



**BRIEFING PAPER**  
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## **WHY THE EU REFORM TREATY MATTERS**

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## **Contents**

- 4**            **Why the EU Reform Treaty matters**
- 5**            **The red-lines and opt-outs**
  - The Charter of Fundamental Rights
  - Foreign and Defence Policy
  - Justice and Home Affairs
  - Social Security & Tax
- 12**          **The Treaty provision within the Government's red-lines**
  - Extension of Competences
  - Extension of Majority Voting
  - Institutional Changes
  - Increased EU powers relative to Member States
- 15**          **The evolution of the EU as a sovereign power**
- 17**          **The UK needs a referendum**
- 18**          **Appendix**
  - Analysis of key steps in the progression of EU powers
- 24**          **References**

# STRUCTURE OF THE PROPOSED EU TREATIES

## Treaty on European Union (TEU)

Governing principles of the EU (*originally the Maastricht Treaty*)

- Values and Aims
- Legal identity
- Citizenship
- Roles of EU institutions
- Role of National Parliaments
- Legal Status of Charter
- Enhanced Cooperation
- Common Foreign and Security Policy
- Treaty revision
- Process for Withdrawal

## Treaty on the Functioning of the European Union (TFEU)

Procedures and rules of the EU, under jurisdiction of European Court  
(*originally the Treaty of Rome*)

- Defines EU competences
- Defines ordinary legislative process (QMV)
- Specifies coordinating roles
- Incorporates Area of Freedom Security and Justice
- Internal Market,
- CAP and CFP
- The euro
- External action

## Protocols

Legally equivalent to the Treaty text

Include protocols on:

- The role of national parliaments
- Subsidiarity and proportionality
- Application of the Charter to the UK
- UK position in relation to the Area of Freedom Security and Justice
- Transitional provisions, including existing FSJ measures

## Declarations

Political statements of interpretation

Include declarations on:

- Relationship of Charter and European Convention
- Common Foreign and Security Policy
- Primacy of EU Law
- Delimitation of Competences
- Integration of Schengen acquis

## Charter of Fundamental Rights

Given same legal status as Treaties under TEU Article 6.

Includes articles on:

- Right to marry and found a family
- Right to education
- Right of collective bargaining and action
- Fair and just working conditions
- Social security and social assistance
- Health care

*UK protocol seeks to clarify application of the Charter to the UK.*

## WHY THE EU REFORM TREATY MATTERS

At the end of 2007 the UK Government published the *European Union (Amendment) Bill* – the 8 clause mechanism through which it plans to ratify the new EU Reform Treaty ('The Treaty of Lisbon') in Parliament during the first few months of 2008. Technically these are amendments to existing EU Treaties that put in place a revised *Treaty on the European Union* (TEU) and a newly named companion *Treaty on the Functioning of the European Union* (TFEU)<sup>1</sup>, together with numerous protocols and declarations.

Faced with a complex Treaty text which – according to some of its authors – has been made deliberately 'unreadable'<sup>2</sup>, many people may be inclined to shrug their shoulders and take on trust the view set out by the Government that most of its provisions are merely sensible 'streamlining' – with the UK protected from anything more contentious by the UK's red-lines and opt-outs.

The reality, as recognised by most Continental leaders, is rather different. With relatively few changes in substance from the former Constitution, the champions for European integration continue to hail it as the foundation for a new Europe.<sup>3</sup>

This overview sets out the basis for these differing views, and summarises three clear reasons for concluding that this Treaty, if ratified, would indeed make a fundamental difference to the UK:

- 1) The special protocols and opt-outs the Government claims will protect the UK from EU intervention in the Government's red-line areas are unlikely to be effective;**
- 2) Regardless of the red-lines, the main provisions of the Treaty NOT covered by these protocols in any case represents a major new transfer of power to the EU;**
- 3) When added to the incremental changes in previous Treaties, the cumulative impact amounts to a fundamental shift in the nature of the EU and our relationship with it.**

Accordingly Global Vision strongly supports calls for a referendum which would allow the British people to express their view on the important issues at stake.<sup>4</sup>

## THE RED-LINES AND OPT-OUTS

The UK Government itself has conceded that there are provisions in the general Treaty language (as applicable to other countries) which could potentially be damaging to the UK, but where the Government claims to have secured protection for the UK through special protocols and opt-outs. The then Prime Minister set out the 'red-lines' to the House of Commons Liaison Committee on 18 June 2007:

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

Yet there are serious doubts about the effectiveness of the safeguards in each of these areas – as the House of Commons Scrutiny Committee, amongst others, has concluded.<sup>5</sup>

### The Charter of Fundamental Rights

The Treaty (Article 6 TEU) recognises the Charter of Fundamental Rights (CFR) as having “the same legal value as the Treaties” within the EU, setting out a wide range of ‘rights’ that extend to employment, economic, family and social policy. At the time the Constitution was being discussed, the Government expressed concern that a legally binding Charter would provide the basis for the European Court of Justice (ECJ) to interfere in UK domestic policy in these areas – for example over the provisions for industrial action, or the nature of social benefits.<sup>6</sup>

Some argue that since the provisions of the Charter are drawn from the European Convention and other existing international agreements, the Charter adds nothing to the backdrop to UK court judgements – and can therefore be ignored. However the importance attached to the Charter by its advocates reflects the belief that bringing these rights together in a single EU legal document will make it easier for them to be applied and make it easier to build up a clear base of local case law.

