Ask Full Fact: Brexit in court

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Q: What do you mean, Brexit in court?

A: A number of different people are challenging the way in which the Prime Minister plans to implement the referendum vote to leave the European Union.

These different legal actions have now resolved themselves into two main cases. One is about whether Parliament needs to pass legislation before the UK can leave, and the other is about the effect on devolved governments.

Q: Why two different cases?

One's in England, the other in Northern Ireland. They have separate High Courts.

The second case involves some arguments specific to Northern Ireland, such as the contention that the province should have to agree to Brexit because of the Good Friday Agreement.

The High Court in Belfast reportedly wanted to make sure that the regional angle got a hearing. It put the issue being debated in the English case on hold.

Q: Isn't that one about trying to stop us leaving the EU?

A: Not directly. The lawyers in the English case say that's not the motive. They're arguing that the government can't make the decision to take us out of the EU on its own.

Instead, they want the courts to declare that MPs and members of the House of Lords have to authorise it first.

Q: Hang on, hasn't the decision to leave the EU already been taken?

A: People have voted for it (although only a minority in Northern Ireland and Scotland), but the referendum wasn't legally binding. Formally, nothing has changed. We're still a member of the EU and the government has not yet triggered the process of leaving.

We only begin that process when we inform the EU that the decision has been taken.

Q: By invoking Article 50 of the Lisbon Treaty, right?

A: Actually it's Article 50 of the Treaty on European Union. But, yes, according to Article 50, a country that wants to leave the EU has to notify the European Council, which is made up of government leaders. That kicks off a period of negotiation on unwinding that country's membership, which is a complex business.

Q: So it's up to the Prime Minister to do that?

A: That's what the government's lawyers think, and plenty of other legal experts as well. But equally respected lawyers disagree, saying that Parliament would have to authorise the use of Article 50 by passing legislation. Now the courts will have to decide.

Q: How can it be such a difficult question?

A: Article 50 says that a country's decision to leave the EU has to be made "in accordance with its own constitutional requirements". The UK doesn't have a codified constitution—the president of the Supreme Court thinks it doesn't have a constitution at all—which leaves plenty of scope for argument about what our "constitutional requirements" are.

Q: Can you give me the opposing arguments in one sentence?

A: One side says “Under the UK’s constitution, it is the Crown (the Queen acting under the Royal Prerogative in practice on the advice of government ministers) which has the power to enter into and withdraw from international treaties”.

So on this view, the government has the power to trigger Article 50.

The other side says that there is an existing law, or statute, making EU rules part of our legal system, so “it is not open to government to turn a statute into what is in substance a dead letter by exercise of the prerogative powers”.

If they’re right, Parliament would need to have a say.

Q: So which side did the judges take?

A: Neither, yet. The case began on 13 October in front of the Lord Chief Justice, Lord Thomas of Cwmgiedd, sitting with two other judges.

Whichever side loses is expected to appeal. But it’s likely that the appeals will ‘leapfrog’ the Court of Appeal and go straight to the UK Supreme Court for a hearing in December. That court would be expected to deliver its judgment before the end of the year.

The government made it clear in court that it wasn’t planning to trigger Article 50 in 2016. Theresa May has since confirmed that it will happen by the end of March 2017.

Q: Let’s have the rundown of the different cases, then.

A: The lead claimant in the London case is a fund manager called Gina Miller. She’s represented by Lord Pannick QC and the solicitors Mishcon de Reya.

Other challenges have been combined into her case, including a claim brought by a hairdresser named Deir Dos Santos and a “People’s Challenge” crowdfunding campaign organised by Grahame Pigney, a UK citizen who lives in France.

The case in Belfast also consolidates different groups. One challenge was launched by Raymond McCord, who campaigns on behalf of victims of violence in Northern Ireland. The other involves a group of activists and politicians from various parties.

Q: Who are they taking the case against?

A: The government, essentially, but cases of this kind are brought against a specific minister. The newly-created Secretary of State for Exiting the European Union, David Davis, has this on his plate.

Q: If the claimants win, will MPs and peers have to vote in favour of Brexit for it to happen?

A: Yes.

Q: And if the claimants lose?

A: Theresa May will be able to trigger Article 50 at a time of the government’s choosing and on its own authority.

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News story

Attorney General to defend Brexit legal challenge

From: Attorney General's Office
First published: 28 September 2016

Attorney General to defend Brexit legal challenge in the High Court

The Attorney General Jeremy Wright QC MP, James Eadie QC, Jason Coppel QC, Tom Cross and Christopher Knight have been named as the counsel who will ask the High Court to reject a claim that legal obstacles stand in the way of Government giving effect to the referendum result and triggering Article 50.

The Attorney General Jeremy Wright QC MP said: “The country voted to leave the European Union, in a referendum approved by Act of Parliament. There must be no attempts to remain inside the EU, no attempts to re-join it through the back door, and no second referendum. We do not believe this case has legal merit. The result should be respected and the Government intends to do just that.”

The Attorney will appear at the hearings in the High Court on 13 and 17th October.

Background

The detailed grounds filed with the court by the Secretary of State assert: “The Government intends to give effect to the outcome of the referendum by bringing about the exit of the UK from the EU. That is a proper constitutional and lawful step to take in light of the referendum result.”

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From:

Attorney General's Office

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Northern Ireland court considers whether Brexit requires parliament vote

Raymond McCord; part of a group making a legal challenge against British plans to leave the European Union without a vote in the Westminster parliament; departs the High Court in Belfast, Northern Ireland October 4, 2016. REUTERS/Clodagh Kilcoyne 1/3

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By Amanda Ferguson | BELFAST

Northern Ireland's High Court began hearing a legal challenge on Tuesday against British plans to leave the European Union without a vote in the Westminster parliament.

The case is being brought by a cross-party group of politicians, including members

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who want to remain part of the United Kingdom. The conflict left 3,600 dead.

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The politicians will also argue that the British government is legally obliged to safeguard EU

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LONDON Britain is committed to leaving the European Union, a spokeswoman for Prime Minister Theresa May said on Friday, slapping down a suggestion from European Council President Donald Tusk that the country might ultimately change its mind.

Accused UK "flash crash" trader to be extradited to U.S.

LONDON A London-based trader accused of contributing to the 2010 Wall Street "flash crash" by placing bogus orders to spoof the market lost his legal bid to stop extradition on Friday and will now be sent to the United States to face trial.

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Introduction to the justice system

Find out about the justice system in Northern Ireland, including the differences between civil and criminal law, what court does what and the different agencies involved.

About the justice system

Northern Ireland has its own judicial system which is headed by the Lord Chief Justice of Northern Ireland.

On this page

In this section

The Department of Justice is responsible for the administration of the courts, which it runs through the Northern Ireland Courts and Tribunals Service. The Department also has responsibility for policy and legislation about criminal law, legal aid policy, the police, prisons and probation.

Criminal and civil justice

Criminal law is about protecting the community and establishing and maintaining social order. Anyone who breaks the law can be prosecuted and if found guilty they can be fined, given a community penalty or sent to prison.

The criminal law presumes that each individual is innocent until proven guilty. The level of proof that is required is that the evidence presented should show the person's guilt 'beyond reasonable doubt'.

Civil law is mostly about disputes between individuals or corporate bodies. Cases must be proved on the balance of probabilities (more than a 50 per cent probability that the defendant is liable) rather than the 'beyond reasonable doubt' standard applied in criminal cases.

In both criminal and civil cases, the courts make decisions on an adversarial rather than an inquisitorial basis. This means that both sides test the credibility and reliability of the evidence their opponent presents to the court. The judge or jury makes decisions based on the evidence presented.

Courts in Northern Ireland

Find out what each court does in the table below.

UK Supreme Court	hears appeals on points of law in cases of major public importance
The Court of Appeal	hears appeals on points of law in

	criminal and civil cases from all courts
The High Court	hears complex or important civil cases and appeals fron county court
County Courts	hears a wide range of civil actions including small claims and family cases
The Crown Court	hears all serious criminal cases
Magistrates Courts (including Youth Courts and Family Proceedings)	hears less serious criminal cases, cases involving juveniles and civil and family cases
The Enforcement of Judgments Office	enforces civil judgements

You can search the court lists online to see what civil and criminal cases are being held in Northern Ireland courts in the coming days.

Agencies involved in the justice system

The justice system in Northern Ireland is made up of a number of agencies who are responsible for the administration of justice, maintaining law and order, detecting and stopping crime, dealing with offenders and overseeing the work of prisons.

- Police Service of Northern Ireland
- Public Prosecution Service
- Northern Ireland Courts and Tribunals Service
- Northern Ireland Prison Service
- Probation Board for Northern Ireland
- Forensic Science Northern Ireland
- Criminal Justice Inspection Northern Ireland
- Youth Justice Agency

There are also a number of national crime bodies that work

across the UK:

- National Crime Agency
- Serious Fraud Office
- UK Visas and Immigration
- Border Force

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

(JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY STEPHEN AGNEW AND OTHERS

AND IN THE MATTER OF AN APPLICATION BY RAYMOND MCCORD

FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

SKELETON ARGUMENT ON BEHALF OF THE SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION AND THE SECRETARY OF STATE FOR NORTHERN IRELAND

COUNSEL: Tony McGleenan QC; Paul McLaughlin BL

SOLICITOR: Crown Solicitors Office.

I. Introduction.

1. The Applicants in these proceedings seek leave to apply for judicial review of the intention of the government to use the Royal Prerogative to invoke Article 50 of the Treaty of the European Union ("TEU") following the result of the referendum held on 23rd June 2016 in which the majority of those who voted, voted in favour of the United Kingdom leaving the EU.

2. Prior to the referendum the Government's policy was unequivocal that the outcome of the referendum would be respected. Parliament enacted the EU Referendum Act 2015 based on this clear understanding. The Prime Minister has confirmed that the Government will give effect to the outcome of the referendum by bringing about the exit of the UK from the EU.

3. Under the EU Treaties, Article 50 TEU sets out the procedure by which a Member State which has decided to withdraw from the EU achieves that result. That decision has been taken in accordance with Article 50(1) and the next stage in the process is for the Member State to notify the European Council in accordance with Article 50(2) of the intention to withdraw. The Government intends to give notification, and to conduct the subsequent negotiations, in exercise of prerogative powers to conclude and withdraw from international agreements, against the backdrop of the referendum.

II. The Proceedings.

4. The Court has directed that these applications proceed by way of a rolled-up hearing on 4th and 5th October 2016. The Court has stayed some of the grounds of challenge in both cases on the basis that they directly overlap with issues that are being litigated in proceedings brought by Miller and others ("the *Miller* claim") due to be heard by the Divisional Court in London on 13th and 17th October 2016. The grounds of challenge that are so stayed relate directly to the question of whether notification pursuant to Article 50 requires prior authorisation by Act of Parliament. The Applicants in the present case raise these issues in the following grounds:

    a. *Agnew and others* Ground 4(2)(a)(i);
    b. *McCord* Grounds 3(b) and (c).

5. The remaining grounds of challenge are not directly raised in the pleadings and Skeleton Arguments in the *Miller* case although there may inevitably be some areas where similar lines of argument are developed in both cases.

6. The Applicants' grounds of challenge can be grouped under the following broad headings.

a. The prerogative power cannot be exercised for the purpose of notification in accordance with Article 50(2) TEU because it has been displaced by the Northern Ireland Act 1998;
b. If an Act of Parliament is required then there is a requirement for a legislative consent motion before legislation is passed authorising notification pursuant to Article 50(2) TEU.
c. There are further constraints imposed by: section 75 of the Northern Ireland Act 1998, the Public Sector Equality Duty in s. 149 of the Equality Act 2010 and general principles of EU law.
d. There are non-statutory limitations on the use of prerogative powers to issue notification including constraints imposed by the effect on the Northern Ireland peace process and the constitutional arrangements between Northern Ireland and the other constituent countries of the United Kingdom.

