payments imposed by the Court of Justice	Neutral
Annex 56 g	Solidarity Clause	Advocated
Annex 56 h	National Security and Data Protection	Advocated
Annex 56 I	Withdrawal from the Union Negotiator	Neutral
Annex 56 j	Ratification of the Constitution	Neutral
Annex 57	Declaration by the Federal Republic of Germany, Ireland and the Republic of Austria (Euratom)	Neutral

## Presidency document CIG 85/04 (published 18 June 2004)

Annex 1	The European Commission	Advocated
Annex 2	Definition of qualified majority voting	Neutral
Annex 3	Draft Decision relating to implementation of Article I-24	Neutral
Annex 4	European Parliament seats	Advocated
Annex 5	Provisions specific to Member States whose currency is the euro	Accepted (UK amendments made French proposal acceptable)
Annex 6	Coordination of Economic Policy	Advocated
Annex 7	Declaration on the Stability and Growth Pact amendments	Accepted (UK made German/Dutch proposal acceptable)
Annex 8	Measures relating to excessive deficits	Advocated
Annex 9	Multiannual Financial Framework	Neutral
Annex 10	Explanations relating to the Charter of Fundamental Rights	Advocated
Annex 11	Provisions specific to Member States whose currency is the euro (revised Annex 22 from CIG 81/04)	Advocated
Annex 12	Eurojust (revised Annex 26 from CIG 81/04)	Advocated
Annex 13	Enhanced Co-operation (revised Annex 55 from CIG 81/04)	Advocated
Annex 14	Economic, Social and Territorial Cohesion (revised Annex 36 from CIG 81/04)	Neutral
Annex 15	Transport (revised Annex 37 from CIG 81/04)	Neutral
Annex 16	Energy (revised Annex 39 from CIG 81/04)	Advocated
Annex 17	Authentic texts and translations (revised Annex 52 from CIG 81/04)	Neutral
Annex 18	Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls asylum and immigration, judicial co-operation in civil matters and on police co-operation	Advocated
Annex 19 (1)	Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland (on Gibraltar)	Neutral
Annex 19 (2)	Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"	Advocated
Annex 19 (3)	Declaration by the Kingdom of the Netherlands re Article IV-4	Neutral
Annex 19 (4)	Declaration by the Kingdom of the Netherlands re Article I-54	Neutral







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