Furthermore the risk comes not just from the Charter language itself but from the opportunity for the ECJ to apply the Charter language to the *extended range of EU competences* defined under this Treaty in ways that extend the scope of its interventions and create new EU case law that is directly or indirectly applicable in the UK.

The Government claims that it has protected the UK from interference through a special UK protocol that states the Charter does not extend the ability of the courts to adjudicate on rights and principals which are not

already provided for under UK law. According to the Government, this is not an 'opt-out', but simply a 'clarification'.

There are two reasons for doubting this will provide worthwhile protection.

First, in ratifying the Treaty, the UK would be accepting that all the provisions of the Treaty – and legislation that flows from them – are enshrined as part of 'UK Law'. It is the ECJ which ultimately determines whether and how areas of EU competence apply to the UK – for example on the scope of the EU's shared competences under Article 2C of TFEU to legislate on 'social policy' and on 'economic, social and territorial cohesion', as well as its powers under Article 2D to 'take measure to ensure coordination of employment policies' and "take initiatives to ensure coordination of Member States' social policies". Accordingly the ECJ will have considerable scope, if it chooses, to rule that a grey area under an EU directive does apply to the UK, enabling it to apply its EU-wide interpretation of the related 'right' under the charter. This opens the gate to a more expansive implementation of the Charter rights than the UK courts themselves might implement.

Second, given that the UK has previously signed up to the Charter of Fundamental Rights in full as a document in its own right – which already gives it the authority of political intent in the UK – it is likely that ECJ rulings in other EU territories that relate to these rights will be taken into account as precedents in UK court hearings. As a recent House of Lords report made clear, this cross-referencing to incorporate ECJ judgements into UK law is already normal practice.<sup>7</sup> Going forward, this will particularly apply to EU-wide measures to which the UK is party, but could potentially be a factor in judgements relating to the Area of Freedom, Security and Justice even where we are not opted in to the underlying measure.

Ultimately it is the acceptance of the ECJ as the definitive EU court that makes it unlikely that the UK can sustain a separate body of law to that which prevails elsewhere in the EU in any area where the ECJ has jurisdiction. Following this Treaty, the only area which is specifically excluded from the ECJ is Foreign and Defence Policy

### **Foreign and Defence Policy**

Under this Treaty the potential role of the EU in shaping and implementing a common foreign and defence policy is hugely extended – indeed this was a major objective for many proponents of the Treaty. The UK Government's claim is that it has preserved the requirement for unanimity – enabling the UK to maintain its own independent foreign policy.

However, there is no doubt that the intent behind the Treaty is to increasingly bring EU members into line behind a common EU policy and common representation, gradually subsuming independent national positions. Article 10A of the TEU sets out the objective: "The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations..". Furthermore, the claim that unanimity

has been preserved is seriously breached in a number of areas, with 11 different areas of Foreign Policy subject to Qualified Majority Voting (QMV).<sup>8</sup>

Specifically on foreign policy:

- The EU High Representative, or Foreign Minister, will be a member of the Commission. If the Council requests that he recommend a common position on any area, it can then adopt his (i.e. the Commission's) recommendations by QMV – creating a policy which would be binding on Member States, and which they would be required to uphold (Article 15b TEU). In practice it would be difficult for the UK to resist a request for the High Representative to consider policy in some broad area, and it would be equally difficult to then control how that remit might then be interpreted, or what recommendations might follow after the passage of time.
- While the Treaty contains the safeguard that a Member State may block a QMV decision on a common policy for vital and stated reasons of national policy, it would clearly have to persuade other members that its opposition is a 'vital' matter – and in practice it would be difficult to use this frequently without retribution in other areas.
- If any topic on which the EU has a common position comes before the United Nations, the UK will be required to support the right of the EU Representative to take the place of national spokesmen in presenting the EU position (Article 19 TEU).
- The EU Foreign Minister will be supported by a new European External Action Service, clearly destined to become the dominant diplomatic representation for EU members. The diplomatic and consular missions of Member States are required to cooperate with EU delegations where they co-exist in advancing the common EU position. Since the organisation and functioning of this service will be determined by the Council on 'a proposal from the High Representative', it seems likely that this will be determined by QMV (Article 13a TEU).
- Under Article 20, these EU delegations in third countries are empowered not only to represent the EU, but also to take on consular protection responsibilities for EU citizens – enabling them to become full service EU embassies.
- A new provision (under Article 28 TEU ) allows for "start up funding" outside the EU budget for "financing common initiatives in the framework of Common Foreign and Security Policy", with the funding procedures and amounts determined by QMV – essentially opening the door to independent funding of EU external initiatives.
- The Treaty sets out similar ambitions for an expanded role in defence – with the words in the previous Treaty that the development of a common security and defence policy "*might* lead to a common defence" replaced by the words "*will* lead to a common defence"

(author's emphasis) (Article 28a TEU). As a starting point, the Treaty carries forward the proposal from the draft Constitution for a group of states to set up 'permanent structured cooperation' of their military capabilities under the auspices of the EU (Article 28E).