7. The Respondent's case, in summary is:

On the displacement of the prerogative power by the Northern Ireland Act 1998

a. The lawfulness of the prerogative is not impacted upon by the Northern Ireland Act 1998 (or other devolution statutes). The conduct of foreign affairs and international relations are not transferred matters and are outwith the competence of the devolved legislatures.
b. References to EU law in the Northern Ireland Act 1998 and the Belfast Agreement assume, but do not require, ongoing membership of the EU.

On the Legislative Consent Motion

c. The giving of notice under Article 50 does not require an Act of Parliament and, therefore, the need for a legislative consent motion simply does not arise.

d. On the assumption that an Act of Parliament is required to authorise notification pursuant to Article 50(2), such legislation would not involve a devolved matter so no question of a legislative consent motion would arise.
e. The Applicant's argument fails to recognise the constitutional status of the Sewel convention in Northern Ireland as a convention which does not give rise to legal rights and obligations. Whether or not a LCM is required is not, therefore, a justiciable issue.
f. Further, the Sewel convention itself recognises that there will always be circumstances where the Westminster Parliament can legislate upon a devolved matter without the consent of the relevant devolved legislature. These are matters of political judgment and are not readily amenable to the supervision of the Court.

On the Limitations on the Prerogative powers

g. The Royal Prerogative to make and withdraw from treaties is only subject to the limitations that are clearly imposed by statute.
h. The non-statutory factors relied upon by the Applicants do not impose any limitation on the exercise of the powers for the purposes of notification under Article 50(2) which is not justiciable.

Section 75 obligations

i. The decision to invoke the Article 50 process does not engage the section 75 obligations.
j. While the Northern Ireland Office is a designated public authority pursuant to the Northern Ireland Act 1998 (Designation of Public Authorities) Order 2000, the Secretary of State for Northern Ireland is not. He is not, therefore, subject to section 75 obligations in respect of his involvement in executive decisions to invoke Article 50.

k. In any event, even if the section 75 obligations were engaged the Court of Appeal in *Neill* has established that the superintendence of those obligations is to be conducted primarily through the mechanism of Schedule 9 of the Northern Ireland Act 1998 rather than by way of judicial review.

l. It is not accepted that the section 75 obligation has any application to the decision to notify pursuant to Article 50. If the section 75 obligation applies at all to the process of withdrawal from the EU it does not apply to the Article 50(2) process as this is the first stage in a complex negotiated decision-making process that will only yield a defined policy capable of being assessed at a much later stage.

On the Application of EU law principles

m. The general principles of EU law do not apply to the decisions and actions contemplated by Article 50, both because they are exclusively within the province of Member States and because a notification is a purely administrative step on the international plane.

On the Peace Process argument

n. The Article 50 decision will not undermine in any material respect the Northern Ireland peace process, the terms of the Belfast Agreement or the structures established in support of it.

o. The references to the EU in the Belfast Agreement are not normative in nature and find only limited expression in the Northern Ireland Act 1998.

p. The commitments in the Belfast Agreement in respect of ongoing engagement on matters pertinent to the EU can be maintained during and after the Article 50 process.

III. The Effect of the Northern Ireland Act on prerogative power.

8. The Government contend that the constitutional law of the United Kingdom permits notification under Article 50(2) without the need for further legislation. Prerogative powers can be lawfully invoked for this purpose having regard to the terms of the EU Referendum Act 2015, standard constitutional practice regarding the conclusion of and withdrawal from treaties and the very limited restrictions which Parliament has chosen to impose upon the exercise of prerogative powers in this context.

9. The referendum was set up and provided for by Parliament in the 2015 Act. Its legislative purpose and object was to enable the people directly to express their will on a single, binary, question: "*Should the United Kingdom remain a member of the European Union or leave the European Union?*" (see section 1(4) of the 2015 Act). There is nothing to suggest that Parliament intended that the Government should only commence the process of implementing the result of the referendum, by giving the notification prescribed by Article 50(2), if given further primary legislative authority to do so. On the contrary, the premise of the 2015 Act, the clear understanding of all concerned and the basis on which the people voted in response to the referendum question was that the Government would give effect to the outcome of the referendum.[1] The

[1] This was clearly stated on many occasions, for example: "*This is a simple, but vital, piece of legislation. It has one clear purpose: to deliver on our promise to give the British people the final say on our EU membership in an in/out referendum by the end of 2017*." (Second Reading, HC, Hansard, 9 June 2015, col. 1047, the Foreign Secretary); "*As the Prime Minister has made very clear, if the British people vote to leave, then we will leave. Should that happen, the Government would need to enter into the processes provided for under our international obligations, including those under Article 50 of the Treaty on European Union."* (Report stage, HL Hansard, 23 November 2015, col. 475, Minister of State, Foreign and Commonwealth Office, Baroness Anelay of St Johns). On 22 February 2016, the-then Prime Minister told the House of Commons that "*This is a vital decision for the future of our country, and I believe we should also be clear that it is a final decision…This is a straight democratic decision—staying in or leaving—and no Government can ignore that. Having a second renegotiation followed by a second referendum is not on the ballot paper. For a Prime Minister to ignore the express will of the British people to leave the EU would be not just wrong, but undemocratic.*" (HC, Hansard, 22 February 2016, col. 24).

argument made by those seeking to rely on Parliamentary sovereignty as a determinative principle, involves the proposition that it would be constitutionally appropriate for the people to vote to leave, and for the Government and/or Parliament then to decline to give effect to that vote. That is a surprising submission in a modern democratic society.[2]

10. It has been suggested that the referendum was "*advisory*". That is a term which does not appear in the 2015 Act and is apt to mislead. The 2015 Act did not prescribe steps which the Government was required to take in the event of a leave vote. That was not because Parliament or the electorate were proceeding on the basis that the outcome of the referendum would not be given effect to. Any such suggestion would be untenable in fact: the Government had been very clear in this respect. It is unsurprising that the legislation did not prescribe steps to be taken in the event of a leave vote given that: (a) Article 50 itself prescribes the formal steps to be taken once a Member State has decided to withdraw from the EU; (b) it would be a matter for the Government to start the formal process of withdrawal by giving notification under Article 50(2), at a time which the Government believed to be in the best interests of the UK; (c) it had not been decided, and Parliament did not itself seek to decide, what outcome the UK should seek to achieve in negotiating its future relationship with the EU. The characterisation of the referendum as merely "*advisory*" is therefore inappropriate and inaccurate if that term is used to imply lack of Parliamentary permission to give effect to the result or some Parliamentary requirement to return by primary legislation before beginning that process in the event of a vote to leave.

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[2] As the Secretary of State for Exiting the European Union has pointed out: "*I am a great supporter of parliamentary democracy because it is our manifestation of democracy in most circumstances; in this unique circumstance we have 17.5 million direct votes that tell us what to do. I cannot imagine what would happen to the House in the event that it overturned 17.5 million votes. I do not want to bring the House into disrepute by doing that. I want to have the House make decisions that are effective and bite into the process. That is what will happen.*" (HC Hansard, 5 September 2016, col. 61)

11. Having, in implementation of the outcome of the referendum, validly decided that the UK should withdraw from the EU (which is, apparently, common ground between all parties), the Government can only give effect to that decision by notifying the European Council pursuant to Article 50(2). It cannot be prevented from doing so by the absence of primary legislation authorising that necessary step.

12. Where Parliament seeks to impose limitations on the exercise of prerogative power to enter into and withdraw from treaties it must do so clearly. Save as set out below the power of the Crown in this context has been limited only to the extent set out in the Constitutional Reform and Governance Act 2010.[3] Nothing in the Northern Ireland Act 1998 imposes any constraint on the ability of the Government to withdraw from an international treaty.

13. The European Communities Act 1972 ("ECA") did not restrict the power of the government to withdraw from the then EEC. Nor was any provision made to control the use of Article 50 TEU when giving effect to the Treaty of Lisbon in the European Union (Amendment) Act 2008. Both the 2008 Act and the European Union Act 2011 have imposed some constraints on the Government's prerogative powers to act under the EU treaties but, notably, neither constrains the Government's power to decide to withdraw from the EU Treaties or to give notification under Article 50(2).[4]

[3] See section 20.

[4] The EUA 2011 contains a number of procedural requirements which apply in particular circumstances where prerogative powers might otherwise have been exercised to ratify amendments of the EU Treaties or to take steps under them. These requirements, *inter alia*, replaced section 6 of the 2008 Act. For example, under section 2, a treaty which amends the TEU or TFEU to confer a new competence on the EU may not be ratified unless the treaty is approved by an Act of Parliament and a referendum. Under section 8, a Minister of the Crown may not vote in favour of or otherwise support a decision under Article 352 TFEU unless one of sub-sections 8(3) to (5) is complied with in relation to the draft decision. Under section 9, certain notifications – under Article 3 of Protocol No. 21 to the TFEU and TEU on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice – cannot be given without Parliamentary approval. The EUA 2011 does not seek to regulate a decision to withdraw from the EU Treaties or to give notification under Article 50(2).

14. This is not to say that Parliament has no role in the process of withdrawing from the EU. Parliament has many and varied means of holding the Government to account both prior to notification and during the course of any negotiations.

15. In circumstances where there is no express restriction on the Crown's powers to take action under the EU Treaties the Courts will not imply any such restriction. In *R v Secretary of State for Foreign and Commonwealth Affairs ex parte Rees-Mogg* [1994] QB 552 Lloyd J rejected an argument that a Social Policy Protocol attached to the Maastricht Treaty could not be ratified using prerogative power. He stated:

> "We find ourselves unable to accept this far-reaching argument. When Parliament wishes to fetter the Crown's treaty-making power in relation to Community law, it does so in express terms, such as one finds in section 6 of the Act of 1978. Indeed, as was pointed out, if the Crown's treaty-making power were impliedly excluded by section 2(1) of the Act of 1972, section 6 of the Act of 1978 would not have been necessary. There is in any event insufficient ground to hold that Parliament has by implication curtailed or fettered the Crown's prerogative to alter or add to the EEC Treaty."

16. In our submission, if it is correct that the ECA does not provide any constraint on the use of prerogative powers in relation to the EU Treaties, it is difficult to understand how any such limitation could be derived, or otherwise implied, from the terms of the Northern Ireland Act 1998.

17. The Appellants in the *Agnew* challenge contend (paragraphs 51 *et seq*) that, where the Prerogative and legislation occupy the same territory, the prerogative is displaced by the legislation in question. In support of this proposition they seek to rely upon the decisions in *Laker Airways Ltd v*

Department of Trade [1977] QB 643 and *R v Secretary of State for the Home Department ex p Fire Brigades Union*.

18. In our submission these authorities do not assist the Applicants' case. Mr Laker wished to operate "Skytrain", a budget airline to fly passengers across the Atlantic. In order to achieve this, two things had to happen. First, he needed to obtain a licence from the Civil Aviation Authority (**"the Authority"**) under the Civil Aviation Act 1971 (**"the CAA"**). The CAA contained detailed provisions relating to the basis on which, and the process through which, such licences were to be granted. Section 4 of the CAA conferred powers on the Secretary of State to revoke licences in specified circumstances. Secondly, the UK Government had to "*designate*" Skytrain as an air carrier under an international treaty between the UK and the USA, the Bermuda Agreement, under which those nations' Governments mutually agreed to permit carriers to fly into and out of their countries. Mr Laker was granted a licence by the Authority, and the Government designated Skytrain under the Bermuda Agreement. The Secretary of State subsequently made a change to his aviation policy, which involved deciding that Skytrain should not be able to operate. But instead of seeking to use his powers under the CAA (such as in section 4), or seeking to amend the CAA through legislation, he decided instead to withdraw Skytrain's designation under the Bermuda Agreement, which had the practical effect which he wished to achieve and to issue new guidance to the Authority to the effect that Laker's licence should be revoked.