- Other areas where QMV will apply are on provisions to set up an inner core on defence, on the interpretation of the terrorism solidarity clause, on terrorist financing controls, on urgent financial aid, on humanitarian aid, on the election of the EU Foreign Minister, on EU responses to civil disasters, and on rules for diplomatic and consular protection.
- Article 16 limits freedom of national action with the commitment that,

*"Before taking any action on the international scene or entering into a commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Members shall show mutual solidarity."*

- Finally, of course, the creation of the EU as a legal personality under this Treaty gives it new capacity to engage in legally binding Treaties on behalf of its Member States.

It does not take much foresight to see where the ambitions of the Commission lie in this area. In practice it can only be a one way street in which Member States are progressively bound in and circumscribed by EU actions.

## **Justice and Home Affairs**

Here the Treaty moves what was previously an intergovernmental agreement on Police Cooperation and Judicial Cooperation on Criminal Matters into a mainstream EU competence, alongside Asylum, Immigration and Civil Justice (which had already been moved to the EU under the Amsterdam Treaty). This means that the matters covered under the Area of Freedom Security and Justice become subject to EU legislation by QMV and under the jurisdiction of the ECJ. These include the harmonisation of both civil and criminal laws and regulations for cross-border cases, and minimum rules on areas such as admissibility of evidence, rights of individuals and criminal sanctions (Articles 65-69 TEU).

The Government is very clear that these Treaty provisions, if they applied to the UK, would represent an unacceptable transfer of sovereignty over judicial matters. The UK has a different common law legal tradition to those continental countries which have based their legal system on the Napoleonic Code, and in any case the Government accepts that these matters are ones which should be subject to national democratic control.

The Government's claimed safeguard is that, for the UK, these new areas are covered by a special Protocol that enables the UK to decide whether or not to opt in to new legislation in any area of Justice and Home Affairs. They also claim this safeguard is reinforced by the so called 'emergency brake' provisions which allow a country to object to QMV being applied to legislation that would affect 'fundamental' aspects of its criminal justice system.

One basic legal concern that has been raised over these safeguards is whether the protocols can in reality over-ride court judgements that may place a higher priority on upholding the high level Treaty objectives of cooperation and consistency across the EU.

However there are a number of other practical concerns about these opt-outs which are likely to create pressure for the UK courts and legal system to conform over time:

- Where the UK agrees or is pressured into participating in what seems a modest and genuine new measure, the UK will not be able to prevent that measure subsequently being extended and enforced by QMV – and we would be subject to unspecified penalties defined by other Member States if we then tried to opt out (under Article 4a of the UK protocol).
- Since the Treaty extends the role of the ECJ into the police and judicial cooperation aspects of the area of Freedom, Security and Justice, the ECJ will have an immediate role in interpreting any new measure (or amendment) that the UK opts to accept following the Treaty. However, under the Transition protocol, after a 5 year period the UK will also either have to accept the role of the ECJ in ruling on any of the 70 or so measures already in place at the time the Treaty comes into force, or opt out from these agreements too. If we decide to opt out at that time the other members of the Council will again be able to decide on financial penalties to impose on us.
- While theoretically the UK's protocol would appear to allow us to opt out of an amendment to any of these existing measures while remaining part of the original measure, in reality it is not clear how practical this will prove to be. The Protocol under Article 4a provides for the Council to determine that the UK's non-participation would render the amendment unworkable, and to force the UK to decide whether to continue or opt out of the whole measure at that time. If the UK does opt out it could again have financial penalties imposed. This could provide much scope for inventive minds to find ways of positioning new legislation as simply amendment of old legislation under these provisions, increasing the pressure on the UK to conform.
- In addition, under this Treaty (Articles 69D and 69E) the UK will not be able to block other members of the EU developing Eurojust or establishing a new European Public Prosecutor (EPP) to build cross-border investigative and prosecuting forces. These will have the power to charge and prosecute EU citizens initially for alleged crimes against

EU financial interests, but the Treaty provides for the EPP's role to be extended to ultimately include a much wider range of criminal offences.

- Nor, as referenced earlier, will we be able to prevent the ECJ developing new case law based on aspects of the Area of Freedom, Security and Justice to which we are opted out, but which nevertheless become a source of reference for UK courts.
- In particular, on immigration and asylum measures to which we have signed up, the ECJ will in future be able to refer to the relevant Article of the Charter of Fundamental Rights in reviewing our practices, including Article 21 of the Charter which forbids different treatments based on nationality.
- And while the express base of the Treaty covers only civil and criminal matters with 'cross-border' implications, it seems doubtful whether the UK could for long sustain separate and divergent legal bases for the conduct of cross-border cases and those that apply to purely domestic matters.

Based on the experience of how EU institutions have sought to circumvent previous UK guarantees and opt-outs – for example on the Social Chapter and on the Working Time Directive – it seems inconceivable that the UK would be able to sustain a permanent division of ways with the rest of EU law while remaining within the current EU relationship and ECJ oversight. In reality these protocols are likely to prove to have been no more than a temporary break that served to accommodate UK sensitivities.