19. The Court of Appeal held that the new guidance was unlawful, contrary to the CAA, and could not be relied upon by the Authority as a basis for revoking Laker's licence. The Secretary of State argued, nevertheless, that the Government was entitled to withdraw Laker's designation under the

Bermuda Agreement, in exercise of prerogative powers, the exercise of which was not justiciable. As Roskill LJ explained (at 718G):

> *"The sole question is whether the relevant prerogative power has been fettered so as to prevent the Crown seeking by use of the prerogative to withdraw the plaintiffs' designation under the Bermuda Agreement and thus in effect achieve what it is unable lawfully to achieve by securing the revocation by the Authority of the plaintiffs' air transport licence".*

20. Roskill LJ explained that the relevant principles upon which the Courts have to determine whether prerogative power has been fettered by statute were "*plain*" and had been "*exhaustively considered*" by the House of Lords in *Attorney-General v De Keyser's Royal Hotel Ltd* [1920] AC 508, including in the speech of Lord Parmoor (at 721E):

> *"The principles of construction to be applied in deciding whether the Royal Prerogative has been taken away or abridged are well ascertained. It may be taken away or abridged by express words [or] by necessary implication … I am further of opinion that where a matter has been directly regulated by statute there is a necessary implication that the statutory regulation must be obeyed, and that as far as such regulation is inconsistent with the claim of a Royal Prerogative right, such right can no longer be enforced".*

21. The Court of Appeal examined the particular statutory framework in question (the CAA). Having regard to that framework, they decided that the prerogative was not available to the Secretary of State to stop Skytrain, because the CAA had specified the circumstances in which and process through which it could be stopped, for example using the Secretary of State's powers under s.4 of the CAA (*per* Roskill LJ at 722F-G, *per* Lawton LJ at 728B, and *per* Lord Denning MR at 706H-707B). On a proper construction of the

CAA, Parliament had, in that case, intended to fetter the use of the prerogative (per Roskill LJ at 722H, per Lawton LJ at 728C-D).

22. In the present case, by contrast, it cannot be said that the Northern Ireland Act has "fettered" the Government's ability to use the prerogative to commence the process of giving effect to the will of the people as expressed through the referendum. As explained above, no legislation contains any such fetter either expressly, or by necessary implication. There is no legislation other than the 2015 Act which purports to regulate the process by which the UK may decide to withdraw from the EU and then give effect to that decision. Save in the 2015 Act, those matters have not been "*directly regulated*" so as to come within the principle expressed in *Laker Airways*.

23. The concept of necessary implication is a narrow one. As Lord Hobhouse held in R (Morgan Grenfell) v Special Commissioners of Income Tax [2002] UKHL 21; [2003] 1 AC 563 at §45: "A necessary implication is not the same as a reasonable implication…A necessary implication is one which necessarily follows from the express provisions of the statute construed in their context. It distinguishes between what it would have been sensible or reasonable for Parliament to have included or what Parliament would, if it had thought about it, probably have included and what it is clear that the express language of the statute shows that the statute must have included. A necessary implication is a matter of express language and logic not interpretation" (original emphasis).

24. In the context of Parliament being taken to have "occupied the field" otherwise covered by the prerogative, that narrow approach requires a party to show that Parliament has legislated to cover the "whole ground" or has "directly regulated" the subject-matter: Attorney-General v De Keyser's Royal Hotel Ltd [1920] AC 508, 526 per Lord Dunedin and 576 per Lord Parmoor. In the words of Lord Hope in R (Alvi) v Secretary of State for the Home

Department [2012] UKSC 33; [2012] 1 WLR 2208 at §28: "Where a complete and exhaustive code is to be found in the statute, any powers under the prerogative which would otherwise have applied are excluded entirely" (emphasis added).

25. Where Parliament has not adopted a "monopoly" of the prerogative power in issue, even where it has enacted legislation which did make provision in the same area, the prerogative power remains available to the Crown: R v Secretary of State for the Home Department, ex p Northumbria Police Authority [1989] QB 26.

26. Similarly, the decision in *Ex parte Fire Brigades Union* does not assist the Applicants. The Criminal Justice Act 1988 (**"CJA 1988"**) provided for a Criminal Injuries Compensation Scheme. By s.171 CJA 1988, this was to come into force "on such day as the Secretary of State may appoint". However, the Secretary of State did not bring the statutory scheme into force. Instead, in exercise of prerogative powers, he replaced an existing non-statutory scheme with a new non-statutory tariff scheme.

27. A majority of the House of Lords accepted the argument of the claimant that it was not permissible for the Secretary of State to use prerogative powers to bring in the new non-statutory tariff scheme. Lord Browne-Wilkinson said, at 552D-G:

> *"… it would be most surprising if … prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament expressed in a statute and, to an extent, to pre-empt the decision of Parliament whether or not to continue with the statutory scheme even though the old scheme has been abandoned … The constitutional history of this country is the history of the prerogative powers of the Crown being made subject to the overriding powers of the democratically elected legislature as the sovereign body. The prerogative*

powers of the Crown remain in existence to the extent that Parliament has not expressly or by implication extinguished them. But under the principle in Attorney-General v De Keyser's Royal Hotel Ltd [1920] AC 508, if Parliament has conferred on the executive statutory powers to do a particular act, that act can only thereafter be done under the statutory power so conferred: any pre-existing prerogative power to do the same act is pro tanto excluded".

28. Lord Browne-Wilkinson held that by "*introducing the tariff scheme he debars himself from exercising the statutory power for the purposes and on the basis which Parliament intended*" (p.554G). Lord Nicholls held that the Secretary of State had "*disabled himself from properly discharging his statutory duty in the way Parliament intended*" (p.578F).

29. The *ratio* of this case, following *De Keyser's Royal Hotel*, is that the Crown may not use prerogative powers to do a particular act where Parliament has prescribed statutory powers for the doing of that act. Again, this has no application in the present case. There is no legislative scheme governing withdrawal from the EU which the Government would be undermining by proceeding under the prerogative. The use of the prerogative to provide notification under Article 50(2) would not frustrate the will of Parliament.

IV. The Need for a Legislative Consent Motion

30. The Applicants contend that an Act of Parliament is required to authorise the commencement of the Article 50 process and that it follows that there is a constitutional obligation to (a) seek and (b) receive the consent of the Northern Ireland Assembly before any such legislation is enacted. It is contended therefore that a legislative consent motion ("LCM") must be passed in advance of the enactment of any statute enabling notification.

31. In our submission it is clear that notification pursuant to Article 50(2) is not a devolved matter, does not involve devolved powers and therefore there could be no requirement to seek consent from the Northern Ireland Assembly before legislation authorising an Article 50 notification could be enacted.

32. There are two key documents that address the question of the need for an LCM. These are:

    a. The Devolution Memorandum of Understanding;
    b. The Devolution Guidance Note No. 8 on post-devolution legislation affecting Northern Ireland.

33. The Devolution Memorandum of Understanding states that:

    "The UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature."

34. The convention referred to herein is sometimes described as the Sewel convention. This remains no more than a non-binding political convention in terms of the constitutional law of Northern Ireland. The Convention has been put on a statutory footing in section 2 of the Scotland Act 2016 which provides under the heading "Sewel convention" that section 28 of the Scotland Act 1998 should be amended to include sub-paragraph 8 which states:

    "But it is recognised that the Parliament of the United Kingdom will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament."

35. A similar provision is included in the Wales Bill introduced into Parliament in 2016 but, notably, there is no analogous provision in the Northern Ireland Act 1998.[5] Accordingly, in Northern Ireland the Sewel convention has not been placed on a statutory footing and its status as a convention is beyond dispute. Further, it is clear from the text of the Convention – and section 2 of the Scotland Act 2016 - that the operation of the convention admits of exceptions. The use of the word "normally" indicates that Parliament continues to recognise that there will be circumstances where it is appropriate for the Westminster Parliament to legislate with regard to devolved matters in Scotland, Northern Ireland and Wales.

36. Further, it is the use of the term "normally" that gives the clearest indication that the Convention is not justiciable. A judgment as to what is or is not "normal" is a political rather than a legal one. An assessment of political norms is not one which the Court is well placed to make.

37. In any event the Convention must be read against the statutory provision in section 5(6) of the Northern Ireland Act 1998 which provides:

> "This section does not affect the power of the Parliament of the United Kingdom to make laws for Northern Ireland...."

This betokens statutory acceptance that Parliament remains sovereign and that the only constraint upon that sovereignty is in the form of a convention containing an exceptionality clause in the plainest of terms.

38. The Memorandum of Understanding reflects this analysis. It states at paragraph 2:

[5] The equivalent provision to section 28 of the Scotland Act 1998 is section 5 of the Northern Ireland Act 1998. No similar amendment has been introduced in this jurisdiction. In the Wales Bill clause 2 includes a proposed amendment to section 107 of the Government of Wales Act 2006 in terms identical to those in section 2 of the Scotland Act 2016.

"This Memorandum is a statement of political intent, and should not be interpreted as a binding agreement. It does not create legal obligations between the parties..."

39. In Northern Ireland the convention only has application in respect of legislative provisions that are expressly dealing with transferred matters. Paragraph 2(iii) of Guidance Note 8 states:

"Whether agreement is needed depends on the purpose of the legislation. Agreement need be obtained only for legislative provisions which are specifically for transferred purposes…."

40. Paragraph 5 of DGN8 states that only bills which contain provisions applying to Northern Ireland and which deal with transferred matters (but not excepted or reserved matters) or which alter the legislative competence of the Northern Ireland Assembly or the executive functions of the Northern Ireland Ministers or department are subject to the convention on seeking the agreement of the devolved Assembly.

41. The text of paragraph 4 of DGN8 identifies a number of conditions that must be met before there is a need for an LCM. There are three specific triggering components:

a. The legislation contains provisions which apply to Northern Ireland and deal with transferred matters (but not excepted or reserved matters);
b. The legislation alters the legislative competence of the Northern Ireland Assembly;
c. The legislation alters the executive functions of Northern Ireland departments or Ministers.

42. It is clear that any legislation drafted to authorise the invocation of Article 50 would deal only with excepted matters. International relations, including

relations with the European Union are an excepted matter. Paragraph 3 of Schedule 2 to the Northern Ireland Act 1998 includes as excepted matters:

> "International relations, including relations with territories outside the United Kingdom, the European Communities (and their institutions) and other international organisations and extradition, and international relations and co-operation."

43. Paragraph 18 of the Memorandum of Understanding confirms that "As a matter of law, international relations and relations with the European Union remain the responsibility of the United Kingdom government and the UK parliament." Further support for the proposition that the invocation of Article 50 is not a matter for the devolved institutions can be found in section 7 of the Northern Ireland Act which includes the European Communities Act 1972 in the list of "entrenched enactments" that cannot be modified by an Act of the Northern Ireland Assembly or by subordinate legislation made, confirmed or approved by a Minister or Northern Ireland department."

44. Paragraph 4 of DGN8 identifies the type of proposed legislation that will require an LCM. This includes legislation that contains provisions applying to Northern Ireland and which deal with transferred matters (but not reserved or excepted matters), or which alter the legislative competence of the Northern Ireland Assembly or the Executive functions of the Northern Ireland Ministers or departments. The Article 50 notification process will not sound on transferred matters and will not alter the legislative competence of the Northern Ireland Assembly.

45. Similarly, it cannot be argued that any legislation passed to facilitate Article 50 notification would, in itself, alter the legislative competence of the Assembly or the executive functions of Ministers or Departments in Northern Ireland.

V. Constraints on the Use of Prerogative Power

46. The commencement of the Article 50(2) process involves the withdrawal from international treaty obligations. The relief sought the Applicants is designed to secure that the decision made under Article 50(1) that the UK should withdraw from the EU might not be implemented at all, seeks, in substance, to attack that prior decision. These are matters that are exclusively within the province of the Crown and which are not justiciable. In *CCSU v Minister for the Civil Service* [1985] AC 374 Lord Roskill explained:

> "*Prerogative powers such as those relating to the making of treaties …. are not, I think, susceptible to judicial review because their nature and subject matter are such as not to be amenable to the judicial process. The Courts are not the place wherein to conclude whether a treaty should be concluded…"* [at 418]

47. There are cases in which a specific impact upon a specific individual may require the Court to examine more closely an area which would ordinarily be non-justiciable, but those situations cannot be "abstract": *Shergill v Khaira* [2014] UKSC 33; [2015] AC 359 at §43. Yet this challenge could hardly be more abstract. There is presently no way of knowing precisely which, if any, rights or obligations will be removed, varied or added to by the process of withdrawing from the EU. The notification has not yet been given. The eventual outcome of the Article 50 process will be dependent upon the negotiations in which the Government will engage. As a result, this case is one which falls squarely within the "forbidden area" explained in Shergill at §42 and exemplified by CCSU.

48. The original decision to join the European Economic Community was undertaken by way of the exercise of prerogative power. The issue was addressed by Lord Denning in *Blackburn v Attorney General* [1971] 1 WLR 1037:

"*The treaty-making power of this country rests not in the courts, but in the Crown: that is, Her Majesty acting upon the advice of her Ministers. When her Ministers negotiate and sign a treaty, even a treaty of such paramount importance as this proposed one, they act on behalf of the country as a whole. They exercise the prerogative of the Crown. Their action in so doing cannot be challenged or questioned in the Courts.*"

49. The Applicants in these proceedings seek to challenge the proposed exercise of the prerogative power in the abstract (see in particular grounds 4(2)(c) of the *Agnew* pleadings). The constraints proposed by the Applicants are a combination of statutory, namely the Northern Ireland Act 1998, and a range of non-statutory considerations.

50. The response to the argument in respect of the non-statutory constraints is that these matters are primarily political considerations that are not justiciable in the courts for the reasons outlined above. These arguments are directed primarily to the decision to withdraw from the EU under Article 50(1), rather than to the act of giving effect to that decision by notification under Article 50(2).

VI. The Section 75 Issue

51. At ground 4(4) of the Agnew Order 53 statement it is argued that the Northern Ireland Office and the Secretary of State for Northern Ireland must, before tendering advice to the Cabinet on whether an Article 50 notice should be issued, comply with the statutory requirements under section 75 of the Northern Ireland Act 1998. The Secretary of State for Northern Ireland has not provided any such advice to the Cabinet. However, if such advice were to be provided in our submission the section 75 obligations would not be engaged.

52. Section 75 imposes a duty, sometimes described as a target duty, to have due regard to equality considerations. The section provides:

> "**75.** – (1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-
>
> (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
>
> …
>
> (2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
>
> (3) In this section "public authority" means-
>
> (a) any department, corporation or body listed in Schedule 2 to the Parliamentary Commissioner Act 1967 (departments, corporations and bodies subject to investigation) and designated for the purposes of this section by order made by the Secretary of State;
>
> (b) any body (other than the Equality Commission) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation);

(c) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (departments and other authorities subject to investigation

(d) any other person designated for the purposes of this section by order made by the Secretary of State."

53. Schedule 9 of the Northern Ireland Act 1998 contains a detailed enforcement mechanism for addressing complaints that there has been a breach of the section 75 obligation. The Schedule 9 regime is subject to the oversight of the Equality Commission for Northern Ireland and permits matters to be referred ultimately to the Secretary of State for Northern Ireland.

54. It is accepted that the Northern Ireland Office is a public authority for the purposes of section 75 of the Northern Ireland Act 1998. However, the Northern Ireland Office does not provide advice to the Cabinet and the Applicant does not identify which, if any, of the functions discharged by that Office would engage the requirements of section 75.

55. The Secretary of State for Northern Ireland is not designated as a public authority under the Northern Ireland Act. Indeed, it would be incongruous if the Secretary of State were to be amenable to the section 75 regime given his specific role at the apex of the enforcement mechanism for section 75 complaints in paragraph 11 of Schedule 9 of the Northern Ireland Act 1998. It follows, in our submission, that the Secretary of State is not required to adhere to the section 75 obligations in relation to his discussions in Cabinet.

56. The application of the section 75 regime to the Secretary of State was considered by the High Court in *Re Conor Murphy's Application* [2001] NIQB

34. In that case it was argued that the Secretary of State for Northern Ireland was not a public authority for the purposes of section 75. Kerr J (as he then was) accepted this argument. He stated:

> *"It is not strictly necessary for me to decide this point in order to reach a conclusion on the application of section 75 to the making of the Regulations but I am confident that the respondent's argument must prevail. Only those bodies or agencies specified in section 75 (3) of the Act are to be public authorities for the purpose of the section. The fact that the Secretary of State was performing a function that, in other circumstances, might have been carried out by the Assembly could not bring him within the provision. In this context it is worthy of note that section 76 (7) provides that a public authority shall include a Minister of the Crown. If it had been intended that the Secretary of State should be subject to section 75, that could have readily been made clear, as it has been in section 76."*

57. It is our submission, therefore, that insofar as the target of the section 75 challenge is advice provided by the Secretary of State for Northern Ireland to the Cabinet in respect of the Article 50 process, this is a matter beyond the reach of section 75. Parliament has deliberately excluded the Secretary of State from the reach of section 75. This is evidenced by section 76 (discrimination by public authorities) which, in contrast, extends a duty to Ministers of the Crown.

58. In the alternative, insofar as the challenge is directed at the actions of the Northern Ireland Office then is submitted that any complaint about compliance with the section 75 process ought to be addressed through the mechanisms provided by Parliament in Schedule 9 of the Northern Ireland Act 1998.

59. This issue was addressed in *Re Neill* [2006] NICA 5 where the Court of Appeal accepted the argument that the scope for a judicial review challenge based on section 75 was limited by virtue of the mechanisms for redress contained in Schedule 9 of the Act. The Lord Chief Justice considered the argument, advanced on behalf of the Secretary of State for Northern Ireland, that the circumstances in which judicial review would be an appropriate means of addressing an alleged failure to adhere to the section 75 duty would be very limited. At paragraph 30 the Court held:

> *"The conclusion that the exclusive remedy available to deal with the complained of failure of NIO to comply with its equality scheme does not mean that judicial review will in all instances be unavailable. We have not decided that the existence of the Schedule 9 procedure ousts the jurisdiction of the court in all instances of breach of section 75. Mr Allen suggested that none of the hallmarks of an effective ouster clause was to be found in the section and that Schedule 9 was principally concerned with the investigation of procedural failures of public authorities. Judicial review should therefore be available to deal with substantive breaches of the section. It is not necessary for us to reach a final view on this argument since we are convinced that the alleged default of NIO must be characterised as a procedural failure. We incline to the opinion, however, that there may well be occasions where a judicial review challenge to a public authority's failure to observe section 75 would lie. We do not consider it profitable at this stage to hypothesise situations where such a challenge might arise. This issue is best dealt with, in our view, on a case by case basis."*

60. In our submission, the complaint against the Northern Ireland Office at paragraph 4(4) of the Agnew Order 53 statement is based on an alleged procedural failure to comply with consultation requirements in the Northern Ireland Office equality scheme. This is directly analogous to the complaint – a procedural complaint – considered by the Court of Appeal in *Neill.* The appropriate mechanism for redress in respect of such a complaint can be

found in the enforcement mechanisms of Schedule 9 of the Northern Ireland Act 1998. Such matters are for the Equality Commission in the first instance rather than the Court.

61. It is not accepted that the section 75 obligation has any application to the decision to notify pursuant to Article 50. The decision to notify is not, on proper analysis, a policy decision that would in any event be amenable to equality appraisal and assessment because it is only the first stage in a process that will, ultimately and following extensive negotiations with the European Union and other Member States, lead to a final policy position. The impacts of triggering Article 50 cannot sensibly be assessed at this stage because they remain to be defined.

62. In *R(Nash) v Barnet London Borough Council* [2013] EWHC 1067 (Admin) Underhill LJ (para 80) noted that the public sector equality duty obligations pursuant to section 149 of the Equality Act 2010 in respect of local authority outsourcing decisions could only require detailed consideration "when the details of the outsourcing arrangements were being worked out."

63. Similarly, in *R(Bailey) v London Borough of Brent* [2011] EWCA Civ 1586 Davis LJ stated at paragraph 104:

> *"There cannot necessarily be easy identification of particular formative stages in every decision making process: and it is certainly unreal to require a "comprehensive scrutiny" (whatever that may mean) at every moment throughout the process. Precisely what consideration is due can and will vary from time to time during the process: even if there needs to be consideration during the process and even if an ultimate assessment may need to be made as to whether, overall, "due regard" had been given. Here too it is what happens in substance that counts … It is necessary that consideration of the duty required to be regarded – most obviously here, section 149 of the 2010 Act –*

properly informs the decision-making process before the ultimate decision is made."

64. Ouseley J similarly observed that equality impact assessment could legitimately take place during the later stages of a multi-stage decision-making process in *R(Fawcett Society) v Chancellor of the Exchequer* [2010] EWHC 3522 (Admin) at para 15:

> *"It is perfectly sensible for the Government to wait until policy has been adequately formulated for there to be a clear basis upon which its ... equality impact can be assessed. The point at which that is reached is ... very much a question of rationality not of duty."*[6]

65. The assessment of the equality impacts, if any, of the decision to invoke Article 50(2), is as a matter that cannot be conducted in any practicable sense at this stage in the process. The variables that may have a bearing on the ultimate shape of policy are not readily identifiable at this stage.

The Public Sector Equality Duty

66. The Applicants in the Agnew case place reliance upon the public sector equality duty (PSED) in section 149 of the Equality Act 2010. This provision does not apply in Northern Ireland where the issue of statutory equality duties is addressed with the framework of section 75 and Schedule 9 as discussed above. Equal opportunities and discrimination are "transferred matters" under the Northern Ireland Act. Consequently, with some minor exceptions, the Equality Act 2010 is not part of the law of Northern Ireland.[7] It is not at all clear what actions of the proposed Respondents are alleged to have breached the obligations in section 149 and, if those actions took place in

[6] See to similar effect *R(JG & MB) v Lancashire County Council* [2011] EWHC 2295 (Admin) per Kenneth Parker J (at 50-52), *R(D&S) v Manchester City Council* [2012] EWHC 17 (Admin) (at ss59-61)

[7] The Disabiity Discrimination Act 1995 which has been repealed in England, Scotland and Wales by the 2010 Act remains in force for Northern Ireland.

this jurisdiction, how they can raise a justiciable issue in the High Court in Northern Ireland.

67. Section 149(1) provides:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to
> (a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
> (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
> (c) Foster good relations between persons who share a relevant characteristic and persons who do not share it."

68. If, contrary to the jurisdictional point, section 149 can be found to have some application in this jurisdiction that engages the supervisory jurisdiction of the Court we submit that the argument that the PSED requires the conduct of some form of EQIA in Northern Ireland cannot be sustained. The invocation of Article 50 is an act related to international treaty making. It operates, therefore, on the international plane and the requirement to conduct equality impact assessments on the making of international treaties cannot have been envisaged by Parliament. Further, as submitted above in respect of the section 75 obligations, even if the statutory duty is engaged, which is not accepted, there is no obligation to conduct an equality impact assessment at the commencement of a multi-stage decision-making process.

VII. **Article 50 and adherence to the general principles of EU law**

69. At grounds 4(3)(a) and (b) of the Order 53 statement, the Applicant in the Agnew challenge contends that government intends not to comply with the general principles of EU law in acting pursuant to Article 50 TEU.

70. The decision of the High Court in *Shindler* will be of assistance to the Court on this point. There the Court considered the legality of the franchise rules adopted pursuant to the EU Referendum Act 2015. Those rules excluded from the franchise UK citizens who moved abroad and were last registered to vote in the UK more than 15 years ago ("the 15 year rule"). One of the issues which the Court considered was whether the franchise for the referendum fell within the scope of EU law. The Court held that it did not.