### **Social Security and Tax**

The Government claims it has preserved national control over both Tax and Social Security (other than areas of VAT which fall within EU competence). Neither the Reform Treaty – or the Constitution that preceded it – advanced explicit new proposals for EU legislation on tax or social security, so in raising this red-line the Government has not sought or obtained any specific opt-outs. At first sight this looks like claiming a pyrrhic victory against an invented enemy.

Thus the reference to legislative action in the Treaty of Nice to 'support and complement' the actions of Member States in the area of 'social security and the protection of workers' is translated into Article 137 of the TFEU, but remains subject to unanimity.

The other specific legislative mandate already in the Treaty of Nice was an Article enabling action to protect the benefit entitlement of workers moving across national boundaries. While this is moved from unanimity to QMV in the new Treaty, it is protected by an 'emergency break' that requires a reversion to unanimity if any country claims a proposal would affect important aspects of its social security system. (Article 42 TFEU)

However the red-line may not be as secure as first seems. There are two additions to the text of the new Reform Treaty which could open the door to 'scope creep' over time. Article 2D of the new TFEU contains a new and explicit statement that, "The Union may take action to ensure coordination of Member States' social policies." The new wording of Article 140 then adds to this by including a requirement for the Commission to take initiatives aimed at establishing 'guidelines and indicators' for social security and the protection of workers (amongst other areas).

In addition, the text of the Treaty remains subject to continuing interpretation by the ECJ. The absence of a clear mandate in the existing Treaties has not stopped the EU from proposing an increasing range of tax harmonisation measures in support of the 'Single Market', or from considering cross-EU tax cases in the ECJ.<sup>9</sup> There is no reason to believe that this trend will stop, or that the ECJ will not similarly extend the scope of EU intervention in social policy.

The specific references to social security rights in the Charter of Fundamental Rights are likely to provide scope for just such judicial intervention. Article 34 of the CFR, for example, sets out entitlement to social security and social benefits to protect against maternity, illness, industrial accidents, dependence, old age or loss of employment; and specifies that these should be available to anyone residing and moving legally across national boundaries within the EU. It also recognises "the right to social and housing assistance so as to ensure a decent existence".

When coupled with the new Treaty wording set out above, the opportunity for scope creep of EU intervention through ECJ case law is likely to be substantial – and not subject to any legislative national veto.

## THE TREATY PROVISION WITHIN THE GOVERNMENT'S RED-LINES

While the self declared 'red-lines' may have been the Government's preferred focus of debate, they are not the end of the story. Even if all the UK opt-outs and protocols were accepted at face value, the vast majority of the other Treaty changes which were conceded within the red-lines themselves amount to a further major change in our relationship with the EU. The debate on the red-lines is in danger of diverting attention away from the real substance of the Treaty.

Alongside the changes to the Area of Freedom, Security and Justice and the development of the Common Foreign and Defence Policy, other key provisions through which this Treaty extends the EU's powers are as follows:

### Extension of Competences

- Rather than limiting and containing EU legislation within tight boundaries, this Treaty creates a new definition of 'shared competences' covering an extensive list of very broadly defined policy areas (Article 2C TFEU). The EU is given unlimited scope to extend its legislation and directives in each of the areas named. These shared competences cover:
  - the internal market
  - social policy (for the aspects defined in the Treaty)
  - economic, social and territorial cohesion
  - agriculture and fisheries
  - environment
  - consumer protection
  - transport
  - trans-European networks
  - energy
  - area of freedom, security and justice (as noted above)
  - common safety concerns in public health matters
- Furthermore the Treaty contains an explicit limitation on the powers of Member States by declaring that Member States can (only) legislate in any area of these shared competences "to the extent the EU has not exercised its competence" (Article 2A TFEU). This turns subsidiarity on its head – and any challenge to subsidiarity from national parliaments will be decided by the ECJ.
- On top of that, the EU is given ill defined powers to coordinate policies and take supporting actions in a range of more sensitive areas, including industry, education, culture, human health, employment and social policy. The interaction of all these competences with the provisions of the Charter with respect to

social rights could result in a wide range of new EU and ECJ interventions, as noted earlier.

### **Extension of Majority Voting**

- Qualified Majority Voting (QMV) is defined as the normal procedure in all areas – not just Single Market provisions – with more than 60 further national vetoes disappearing. These include important areas like energy, transport and culture as well as the areas of foreign policy and Justice and Home Affairs referred to earlier.
- In 2014, the blocking minority required to stop legislation under QMV will be made more difficult to achieve by a reduction in the highest hurdle for majority voting from 74% of weighted Council votes to just 65% of votes weighted by population.