71. In reaching its decision the Court considered the meaning of the words in Article 50(1) TEU, in particular the stipulation that a Member State may decide to withdraw from the Union "in accordance with its own constitutional requirements". The Court noted that this phrase had not been subject to elucidation in the *travaux préparatoires* to the Lisbon Treaty, nor had it been considered previously by the domestic courts or the CJEU. It had, however, been considered by the German Constitutional Court in *Re Ratification of the Treaty of Lisbon* [2010] 3 CMLR 13. The Court cited that judgment, in particular its finding that the issue of whether a Member state had complied with its own constitutional requirements could "*only be verified by the Member State itself, not by the European Union or the other Member States*"(paragraph 7).

72. The Court then stated at paragraph 16:

> "*A decision by a Member State to withdraw from the EU is an exercise of national sovereignty of a special kind for which the TEU has made the express provision that this may be done in accordance with a Member State's own constitutional requirements. That is hardly surprising. It would have been*

surprising if the Member States had agreed that a Member who wishes to withdraw from the EU altogether could only do so if the decision to withdraw did not infringe one or more fundamental EU rules. An obvious reason why a Member State might wish to withdraw is that it found such rules unacceptable and was no longer willing to be bound by them."

73. Accordingly, the Court held that one of the constitutional requirements that Parliament decided had to be satisfied as a condition of withdrawal from the EU was a referendum. The 2015 Act, which gave effect to that decision, was not within the scope of EU law.

74. *Schindler* is authority for the proposition that the decision to withdraw from the EU falls outside the scope of EU law. The logic of that proposition, and indeed the words used in paragraph 16 of the Court of Appeal's judgment, must necessarily extend to the notification under Article 50(2) which follows from a withdrawal decision under Article 50(1). Otherwise, a decision to withdraw from the EU could be compromised by a Member State being constrained in the implementation of the Article 50(1) decision.

75. Accordingly, it would be incorrect to say that a Member State is required to comply with the general principles of EU law when giving notification under Article 50(2).

76. Even if the general principles of EU law were potentially applicable, they could have no meaningful content in the case of notification under Article 50(2), which is a purely administrative act in implementation of the Article 50(1) withdrawal decision. Nor is it apparent how such a decision could sensibly be to the effect that the Government should not implement the outcome of the referendum.

VIII. **The Northern Ireland peace process and the Belfast Agreement**

77. The *McCord* challenge raises issues relating to the Northern Ireland peace process and the Good Friday/Belfast Agreement at grounds 3(d) and (f). The government has stated its clear and ongoing commitment to the Belfast Agreement which is not diminished in any way by the implementation of the decision to leave the European Union.

78. The Court will note that very sparing reference is made to the European Union in the text of the Belfast Agreement. Further none of these references were given statutory expression through incorporation into the Northern Ireland Act 1998 and none of them appear to be of any direct consequence to the issues in the litigation. In general terms, both the Northern Ireland Act 1998 and the Belfast Agreement that preceded it, *assume but do not require* ongoing membership of the European Union. It is accepted that the legislative and executive competence of the Assembly and Ministers is limited by the requirement to act compatibility with EU law. However, the operation of the Act is not dependent upon the application of EU law and the Applicants have not sought to demonstrate how the Act would become inoperable in the event of withdrawal.

79. The Applicants in both *Agnew* and *McCord* adumbrate various passages of the Belfast Agreement and related documents which refer to EU law. However, the Court will not, in our submission, find this to be helpful exercise in determining the legality of notification under Article 50(2).

80. The preamble to the British Irish treaty refers to both parties being "partners in the European Union". That was, of course, a factually accurate empirical observation when the agreement was concluded. It was not intended to be a normative statement and cannot conceivably have any enduring effect in law.

On analysis leaving the European Union has no legal or practical consequence upon this aspect of the Belfast Agreement.

81. There is a reference to the European Union at paragraph 31 of Strand One. Here the section relating to the Assembly refers to "co-ordination and input by Ministers to national policy-making, including on EU issues". However, it is likely that national policy making will continue to include policy making on EU issues even after the United Kingdom leaves the EU.

82. In paragraph 3(iii) of Strand Two, the North/South Ministerial Council is tasked with considering "institutional or cross-sectoral matters (including in relation to the EU)". There is no impediment to the Council considering matters relating to the EU even after the Article 50 process has concluded.

83. Paragraph 17 of Strand Two and paragraph 8 of the Annex, the Council is tasked with considering EU dimensions and programmes and proposals under consideration in the EU framework. There is also provision for arrangements to be made to ensure the views of the Council are represented at relevant EU meetings. There is no impediment to the Council being represented at EU meetings even if the UK no longer remains a member of the EU, and so again, the UK leaving the EU would not amount to a breach of this aspect of the Belfast Agreement.

84. Similarly, in Strand Three paragraph 5, there is provision that suitable issues for early discussion in the British Irish Council could include "approaches to EU issues". This provision imposes no legal or practical constraints on the decision to notify pursuant to Article 50(2) TEU.

85. There is nothing in the text of the Belfast Agreement that would impede the Article 50 process. The Agreement is a quasi-constitutional document containing important commitments to human rights and the setting up and

support for various institutions. Many, although not all, of those commitments have been given statutory expression in the Northern Ireland Act 1998. The Belfast Agreement does not impose any fetter on prerogative power. Since, in our submission, the terms of the Northern Ireland Act 1998 impose no fetter or constraint on the exercise of the prerogative power to invoke Article 50(2) it follows that the terms if the Agreement will have no greater effect. Moreover, on a practical and political level the operation of the Agreement and its outworkings will continue notwithstanding the Article 50 process and the Government has given express commitments to that effect.

IX. Response to the Applicants Arguments

86. *McCord Skeleton.* The Applicant in the *McCord* challenge contends that the decision to invoke Article 50 would be unconstitutional even if it was otherwise lawful. It is contended that the Belfast Agreement is justiciable. [para 19 skeleton]. However, the question of justiciability would arise only if there was some public law issue arising in respect of the Agreement. The Applicant contends that the invoking Article 50 would undermine the Agreement. However, for the reasons outlined above Article 50 notification would have no material impact upon the Agreement which the government has pledged to uphold.

87. The Applicant contends that the sovereignty of the Westminster Parliament is now attenuated in some way. It is suggested that the devolution acts, the establishment of the Supreme Court and the Belfast Agreement [see paras 24-26] have resulted in an erosion of sovereignty. However, this submission pays no regard to the fact that the constitutional balance between affording the devolved institutions scope to legislate on transferred matters while retaining sovereignty over excepted and reserved matters is a constant feature of the devolution Acts. In the Northern Ireland Act 1998 sections 5 and 6 expressly provide for this balance. Section 5, in particular, affords the

Northern Ireland Assembly scope to legislate subject to the express reservation in section 5(6) that the power of Parliament to make laws for Northern Ireland remains intact.

88. The Applicant develops an argument that an Act of Parliament which is "in a strict sense legal" could also be illegitimate because it is incompatible with the constitution. The Applicant cites no United Kingdom authority on the point but relies on a number of decisions of the Canadian Supreme Court [paras 39 *et seq*]. In our submission casual parallels between decisions about the written Canadian constitution in respect of the operation of a federalist system of government are not helpful to the Court.

89. The Applicant also places reliance upon section 1 of the Northern Ireland Act which provides that the status of Northern Ireland – as part of the United Kingdom – will remain unless majority voting in a poll defined in Schedule 1 give their consent to change. The Applicant contends that this provision must be read purposively to include the status of Northern Ireland as a constituent country of the European Union.

90. However, section 1 is plainly directed to the question of whether Northern Ireland should "cease to be part of the United Kingdom and form part of a United Ireland". This is the express language that is used in section 1(2). There is nothing in the text of section 1 that would support that Applicant's argument that the consent of the people of Northern Ireland is specifically required in order to invoke Article 50.

91. The Applicant also contends that the replacement of the section 1(2) of the Ireland Act 1949 with section 1 of the Northern Ireland Act places sovereignty in "the people of NI". However, this argument ignores the current provision in section 1(2) of the Northern Ireland Act which states:

"if the wish expressed by a majority in such a poll is that Northern Ireland should cease to be part of the United Kingdom and form part of a united Ireland, the Secretary of State shall lay before Parliament such proposals to give effect to that wish as may be agreed between her Majesty's Government in the United Kingdom and the Government of Ireland."

Agnew Skeleton.

92. The Applicants dilate on a number of propositions relating to constitutional law in Northern Ireland. At paragraphs 30-37, a number of provisions in the Belfast Agreement which refer to the EU, at varying levels of generality, are highlighted. However, the fundamental point remains that in paragraph 3 of Schedule 2 to the Northern Ireland Act matters relating to relations with the European Union and the relevant institutions are, and remain, excepted.

93. At paragraph 38 it suggested that the Northern Ireland Act 1998 has constitutional status. This is not a controversial proposition in itself but there is nothing in the Act that impedes Government action in respect of excepted matters. The designation of "constitutional statute" can be traced to the decision of Laws LJ in *Thoburn v Sunderland City Council* [2003] QB 151 where it was introduced to restrict the ordinary doctrine of implied repeal. No issue of implied repeal of the Northern Ireland Act 1998 presently arises and the designation of the 1998 Act as a "constitutional statute" (a rule of statutory construction in any event) does not act as an absolute bar to the exercise of prerogative powers.

94. At paragraph 39 attention is drawn to various provisions of the Northern Ireland Act which, it is argued, require EU law to be "recognised and available in law." The Applicant then identifies sections 6, 7, 24 as the provisions which have these effects. However, section 6 simply provides that

an Act of the Assembly will not be law if it is incompatible with "community law". This is a provision which imposes a limit on the scope of the legislative competence of the Assembly; it does not require that EU law be "available" in Northern Ireland.

95. Similarly, section 7 "entrenches" the European Communities Act 1972. As with section 6, this provision reflects the fact that the Northern Ireland Assembly is not empowered to modify certain statutes, including the ECA 1972. Section 7 imposes a limitation on the power of the Assembly it does not require that any of the entrenched provisions remain available in perpetuity.

96. Section 24 is found in Part III of the Act which deals with Executive functions. It imposes constraints on the scope of executive power and, again, reflects the constitutional constraint that the devolved Assembly and executive are precluded from legislating on excepted matters and entrenched provisions. None of the provisions relied upon by the Applicants in paragraph 42 of their skeleton *require* that EU law be "available" nor do they preclude the commencement of the Article 50(2) notification process.

97. At paragraph 42 the Applicant contends that amendments to the devolution Acts require the authority of Parliament. At paragraph 55 the Applicant asserts that invoking Article 50 TEU "*involves, in effect, the beginning of a far-reaching process of amending the Northern Ireland Act. 1998.*" This is a wholly speculative contention. Invoking Article 50 does not involve amending the Northern Ireland Act 1998. The commencement of the process of withdrawal from the EU does not itself involve any change to common law or statute. Any alterations are a matter for future negotiation and will be subject to Parliamentary scrutiny and, if necessary, implementation by legislation.

98. At paragraphs 62-68 the Applicants contend that there is an obligation to seek and obtain a legislative consent motion before any legislation is enacted to

facilitate the Article 50 process. The Applicants concede, at paragraph 67, that Parliament could legislate in this area without the consent of the Northern Ireland Assembly. In light of this submission it seems that the Applicants no longer pursue the relief sought at paragraph 3(b) of the Order 53 statement. At paragraph 67 they state:

> "it is not proposed to ask the High Court to declare that an Act of Parliament authorizing withdrawal from the EU in the absence of an LCM from the Northern Ireland Assembly would be unconstitutional and unlawful."

99. However, the Applicants suggest that they will reserve their position on this point for possible determination in the Supreme Court. However, if the High Court is not invited to rule upon the relief sought then the Applicants cannot seek to raise the issue, as they suggest, in the Supreme Court.

100. At paragraphs 68-72 the Applicants contend that the exercise of the Royal Prerogative is justiciable. As we have argued above the exercise of the prerogative power to conclude and withdraw from international treaties is not justiciable. However, in any event, even if the powers were justiciable in this context, the use of prerogative powers to invoke Article 50(2) is not inconsistent with the Northern Ireland's constitutional law. This argument repeats the points raised already in respect of the application of the Northern Ireland Act 1998. There is nothing within the terms of the Northern Ireland Act which impedes the commencement of the Article 50(2) process. The argument, faintly made, at paragraph 74 that the use of the prerogative is so antithetical to the constitutional place of Northern Ireland that it "might" amount to an abuse of power is not sustainable.

101. At paragraph 82 *et seq* the Applicants contend that the Northern Ireland Office is *prima facie* in breach of its equality and good relations duty under section 75 NIA. The Applicants advance no evidence in support of this

proposition. The Applicant bears the onus of proof in a judicial review application *(Re SOS (NI) Ltd)* and cannot simply assert that lack of evidence leads to a conclusion that a statutory duty has been breached. In any event, for the reasons we have outlined above, there is an existing, and more appropriate, mechanism in Schedule 9 for close examination of the extent to which the obligations under section 75, if applicable, have been discharged by a public authority.

X. Conclusion

102. None of the grounds of challenge raised by the Applicants can be sustained. The process of Article 50(2) notification has yet to commence and many of the arguments advanced by the Applicants are either directed to the Article 50(1) decision to withdraw from the EU – which is not, and cannot be, directly challenged - or to the policy position on withdrawal from the EU which remains at a formative stage. We invite the Court to refuse leave on those grounds which have not been stayed and to adjourn any further argument on the stayed grounds until after the judgment of the Divisional Court has issued in *Miller.*

30th September 2016

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5 legal cases that challenge Brexit

by Alanna Petroff @AlannaPetroff

July 11, 2016: 12:47 PM ET

Who is Theresa May?

A string of new legal cases are going to make it tough for the U.K. to formally exit the European Union.

The British public voted with a slim majority to leave the European Union last month. But at least

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five legal challenges have cropped up that could slow, halt or complicate the so-called "Brexit" process.

Here's a rundown of the different cases:

Maitland Chambers

Law firm Maitland Chambers will be the first to present a lawsuit in court to challenge the legality of the government's plan to exit the European Union.

An initial hearing is set for July 19.

Maitland Chambers' senior barrister Dominic Chambers says that, contrary to popular belief, the incoming U.K. prime minister -- Theresa May -- does not have the legal authority to trigger the nation's formal exit from the European Union.

Instead, all members of Parliament must first vote on this issue, according to rules on parliamentary sovereignty. An exit from the EU can only happen once members of Parliament approve the move, though many do not think it's in the nation's best interest.

The firm is bringing the case forward on behalf of a concerned citizen, a London-based hairdresser, Deir Dos Santos.

Chambers told CNNMoney that his client's case was not designed to block Brexit.

"He wants to ensure that the rule of law is followed," he said.

It's worth noting that the result of the referendum was not legally binding, but only advisory in nature.

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Mishcon de Reya

Top London law firm Mishcon de Reya is preparing a similar legal action to ensure U.K. lawmakers debate and vote on Britain's exit from the European Union before the country embarks on its path out of the bloc.

Mishcon de Reya said it had been corresponding with government lawyers since June 27 and it would go to court if necessary.

The law firm argues that members of Parliament must be given a chance to vote and approve Brexit. Otherwise, the move isn't legal.

Mishcon de Reya said it was representing "a group of concerned British citizens."

1,000+ barristers

More than 1,000 lawyers across the U.K. have signed a letter to remind the prime minister and members of Parliament that while the results of the referendum must be acknowledged, they are not legally binding.

They are calling on members of Parliament to vote on leaving the EU before making a final decision.

"The Parliamentary vote should take place with a greater understanding as to the economic consequences of Brexit, as businesses and investors in the U.K. start to react to the outcome of the referendum," the lawyers said in their letter.

However, no formal legal action is expected to follow this letter.

The expat challenge

British citizen and World War II veteran Harry Shindler, 94, argues that hundreds of thousands of British citizens living abroad were denied the right to vote in the referendum, which should nullify the referendum results.

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Anyone living outside the U.K. for over 15 years was denied a referendum vote.

Shindler, who has been living in Italy since the early 1980s, said the fact that he was denied a vote was arbitrary and undemocratic.

"There must be democracy. And at the moment, this Brexit thing is not democratic," he told CNNMoney.

Shindler has exhausted his legal options in U.K. courts, but his challenge is now being heard by the United Nations Commission on Human Rights, he said.

The U.K. government has already rejected a petition calling for a second referendum, signed by more than 4 million people.

Targeting Leave campaigners

Barrister Anthony Eskander at the firm Church Court Chambers in London, said he is considering assisting clients with a criminal case against the individuals who led the campaign to leave the EU, asserting that they misled voters with broken promises.

He expects these individuals, including former London mayor Boris Johnson, could be found guilty of misconduct in public office, which would be a criminal offense.

However, the case could take months or years to wind through the courts and would not necessarily stop the government from triggering an exit from the European Union.

Regardless, he told CNNMoney the case would still be worth pursuing because campaigners should be held accountable for their "propaganda".

CNNMoney (London)
First published July 11, 2016: 12:03 PM ET

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EU referendum and Brexit

Theresa May does not intend to trigger article 50 this year, court told

Government lawyers at first legal challenge to process of Brexit suggest case is likely to end up in supreme court

Theresa May is not aiming to push the exit button until next year at the earliest, the high court was told. Photograph: Andrew Parsons/AFP/Getty Images

Owen Bowcott Legal affairs correspondent
@owenbowcott

Tuesday 19 July 2016 12.17 BST

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This article is **3 months old**

Theresa May will not trigger article 50 of the Lisbon treaty initiating the UK's departure from the European Union before the end of 2016, the high court has been told.

At the opening of the first legal challenge to the process of Brexit, government lawyers conceded that the politically sensitive case was likely to be appealed up to the supreme court.

At least seven private actions – arguing that only parliament and not the prime minister has the authority to invoke article 50 – have been identified to the court.

Confirming that ministers are not aiming to push the exit button until next year at the earliest, Jason Coppel QC, for the government, conceded that there was nonetheless

"some urgency" to the issue.

"Notification [triggering] article 50 will not occur before the end of 2016," Coppel told the court. Should anything change, he promised, the court would be given advance notice.

That timetable is broadly in line with recent comments from the new government frontbench. The defendant appointed to resist the action is David Davis, whose formal title is secretary of state for exiting the European Union.

In an article for the Sun last week, the newly appointed Davis said the process of consulting "should be completed to allow triggering of article 50 before or by the start of next year". There have been reports that civil servants were working on a deadline of Christmas this year while Theresa May has indicated that she wants to secure the support of the SNP leader, Nicola Sturgeon, before beginning the exit process.

What is article 50?

This is a clause in the Lisbon treaty that sets out the legal process for a country notifiying the European Union it intends to withdraw. Once notification is given, negotiations must be concluded within two years – any extension needs the agreement of all EU members.

During the process, the UK remains a member of the EU, but if talks are not concluded after two years, and not extended, Britain reverts to world trade

No question of whether the court has jurisdiction to decide the arcane constitutional issue was raised at the opening of the hearing. Sir Brian Leveson, one of two judges in charge of the directions hearing, said the full trial would take place in October.

So many lawyers participated in the first stage of the legal challenge that proceedings were moved to the lord chief justice's expansive, Gothic wood-panelled courtroom, the largest in the Royal Courts

upon the "bewildering array of legal talent"
natter of great constitutional importance. The
dd, is due to hear the substantive case in the

The lead case for the legal challenge will be that brought by an investment manager and philanthropist , Gina Miller, 51, who lives in London. Her claim is being coordinated by the law firm

Mishcon de Reya.

She attended the hearing and afterwards said: “We believe in a fair society. This is very much along the lines of my belief [as a remain voter] ... This case is all about the sovereignty of parliament. It is very important that the (article 50) issues are dealt with in a serious and grown-up way. We are making sure that happens.”

What is article 50?

Lord Pannick QC, who is instructed by Mishcon de Reya, said the law firm had already been subjected to racist and antisemitic abuse.

“The publicity that has accompanied notification of the legal issue has provoked a large quantity of abuse directed at my solicitors, Mishcon de Reya,” Pannick said.

“It’s racist abuse, it’s antisemitic abuse and it’s objectionable. It’s contempt of court for people to make threats [in relation to live proceedings]. We have asked that the names of those people who are making the [additional] claims should be redacted. People have been deterred from [making legal claims] by the abuse. It’s a very serious criminal matter for people to make threats.”

Leveson said that interfering with the course of justice by making threats was “an extremely serious matter”. He added: “Apart from the commission of a criminal offence, there’s a real risk that behaviour of this type is a contempt of court.”

Brexit supporters staged a demonstration outside Mishcon de Reya’s London office earlier this month with a banner and placards declaring: “Invoke article 50 now” and “Uphold the Brexit vote”.

One of the challenges has been brought by Deir Dos Santos, a British citizen who works as a hairdresser. He has also been abused online since his involvement was revealed. His claim will be heard alongside Miller’s though he may drop back to become an interested party depending on whether he obtains a protected costs order. Dos Santos was not in court on Tuesday.

The Dos Santos claim argues: “The result of the referendum is not legally binding in the sense that it is advisory only and there is no obligation [on the government] to give effect to the referendum decision.

“However, the [previous] prime minister has stated on numerous occasions that it is his intention to give effect to the referendum decision and organise the United Kingdom’s withdrawal from the European Union.

Pro-Brexit supporters urge Theresa May to invoke article 50 on her appointment as Britain's new prime minister. Photograph: Jack Taylor/Getty Images

"The extract from [Cameron's] resignation speech ... makes it clear that [the government] is of the view that the prime minister of the day has the power under article 50 (2) of the Lisbon treaty to trigger article 50 without reference to parliament."

The government says its powers are based on the royal prerogative.

That approach, Santos's lawyers maintain, is "ultra vires" – beyond the legitimate powers of the government – because under the UK's constitutional requirements, notification to the EU council of withdrawal "can only be given with the prior authorisation of the UK parliament".

Dominic Chambers QC, an expert in international and commercial law from Maitland Chambers in London, and Jessica Simor QC, of Matrix Chambers, are acting for Dos Santos. The London law firm Edwin Coe is coordinating the Dos Santos case.

Deadline approaches for government response to Brexit legal challenge

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Lawyers representing Britons living in France are also expected to join the case.

The legal exchanges were permeated with reluctant references to working through the summer holidays to meet legal deadlines for exchanges of documents. Helen Mountfield QC, who represented some of the unidentified claimants, observed: "It's buckets and

spades down". Leveson, smiling, replied: "August is always a good month to work in."

The majority of MPs at Westminster are in favour of Britain remaining inside the EU. Moves to hand parliament ultimate authority over article 50 have been criticised as a devious and underhand means of frustrating Brexit.

Lawyers for the claimants insist the legal challenge is concerned with the constitutional principle of parliamentary sovereignty rather than being engineered for a particular political outcome.

Whether the majority of MPs who support remaining in the EU may now feel morally bound to vote in favour of Brexit if the issue comes to parliament is another question.

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What happens if we vote for Brexit?

Posted on January 19, 2016 by The Constitution Unit

*The EU referendum could be held as early as June so clarity is needed about what will happen in the event of a vote to leave. In this post **Alan Renwick** explains Article 50 of the Lisbon Treaty which sets out the procedure for leaving the EU. Under it a second in/out referendum of the type floated by Boris Johnson among others is not possible. Anybody suggesting that voters can vote to 'leave' safe in the knowledge that they can later change their minds is either playing with fire or manipulating voters disingenuously.*

2016 looks likely to be the year in which voters get to decide whether the UK will stay in the European Union. If David Cameron secures a deal with other EU leaders next month, we can expect to know the referendum date shortly afterwards. Then the key players will settle their positions and decide their core arguments. In the run-up to this crucial moment, we need clarity as to what the options are and what will happen in the event of a vote to remain or to leave.