### **Institutional Changes**

- The adoption of a permanent President of the European Council (rather than a rotating national leader), is likely to significantly enhance the role and authority of the permanent EU institutions in setting the agenda and priorities for EU action relative to Member States. (Article 9b TEU)
- In addition, this European Council – which was the informal meeting of Heads of Government that sat above the EU structure – is now brought into the ambit of the EU by being defined as an EU institution, subject to the authority of the Treaty provisions and the jurisdiction of the ECJ. (Article 9 TEU)
- This shift in power from nations to EU institutions is further emphasised by the substantial increase in the role of the European Parliament, which gains co-decision power in many areas as part of the 'ordinary legislative process', including the primary role in electing the Commission President.<sup>10</sup>

### **Increased EU powers relative to Member States**

- The creation of an EU legal personality (Article 46A TEU) means that the UK can be bound by treaties on any number of areas that have been agreed by QMV and signed on our behalf, without the UK parliament ever approving them.
- The opportunity to further amend the Treaty is made easier by the new provision (Article 48 TEU) that allows the Council to agree amendments without a formal Treaty negotiation. It would then be up to the UK Government to decide how it sought to ratify these amendments, which could be through a minimal parliamentary

procedure. The same Article also provides for the Council to vote for moving any areas from unanimity to QMV, although in that case any national parliament would have the power to block the move by lodging an objection.

- Finally, the introduction of an Exit Clause (Article 49A) means for the first time that any Member State that chose to withdraw is bound to follow a process that forces it to negotiate the terms with the EU Council.

Thus, even if the red-line opt-outs were effective, these other changes in competences amount to a further substantial strengthening of the EU's intended scope and authority.

For those who seek to impose more European level decision making, these changes achieve the intended objective of increasing the ability and simplicity of passing EU legislation, less trammelled by the need to reach a consensus amongst an increasing number of Member States. For those who believe Europe should only act where Member States agree on common action, these changes amount to a substantial further erosion of the model of Europe as an intergovernmental body under the control of nation-states and their parliaments.

## THE EVOLUTION OF THE EU AS A SOVEREIGN POWER

To see the whole picture, it is not enough to look at this Treaty in isolation. To understand its true intent and consequences it is necessary to examine the cumulative impact of incremental changes introduced through successive recent Treaties.

As summarised in the Appendix, these form a clear pattern that amounts to the steady and relentless construction of European level government across an ever wider field of competences. Against that background, the notion that this is the end of the process of ever closer union – rather than the foundation for the next stage – is simply not credible. The same arguments were used at the time of Maastricht, which was billed as the end of the process because of the incorporation of subsidiarity and UK opt-outs. In reality, the process of integration since Maastricht has been more intense than ever.

The most significant changes are not just those concerned with extensions in competences of the kind outlined, but rather the gradual evolution of institutional structure away from nation-states – slowly but surely emphasising the idea of democratic legitimacy exercised independently of nation-states by European level institutions

- At its core is the concept of EU citizenship, which could have been seen as no more than a rhetorical flourish in the introductory fanfare for Maastricht. However in this Reform Treaty the EU now puts the EU citizen – rather than the nation-state – at the centre of its mandate, declaring (in Article 8a TEU) that the Union is founded on representative democracy where citizens are represented *directly* at Union level in the European Parliament. This clearly sets up an alternative source of democratic legitimacy that challenges the right of national governments to be the representatives of their electorates in the EU.
- This concept of a direct EU mandate is reinforced by the encouragement the same Article gives to the development of European level political parties, and by the responsibility given to the Commission (in Article 8b TEU) to bypass national governments and undertake direct dialogue with citizens and representative associations.
- The Charter of Fundamental Rights further embeds the concept that EU citizens have rights and responsibilities defined by the EU itself which transcend those of their national citizenship. Indeed it embodies the concept that the EU determines and is the guarantor of those rights across national boundaries.
- Accordingly the role of the EU Parliament – first introduced as a modest check on the Executive – has been elevated in successive Treaties. These direct representatives of EU citizens now have co-decision making power that puts the EU Parliament on at least equal terms with nation-states in ever more areas – including electing the

Head of the Commission. The shift of EU authority as arising directly from EU citizens rather than nations is reflected in the Treaty when it states unequivocally that, “The Commission, as a body, shall be responsible to the European Parliament” (Article 9d).

- By contrast the Council – consisting of the representatives of the governments of Member States – has shifted from being the directing authority of the EU where the nation-states acted largely by unanimous agreement to being merely a ‘second chamber’ of national representatives casting votes on EU legislation proposed by the Commission, predominantly through a majority voting procedure.
- It is part of this evolution that the President of the European Council becomes no longer a rotating Head of Government, but a permanent EU official. If the President plays this role effectively – including setting the agenda for legislation and representing the EU on the international stage – he or she is bound to assume increasing status and importance. As a result it would not be surprising if, in due course, there are suggestions that the President should also become directly elected – as President Sarkozy and others are already pressing.<sup>11</sup>
- Under the pretext of enhancing the role of national parliaments, this Treaty actually institutionalises their subservience by defining a limited role for national parliaments in the EU institutional structure. They are allowed to scrutinise draft EU legislative acts, but while the Commission is required to review the legislation if a third or more of parliaments object, the Commission can then decide to continue with the legislation unamended – with their decision confirmed by the normal QMV procedures. Ultimately it is the EU itself, through the ECJ, which has final right to arbitrate on claims of subsidiarity infringement. (Article 7 of the Protocol on Subsidiarity and Proportionality)
- Alongside this, the definition of shared competences, the incorporation of the Charter, the expanded role of the ECJ into Justice and Home Affairs, and the scope for the EU to amend its own Treaties increasingly make the EU an autonomous power that is directing rather than serving the nation-states
- The creation of a single legal personality is the final step in this Treaty that allows the EU to operate as a legitimate government in its own right, signing and enforcing Treaties and agreements on the international stage.

As a result it is not surprising that other Continental leaders who favour EU integration hail this Treaty as preserving all the essential ingredients of the Constitution, and in the words of the Spanish Prime Minister, “More than just a Treaty – it’s a foundation, a treaty for a new Europe”.

## THE UK NEEDS A REFERENDUM

This Treaty matters. It will lead to a fundamentally different European Union from any that the UK population has signed up to – and there is no evidence that this direction has popular support. Indeed, polling evidence from Global Vision shows consistently that the vast majority of the population would prefer a looser relationship with Europe – with roughly half opting for the type of relationship that Global Vision advocates which would preserve the benefits of free trade and intergovernmental cooperation, but where the UK has opted out of the project of economic and political union.<sup>12</sup>

Since the Government have no mandate to accept this Treaty for the UK – and indeed have a manifesto commitment to put the Constitutional Treaty on which it is based to a referendum – they should now open up an honest and open debate that allows the UK electorate to have its say in a referendum.

If they can convince the British people that this Treaty is in their interests, they would then have a settled basis to proceed. However, if the UK were to reject this Treaty, we would then be in a powerful position to negotiate a better relationship for the UK – a power which derives from our ability to set our own conditions for allowing other EU countries who want to proceed to do so without being blocked by a UK veto.

We need not stand in the way if the rest of Europe wishes to follow the route to closer union; but neither should we accept that we have no option but to be bound by the same course.

## APPENDIX: ANALYSIS OF KEY STEPS IN THE PROGRESSION OF EU POWERS

This summary is not comprehensive. For further details see the Fact Sheets on the Treaties at [www.global-vision.net](http://www.global-vision.net) on which this is based.

	Treaty of Rome 1957	Single European Act 1986	Maastricht 1992	Amsterdam 1997	Nice 2001	Lisbon Reform Treaty 2007
<b>Structural Changes</b>	Founding Treaty for EEC and its institutions.		<p>Established 3 pillar structure:</p> <ul style="list-style-type: none"> <li>- European Community (EC): <i>Pillar 1</i></li> <li>- Common Foreign and Security Policy: <i>Pillar 2</i></li> <li>- Justice and Home Affairs Cooperation: <i>Pillar 3</i></li> </ul> <p><i>Pillars 2 &amp; 3 were intergovernmental (outside EC legal base)</i></p>	<p>Asylum, immigration and Judicial Cooperation in Civil matters transferred from JHA Pillar 2 to Pillar 1.</p> <p>UK protocol provided for opt-in to Pillar 1 initiatives in JHA.</p>	Formalisation of Enhanced Cooperation procedures.	<p>Distinction between the European Community and European Union removed – replaced by Treaty on the European Union and Treaty on the Functioning of the European Union. <i>(i.e. no separate pillars)</i></p> <p>Remaining areas of old Pillar 3 JHA (<i>Police and Judicial Cooperation in Criminal matters</i>) becomes subject to normal EU legislative procedure, but with UK right to opt in or out and transition arrangements for existing initiatives.</p> <p>Common Foreign and Security Policy extended (<i>see below</i>) but remains largely subject to unanimity.</p> <p>Charter of Fundamental Rights becomes a legally binding text (<i>but with UK protocol</i>).</p>

	<b>Treaty of Rome 1957</b>	<b>Single European Act 1986</b>	<b>Maastricht 1992</b>	<b>Amsterdam 1997</b>	<b>Nice 2001</b>	<b>Lisbon Reform Treaty 2007</b>
<b>Economic integration</b> <i>(under old Pillar 1)</i>	<p>Established Common Market (free movement in goods, services, capital, labour), Customs Union, competition policy, basis for CAP.</p> <p>Established European Investment Bank and European Social Fund.</p>	<p>Established Single Internal Market with QMV legislation.</p> <p>Introduced Monetary Cooperation, with monetary union as goal.</p>	<p>Economic and Monetary Union - EMU <i>(with UK opt-out)</i>.</p> <p>Social Chapter as protocol <i>(with UK opt-out)</i>.</p>	<p>Social Chapter incorporated, allowing legislation over employment and social issues <i>(ended UK opt-out)</i>.</p>		<p>Further definition of EU responsibility to take action to coordinate economic, employment and social policies.</p> <p>Rights related to right to strike, union representation, workplace conditions included in Charter of Fundamental Rights <i>(see below)</i>.</p>