The implications of a vote to remain are easily predicted: the UK will stay in the EU, with whatever tweaks to our terms of membership David Cameron has negotiated. But what happens in the event of a vote to leave? That is much less obvious. This post sets out the

Follow

processes and probes their implications.

The legal framework

We might start with the EU Referendum Act, which received royal assent just before Christmas. It sets out the referendum rules, so could be expected to define the effect of a vote either way. Alas, it does not: it makes no provision as to the referendum's legal effect.

That is because, strictly speaking, it has no legal effect. It will be purely advisory and, in law, the government could simply ignore the result. In this it contrasts with the legislation for the electoral system referendum in 2011, which required the minister responsible to enact the result. But it is the same as the legislation underpinning the Scottish independence referendum of 2014 and, indeed, the referendum on membership of the Common Market in 1975.

Whatever the legal position, however, the political reality is that the government will have to respect the result. If the vote is to leave the EU, the Prime Minister will announce that the UK will indeed leave.

But that departure will not happen immediately: first comes a period when the UK can negotiate its future relationship with the EU. And here the process is regulated by law – specifically, by Article 50 of the EU's Lisbon Treaty.

The details of Article 50 really matter

Article 50 sets out the procedure to be followed if a country wishes to leave the EU. Its terms are important, so the box below gives the full text. In summary, the withdrawal process starts with a statement from the Prime Minister to the European Council (the collection of EU heads of state and government). Then a negotiation begins, with the 27 continuing members on one side of the table and the UK on the other. For a deal to be done, both sides need to agree. On the EU side, that requires support from a qualified majority of the continuing members (specifically, the so-called 'super qualified majority': at least 72 per cent of the continuing members, representing at least 65 per cent of their population) and from the European Parliament. If no deal is done within two years, the UK's membership automatically ceases, unless the 27 vote unanimously to extend the

negotiation.

Article 50 of the Lisbon Treaty

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

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

This has implications for two important things: the balance of power in the negotiations; and the possibility of holding a second referendum.

The balance of power

Put simply, Article 50 gives the 27 continuing member states predominant power. That comes partly from the fact that, according to Paragraph 4 of Article 50, the withdrawing state no longer counts as a member of the European Council for the purpose of the negotiations. But mainly it comes from the guillotine imposed by the two-year deadline and the requirement for unanimity to extend that deadline. The negotiations will be long and contentious. An extension beyond two years might well be needed – but any one of the 27 could block that if it didn't get its way on its own priorities.

We should not overstate the power imbalance here. Writing in *Prospect* magazine last month, Bronwen Maddox said, 'Clause 4 says that after a country has decided to leave, the other EU members will decide the terms—and the country leaving cannot be in the room in those discussions. Repeat: we'd have no say at all on the terms on which we'd deal with the EU from then on, and no opportunity to reconsider.' That isn't right: Clause 4 says only that we wouldn't be in the room when the EU decides its position in the negotiations; but of course we would be in the room when the EU is negotiating with us. Furthermore, the UK is a country with clout, and it could use that to extract some advantage.

But the imbalance is nevertheless real and great. Even one Eurosceptic blogger has commented that 'Article 50 is not really a process designed to facilitate the exit of a nation state from the EU – it is an attempt to build a process that is so risky, politically and economically, that no country would dare invoke it'. Furthermore, Professor Steve Peers from the University of Essex, writing in a detailed post in 2014 that deserves to be read carefully, suggested that this imbalance may be greater even than it appears on the surface. It might be thought that the unanimity issue is not too serious: unanimity is not needed for a deal to be signed, so, while any of the 27 can stop an extension to the negotiation period, none alone can prevent the other members from cutting a deal within two years. As Peers points out, however, things are not necessarily so simple. While a deal can be struck by qualified majority under Article 50, some of the *content* that the UK would want for such a deal – including aspects of a free trade agreement – would need to be ratified by all member states.

Could there be a second referendum?

So if UK citizens vote to leave, it is unclear exactly what kind of future they are voting for. This raises the question of whether it might be more appropriate to hold a second

referendum, following the negotiations, to see whether voters accept the deal. The Constitution Unit has long argued for a two-referendum approach to Scottish independence, and the same logic might be said to apply to EU membership as well. George Osborne recently reiterated the government's position that there will be no second referendum. Nevertheless, Boris Johnson signalled interest in such a plan last summer, and the columnist Simon Jenkins has given it strong backing. The idea appears first to have attracted attention after it was suggested in a blog post by Dominic Cummings, leading light in the Vote Leave campaign.

But what kind of referendum are these people proposing, and is it actually possible under Article 50? Some seem to suggest that the second referendum could be on improved terms of EU membership. The *Sunday Times* story that communicated the London mayor's thoughts said, 'Johnson has told friends that a "no" vote is desirable because it would prompt Brussels to offer a much better deal, which the public could then support in a second referendum.' The idea seems to be that we could retain EU membership, but on much more radically changed terms than are currently on offer.

But that is not possible. It would require a negotiation for revised membership terms, when what Article 50 provides for is a negotiation to cease membership. It might be suggested that it's the politics that matter, not the rules – if EU leaders want to negotiate revised membership (and all do say they want the UK to stay in), they could do so. But the political reality in the UK after a vote to leave would require the Prime Minister to negotiate the terms of departure. He or she would have a mandate to do nothing else. As Steve Peers puts it, 'those who claim to support invoking Article 50 to trigger *renegotiation* either have a hidden agenda or are quite naïve about what they are suggesting'.

What both Cummings and Jenkins appear to have in mind is, rather, a referendum on whether to accept the terms of exit. As Cummings unabashedly admits, he proposes this prospect in order to persuade waverers to vote 'leave' at the first ballot, safe in the belief that they could always change their minds later. Matthew Parris has endorsed just that thought: 'The terms on which we leave could affect us deeply. So I'll stick my neck out. If Britain votes to leave, there will have to be a second referendum. And we will have to have the opportunity to relent of our first decision.' Notwithstanding official denials, James Kirkup said a few months ago that this reflects what some senior people in government are thinking.

So these authors are suggesting a referendum to choose between leaving on the negotiated

terms or not leaving after all. The trouble with this is that Article 50 offers no mechanism to withdraw a notification of intent to leave. We could have a second referendum (the UK parliament can call a referendum on anything it likes), but a vote to reject the negotiated terms would leave us in legal limbo. The European Court of Justice might rule (if asked) that an ability to withdraw such a notification is implied by Article 50 – but it might equally well rule that it is not implied. Some might say again that political realities will take over: the 27 other member states all want us to stay, so, if we indicate a change of heart, they will allow our withdrawal declaration to be quietly forgotten. Well, perhaps. But that would again require unanimity – either to amend Article 50 (and we know how much effort is required to change an EU treaty) or, in effect, to extend permanently the two-year negotiation window. Hence, any member state could drive a hard bargain, potentially one detrimental to the UK.

Anyone who suggests that unsure voters can vote to 'leave' at the initial referendum safe in the knowledge that they can later change their minds is either playing with fire or manipulating voters disingenuously.

In fact, the only second referendum whose effect would be clear is one where the options are to leave on the terms that have been negotiated or to reject those terms and hope we can get something better before being forced, under the terms of Article 50, to leave without having negotiated any terms at all. That *might* strengthen the UK's negotiating hand – but it would also be fraught with risks. The Greek government tried something similar last summer but ended up effectively accepting the original deal anyway, having recognized that other Eurozone countries would budge no further. And everyone agrees that leaving without negotiated terms would be crazy: for example, leaving with no free trade agreement in place would, under World Trade Organization rules, require imposition of tariffs on some UK–EU trade. In any case, such a referendum would be nothing like the one Cummings and others have floated, offering no comfort to waverers at all.

All in all then, Article 50 makes life very difficult for any country wishing to withdraw from EU membership. We might think this deliberate and take it as yet another symptom of perfidious Brussels. But we should remember that our own government and parliament signed up to it. We should recognise also that it is the reality that we will find ourselves in in the event of a vote for Brexit.

About the author

Dr Alan Renwick *is the Deputy Director of The Constitution Unit.*

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Paul Stockton says:
January 20, 2016 at 11:52 am

If the Government really wanted to leave open the possibility of a second referendum one way of doing it might be to conduct the negotiations contemplated in clause 2 in an unofficial way before making the formal notification to the European Council. That way, if the negotiations produced a better deal for the UK (or at least a deal which was more likely to result in a "Remain" vote at a second referendum) the government would not activate the procedure in art 50 and the legal uncertainties would not arise. Of course such an option might well be unattractive to the 27, and would presumably be regarded as a betrayal by the (at this point, successful) "Leave" camp, so might well be a political non-starter. But if the result of the first referendum had been close…Or if England and Scotland had produced different results…it might be an attractive option.

Reply

John Bruton says:
January 20, 2016 at 1:04 pm

This is an excellent piece.
One further thought occurs
.If it was announced in advance as suggested by Cummings and Jenkins, before negotiations to withdraw under Article 50 were commenced, that a referendum on the outcome were to be held, that would impact on the negotiating strategy of the EU side. The EU side would then be less likely to grant any concessions to the UK because to do so would increase the likelihood in the second referendum that UK voters would opt to accept the terms and leave, rather than vote to stay in after all.

Reply

Ewan Sutherland says:
January 22, 2016 at 9:55 am

I do not see a victorious Leave Campaign accepting more than a few days or weeks before invoking Article 50, not unless it had been agreed long before the vote.

Article 50 once invoked has a fixed two years before Brexit. An immediate question is

what might the UK seek to negotiate? EEA membership? Only access to the Single Market? Anything more complex might take much of the two years just to agree the negotiating position, before engaging with the EC and the EU27. The UK internal negotiating process could be horribly messy, especially if it re-opened questions over Northern Ireland and Scotland. It is conceivable there would be unanimity among the 27 to extend the negotiating period, but equally there is the possibility and threat that someone says enough of this, either because it serves some other interest, because it was taking up too much time or just going nowhere.

Reply

Dr Melanie Sully says:
January 22, 2016 at 4:48 pm

The upcoming Referendum on in/out would not be followed by a second one. The possibility exists of another Referendum on the withdrawal package (this is not a second one on the question of Brexit). If the “legal limbo” arose that the UK voted to Exit but did not agree the withdrawal Terms, maybe the EU could decided the UK has exited anyway after two years. Then reapplication would be without the perks. But even a vote to stay in is not without legal ambiguities; we would have to wait for the EU to actually deliver on the renegotation deal and if it was thought it had not or had watered it down then there could indeed be another Referendum.

Reply

Denis Loretto says:
January 22, 2016 at 8:34 pm

The notion that every one of the 27 remaining EU members would agree terms of trade for a country that has spurned membership than they would agree for a country remaining in membership – which is the essential premise of the “second referendum ” brigade – is patent unadulterated nonsense and those spuriously putting it forward know this perfectly well..

Reply

Denis Loretto says:

January 22, 2016 at 10:22 pm

Correction – my previous comment should say “better” terms of trade for a country that has spurned…….i

Reply

Pingback: What happens if we vote for Brexit? – Britain & Europe

Cristina Parau says:

February 5, 2016 at 10:59 am

This article is grossly exaggerating the effect of not reaching an agreement on post-secession specific to relations between the UK and the EU, esp. free trade. But take a look at trade relations with countries that were never EU members: Switzerland, Norway, Liechtenstein and Iceland. They belong to several framework agreements: EFTA and within that the EEA. Is that status so abject and undesirable? Surely the UK falls quite neatly and practically by default into that scheme of things. Do we hear the Swiss, Norwegians etc. (or even the Serbs for that matter, who are out in the cold) clamouring for their govts to hurry up and join the EU? To believe that the EU would specifically deny the UK the same deal that those countries have would require us to believe in a level of vindictiveness and malice in the 27 remaining members that would be shameful and thus quite unsustainable politically — indeed internally divisive to the EU itself.

Reply

Adi says:

February 5, 2016 at 7:07 pm

“They belong to several framework agreements: EFTA and within that the EEA. Is that status so abject and undesirable? Surely the UK falls quite neatly and practically by default into that scheme of things.”