	Treaty of Rome 1957	Single European Act 1986	Maastricht 1992	Amsterdam 1997	Nice 2001	Lisbon Reform Treaty 2007
<b>Other EC Competences</b>  <i>(also under old Pillar 1)</i>		<p>Also added competences in: social policy; economic cohesion; R&amp;D; environmental standards.</p>	<p><i>Added:</i> consumer protection; public health; education and vocational training; culture; trans-EU networks;</p> <p><i>Extended:</i> environmental policy; R&amp;D, Industrial policy</p>	<p>Transferred asylum, immigration and judicial cooperation from pillar 3. Also incorporated Schengen <i>(with UK opt-out)</i>.</p> <p>Extended QMV to cover Employment guidelines; social exclusion; free movement of persons; special treatment for foreign nationals; public health; equal opportunities; R&amp;D; countering fraud; customs cooperation; statistics; data protection; peripheral regions.</p> <p>Extended role in social policies and civil rights.</p>	<p><i>Extended QMV to cover:</i> asylum laws; civil law; free movement of 3<sup>rd</sup> country nationals; frontier controls; illegal immigration and repatriation</p> <p>Subsequent Hague Programme (2004) agreed to develop common European Asylum System by 2010 and common EU immigration policy.</p>	<p>QMV established as the norm, with only a few exceptions. <i>(Effectively removes veto in over 60 areas of policy.)</i></p> <p>Defines 11 shared competences where national governments can only legislate if EU chooses not to legislate; including areas of social policy covered by Treaty; environment; energy; transport; and economic, social and territorial cohesion, etc.</p> <p>Defines 7 areas of supporting competences where EU has coordination role: health, industry, culture, tourism, education, civil protection and administrative cooperation.</p>

	Treaty of Rome 1957	Single European Act 1986	Maastricht 1992	Amsterdam 1997	Nice 2001	Lisbon Reform Treaty 2007
<b>Foreign Policy and Defence</b>  <i>(formerly Pillar 2)</i>		Provided for cooperation on foreign policy and European Security.	Established EU Pillar 2 on Common Foreign and Security Policy as intergovernmental <i>(requires unanimity)</i> .	Further development of CFSP, adding High Representative  Incorporated WEU's Petersberg tasks.  Subsequent Helsinki meeting (1999) agreed to develop European Security and Defence Policy (ESDP).	New permanent structures under ESDP, including: political and security committee; EU military committee; EU military staff.  Subsequently 3 agencies of ESDP set up (2004) - European Defence Agency; EU Institute for Security Studies; EU Satellite Centre	Distinction between the European Community and European Union removed. <i>( i.e. no separate pillars)</i>  Extends scope for EU role, with some actions moved to QMV. <i>(However ECJ still excluded from a role )</i>  Increased status for EU High Representative or 'foreign minister', who will be a member of EU Commission and whose proposals can be approved by QMV.  Provides for development of a common EU diplomatic service.  The EU to represent member states at the United Nations on matters where there is a common position.  A number of other areas to be approved by QMV, including terrorism and mutual defence, establishing an inner defence core, a new EU foreign policy fund.

	Treaty of Rome 1957	Single European Act 1986	Maastricht 1992	Amsterdam 1997	Nice 2001	Lisbon Reform Treaty 2007
<b>Justice and Home Affairs</b> <i>(Pillar 3)</i>		Provided for 'common measures' on police cooperation, visas, extradition and immigration	Established 3 pillar EU.  JHA becomes intergovernmental Pillar 3.	Transferred free movement of persons, asylum, immigration & judicial cooperation to Pillar 1 ( <i>i.e. part of community competence</i> ).  Further developed Police and judicial cooperation in Pillar 3.  Subsequent meeting (1999) agreed to set up Eurojust to combat cross border organised crime.		No longer a separate pillar – remaining areas of old Pillar 3 JHA ( <i>Police and Judicial Cooperation in Criminal matters</i> ) becomes subject to normal EU legislative procedure ( <i>i.e. QMV subject to 'emergency brake' on some matters of vital national importance</i> ), but with UK right to opt in or out.  Consequently brings all of the 'Area of Freedom, Security and Justice' under the jurisdiction of the ECJ.  Enables Eurojust to be extended and EU public prosecutor to be set up by sub group.  Transition period for moving existing legislation into the ambit of EU institutions, including ECJ.

	<b>Treaty of Rome 1957</b>	<b>Single European Act 1986</b>	<b>Maastricht 1992</b>	<b>Amsterdam 1997</b>	<b>Nice 2001</b>	<b>Lisbon Reform Treaty 2007</b>
<b>Institutions and Legal powers</b>	<p>Council, Commission Court, and Assembly.</p> <p><i>(direct elections to European Parliament followed in 1979)</i></p>	<p>EEC renamed EC.</p> <p>Gave formal standing to the European Council.</p> <p>Extended European Parliament's powers.</p> <p>Created Court of First Instance.</p>	<p>EU name introduced.</p> <p>Established EU citizenship.</p> <p>Further extended parliament powers.</p>		<p>New protocol on enlargement and institutional changes to change voting weights.</p>	<p>EU given a legal personality.</p> <p>Elected President of European Council replaces national leaders on rotation, and European Council becomes a formal EU institution.</p> <p>EU parliament much enhanced role as direct voice of EU Citizens; co-decision in many more areas and elects President of Commission.</p> <p>National parliaments given rights to object, but Commission can over-rule.</p> <p>Allows extension to powers of the Union and QMV without requiring a new Treaty.</p> <p>Provides for Enhanced Cooperation if a small group of states wants to pursue further integration.</p> <p>QMV majority cut from 74% of weighted votes to 55% of member states (and 65% population) in 2014.</p>

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## References

<sup>1</sup> The new *Treaty on the Functioning of the European Union* amends and replaces the previous *Treaty Establishing the European Community*.

<sup>2</sup> Giscard d'Estaing is quoted as saying, "Public Opinion will be led to adopt, without knowing it, the proposals that we dare not present to them directly"... "All the earlier proposals will be in the new text, but will be hidden and disguised in some way" (*Le Monde*, 14 June 2007 and *Sunday Telegraph*, 1 July 2007). Similarly, Giuliano Amato, former Italian Prime Minister, stated, " They decided the document should be unreadable. If it is unreadable, it is not Constitutional, that was the sort of perception... Should you succeed in understanding it at first sight there might be some reason for a referendum, because it would mean that there is something new" (CER meeting, 12 July 2007).

<sup>3</sup> For example, Giscard D'Estaing, "The text is, in fact, a rerun of a great part of the substance of the Constitutional Treaty" (*Daily Telegraph*, 27 June 2007); Angela Merkel, "The substance of the Constitution is preserved. That is a fact." (*Daily Telegraph*, 29 June 2007); and Jose Zapatero (Spanish Prime Minister), "We have not let a single substantial point of the Constitutional Treaty go.. It is, without doubt, much more than a treaty. This is a project of foundational character, a treaty for a new Europe" (Speech, 27 June 2007).

<sup>4</sup> See [www.global-vision.net](http://www.global-vision.net) for a full exposition of Global Vision's alternative view of the relationship the UK should develop with Europe in order to preserve the flexibility and economic competitiveness needed to prosper in a globalising world.

<sup>5</sup> House of Commons European Scrutiny Committee, 35<sup>th</sup> Report of Session 2006-07 'European Union Intergovernmental Conference' and the follow-up report, 3<sup>d</sup> report of Session 2007-08.

<sup>6</sup> See Blackwell, *Sleepwalking into an EU Legal System*, Centre for Policy Studies, March 2006, for a description of some of these implications. Particular concern has been expressed about Article 28 of the Charter which guarantees the rights of workers "to take collective action to defend their interests, including strike action"; Article 31 which enshrines that "every worker has the right to limitation of maximum working hours"; and Article 34 which recognises "entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment" as well as "the right to social and housing assistance to ensure a decent existence for all those who lack sufficient resources". While Article 34 is qualified by "in accordance with the rules laid down by Union law and national laws and practices", the future scope of Union law – and of consequent directives that define national laws – is clearly yet to be established. In 2000, at the time of signing the Charter, Tony Blair gave the assurance, "Our case is that the Charter should not have legal status, and we do not intend it to do so"; and in 2003, prior to agreement on the Constitutional Treaty, Peter Hain (as Minister for Europe) declared " ..there are very real legal and practical problems linked to incorporation [of the Charter], which might lead to the European court overturning UK Law. There is absolutely no possibility of us agreeing to this" (*Guardian*, 27 May 2003).

<sup>7</sup> See House of Lords, European Union Committee, *Human Rights Proofing EU Legislation*, November 2005.

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<sup>8</sup> See Open Europe's publication, *A Guide to the Constitutional Treaty*, pp. 21-22.

<sup>9</sup> See *EU Law and British Tax* by Alistair Craig, Centre for Policy Studies, 2003.

<sup>10</sup> See *A Guide to the Constitutional Treaty*, Open Europe, Annex 2, for a full list of 40 new areas where the EU Parliament is given co-decision rights.

<sup>11</sup> President Sarkozy's endorsement for an elected President was reported in *Le Figaro*, 29 April 2007. Giscard D'Estaing is also on the record as saying, "What will certainly have to change over time is the way of choosing the President. In 10 to 20 years there will be a demand for a more democratic election process" (*Wall Street Journal*, 7 July 2003).

<sup>12</sup> See [www.global-vision.net](http://www.global-vision.net) for latest polling. As at November 2007, responses to the question on what relationship with Europe was most preferred were as follows:

<b>If the UK could have the ideal relationship with Europe, which of the following would you yourself prefer?</b>	<b>% response</b>
The UK staying a full EU member on current terms, participating in further integration	24 %
The UK having a looser arrangement with Europe, maintaining free trade and cooperation on common policies, but opting out of political and economic union	47 %
Withdrawing from the EU altogether	23 %
None of these	1 %
Don't know	5 %

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**Note on the author:**

Norman Blackwell was Head of the Prime Minister's Policy Unit at 10 Downing Street from 1995 to 1997, and also served in the Policy Unit from 1985-86. He was created a life peer in 1997, and currently sits on the House of Lords Select Committee on the European Union. A former partner of McKinsey & Company until 1995, he now has a range of business interests. He is also Chairman of the Centre for Policy Studies. He holds a Doctorate in Finance and Economics and a Master's Degree in Business Administration from the Wharton Business School, University of Pennsylvania.

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Global Vision is a non-partisan campaign group backed by economists and business leaders that advocates the negotiation of a new, looser relationship between the UK and Europe based on free trade and mutually beneficial cooperation, whilst opting out of economic and political union. Global Vision believes that this is the right relationship for Britain in the 21<sup>st</sup> century's rapidly changing world.