I suggest you examine in more detail the relationship those countries have with the EU. They are still subject to EU laws, product & service regulations, etc. that the 'outers' are so quick to complain about and must also pay a subscription to belong but with the disadvantage that they have no say in the formulation of 'club rules'. Brexit is not about joining the euro (the UK is already exempt from that), is not about an ever closer political union (the UK already has clarification on this being a sovereign decision), is not about 'red tape' (UK goods and services traded with the EU would still need to comply with EU standards) – it is about one single issue and that is immigration. Strangely enough, the immigration that UK citizens are most concerned about is not from the EU at all but from non-EU and predominantly muslim countries.

Reply

leonduveen says:
February 5, 2016 at 2:14 pm

Reblogged this on Bassetlaw For Europe and commented:
Anyone thinking that Brexit will be easy and will be done on terms dictated by the UK has not read Article 50 of the Lisbon Treaty. As this piece lays out very clearly, leaving the EU is not simple and most of the advantage in the negotiations will be with those countries remain in the EU.

Reply

Grahame says:
February 5, 2016 at 3:52 pm

Reblogged this on Say Yes 2 Europe – Remain in the EU.

Reply

denis579 says:

February 5, 2016 at 3:57 pm

@Cristina Parau

Why listen to my views about Norway's situation when you can read those of former Norwegian Foreign Minister Espen Barth Eide who ruefully commented a few months ago that the Norwegian electorate had twice narrowly rejected EU membership – in 1972 and 1994. He said –

"As an EEA member, we do not participate in decision-making in Brussels, but we loyally abide by Brussels' decisions. We have incorporated approximately three-quarters of all EU legislative acts into Norwegian legislation – and counting. We have legally secured access to the single market, and we practise the free movement of people, goods, services and capital. Norway is more closely integrated into many aspects of the EU than even some of the EU's members. Our subscription to freedom of movement and our membership of the Schengen area means that Norway has even higher per capita immigration than Britain.

Those campaigning for Britain to leave the EU and choose the Norwegian way can hence correctly claim that a country can retain access to the single market from outside the EU. What is normally not said, however, is that this also means retaining all the EU's product standards, financial regulations, employment regulations, and substantial contributions to the EU budget. A Britain choosing this track would, in other words, keep paying, it would be "run by Brussels", and it would remain committed to the four freedoms, including free movement.

Without full European Union membership, however, it would have given up on having a say over EU policies: like Norway, it would have no vote and no presence when crucial decisions that affect the daily lives of its citizens are made."

As for accusing our 27 EU partners of malice if they were to block efforts by the UK to negotiate favourable terms after "Brexit", how would you describe the conduct of the UK if it were to kick them in the teeth and then try to get back all the benefits of membership without the financial and regulatory obligations? In any case, judging by the Norwegian (and Swiss) example good luck with that!

Reply

Cristina Parau says:
February 11, 2016 at 1:33 pm

London is by far the most advanced financial centre in Europe and one of the top three or four in the world. The EU needs that much more than it needs the rest of Europe.

Reply

denis579 says:
February 11, 2016 at 3:59 pm

You correctly describe the City of London, Cristina. That is why the concessions obtained by Cameron concerning the equality of treatment for countries inside or outside the eurozone are important. The Draft decision in the Tusk letter acknowledges that “not all Member States have the euro as their currency”. Recalling the various opt-outs and exemptions from the euro, defence, justice and home affairs etc, the draft confirms that “such processes make possible different paths of integration for different Member States, allowing those that want to deepen integration to move ahead, whilst respecting the rights of those which do not want to take such a course”. It specifies that: The Union institutions, together with the Member States, will facilitate the coexistence between different perspectives within the single institutional framework ensuring both the effective operability of Union mechanisms and the equality of Member States before the Treaties.” The details of this need spelling out of course but in effect here is the safeguard that the City of London needs. As the eminent commentator Michael Emmerson says “However, in the event of the UK’s secession, there will be no such safeguards at all, only the certainty that other member states with serious financial market ambitions, starting with France and Germany, would use new opportunities to engineer competitive advantages for their financial markets. This is a point that the Eurosceptics seem not to have digested.”

To put it bluntly, the strength of London as the financial hub of Europe is demonstrated by its maintenance of that status even when the UK decided to stay out of the

eurozone. However do you seriously think that status can be maintained if the UK deserted the EU altogether?

Reply

Clive Collins says:
February 16, 2016 at 2:19 pm

Is it not the case that for Britain to withdraw from membership of the EU an act of some kind would need to pass through the parliamentary process? Surely the Commons and the Lords would have to vote in favour of Britain withdrawing for it to have any effect? We cannot simply say, the morning after the referendum,: “55% have voted to leave the EU, so Britain is now no longer a member”. There has to be more to it than that, doesn’t there? Which brings me to my next point: What would be the situation if there were a majority vote to leave in a referendum, but this was not supported by a vote in the Commons?

Reply

denis579 says:
February 16, 2016 at 4:51 pm

I think it would theoretically be possible for parliament to refuse to implement the decision made by a referendum but it would not be practical politics for any major party to attempt this. However it is certainly true to say that the referendum will not settle the matter within the Conservative Party or otherwise – any more than the Scottish referendum can be said to have done. And the many years of negotiation and business uncertainty sparked by a “leave” decision are horrific to contemplate. If you have time, have a read at this paper published last year by the Royal Institute of International Affairs https://www.psa.ac.uk/sites/default/files/conference/papers/2015/INTA91_Final_Glencross.pdf

Reply

Clive says:

February 16, 2016 at 7:34 pm

I take your point, Denis, but to say “it would be theoretically possible” does not really address the issue. I can envisage a scenario where the result of a referendum is a majority in favour of Brexit – which would delight the euro-sceptic wing of the Conservative Party – but when it comes to a vote in the Commons, which it surely must do, because Parliament must have the final decision, as it did in 1972 when it voted to join the European Community – as it was at the time – then a combination of the Labour Party, the Lib-Dems (what is left of them), the SNP, Plaid Cymri, and the “Ken Clarke” tendency in the Conservative Party would have the numbers to defeat any bill to leave the EU. It would certainly be practical politics from the Labour Party’s point of view, because it would split the Conservative Party down the middle, with many MPs leaving to form a separate party (or join UKIP). An interesting constitutional knot to unravel: the referendum saying “Out”, and the Commons saying “Stay in” – and perhaps just at the time when Chilcot reports. I look forward to a fascinating summer.

denis579 says:

February 17, 2016 at 11:43 am

Interesting indeed. However I think, given that the Labour Party (reluctantly) removed its previous opposition to the Referendum Bill I cannot see them unitedly attempting to “flout the will of the people” as it would be asserted. Those of us who realise what a disaster UK exit from the EU would be will have to win this the hard way – by doing all we can to persuade a majority that we are right.

Clive says:

February 18, 2016 at 9:09 am

Agreed, Denis – Brexit would be disastrous, in many ways. However, I wouldn’t underestimate the proclivity of the Labour Party to go down a disastrous path:

witness Iraq, on which they were perfectly happy to “flout the will of the people”.

Gordon says:
February 24, 2016 at 12:15 pm

I guess it is more than theoretically possible if the result is very very close – say 50.5% leave. Particularly if (as seems very probable) Scotland, Wales and N Ireland all vote overwhelmingly to stay. And if there are allegations of electoral fraud which could have affected the result. In that case the Commons could decide (albeit with a huge number of Tory rebels!) that the referendum was unclear and another one is needed. Still some months or years of uncertainty, but not as bad as actually negotiating to leave, I think.
Actually setting it out like that, it doesn’t seem such an unlikely scenario… There must be *some* number (50.1%?) for which it would happen?

Reply

Ewan Sutherland says:
February 16, 2016 at 9:23 pm

The question is what the constitutional requirements are in the UK to invoke Art. 50? Once triggered, then two years later the treaties cease to apply. A ‘leave’ referendum and the Royal Prerogative seem, prima facie, enough to meet Art. 50 (1), which could be contested through judicial review. A single article bill invoking Art. 50 seems to be overkill, but would certainly be possible. There would then be negotiations on the terms and a lot of legislation to remove references to the various treaties, the EC, CJEU and the like. I concede it is a somewhat messy business.

Reply

Keith Purdy says:
February 22, 2016 at 1:56 pm

More confu to staysed than ever. I as said above, the public vote for Brexit and the commons vote to stay in, what is the point in a referendum?

Reply

Steve lilley says:
February 22, 2016 at 2:04 pm

Everybody seems so worked up if the EU was more accountable and democratic we would not be in this pickle in the first place. Has been MPs form all country's who are only bothered about there own pockets. The EU budget not being singed off for 14/15 years because of corruption. Who is accountable for this and can we vote them out. NO. People are saying that if we are not at the table we have no imput on anything that is brought in, we are at the table now and still have no say on matters as we are voted out by countries that benifit.

Reply

denis579 says:
February 22, 2016 at 4:33 pm

@Steve lilley
Here again we have the false allegation about "The EU budget not being singed (sic) off for 14/15 years because of corruption". The truth is that for every year since 2007 the European Court of Auditors has given a positive "clean" opinion on the Union's accounts (there were some qualifications in previous years). Here for example is the ECA statement for the year 2013 –

"In the Court's opinion the consolidated accounts of the European Union for the year ended 31 December 2013 present fairly in all material respects, the financial position of the Union as at 31 December 2013, the results of its operations, its cash flows and the changes in net assets for the year then ended, in accordance with the Financial Regulations and with accounting rules based on internationally accepted accounting standards for the public sector. "

There are of course a few observations on ways in which the accounts might be further developed and improved but the claim that the ECA refuses to sign off the EU's accounts is an unadulterated lie – one of many perpetrated by the anti-European clique.

As for David Rowsell who arrogates to himself the power to throw us overnight out of the EU single market (with a rather adverse effect on the UK unemployment rate) he clearly needs to lie down for a while in a darkened room.

Reply

David Rowsell says:
February 22, 2016 at 3:14 pm

This Lisbon Treaty business is nonsense. We will not leave the room and wait for our masters in Brussels to tell us under what terms we will be "allowed" to leave the EU. We will declare UDI and stop paying them the money. We can then tell Merkel that either she agrees to free trade or she can explain to BMW and VW why they can't sell their cars to us any more. Tarrifs go both ways, and the idea that WTO rules mean the EU would have to put on tarriffs, as one of you said above, is nonsense. Remember that it is our seat at the WTO that EU occupies and we want it back,

Reply

Gordon says:
February 24, 2016 at 2:37 pm

Hilarious. Yes tariffs go both ways, but the (rest of the) EU forms a much larger fraction of our trade than we do of theirs. You do understand the meaning of the phrase "unequal negotiating position", right? It is why economic blocs got started in the first place!

Reply

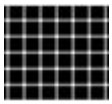
Gordon says:
February 24, 2016 at 2:44 pm

And why would BMW and VW care, when basically all (non-British-made) cars will have a tariff on them, until such time as the UK government can agree separate (and doubtless inferior) trading agreements with the Japanese, South Koreans etc (most of whose cars for our market are made in the EU anyway)? You really do display an astonishing lack of logic in that comment. You might as well have written, “Yah boo, Johnny Foreigner sucks, Britain will be Great again!”

Reply

denis579 says:
February 25, 2016 at 12:10 am

Absolutely correct, Gordon. And those who regard the UK as having enormous bargaining power over the remaining EU if the UK were to exit should bear in mind that while 45% or so of our exports go to the rest of the EU, the exports to the UK from the rest of the EU comprise less than 7% of total EU exports. That is the measure of the unequal negotiating position to which you refer.



Fred Bloggs says:
February 22, 2016 at 8:32 pm

Well said David Rowsell. At last a dose of common sense!

Reply

Peter Gardner says:
February 25, 2016 at 2:28 am

I have only recently started reading these opinions and came to this from Dr Renwick’s later blog on the necessity of invoking Article 50. Whereas much of the EU’s workings and constitution are obscure and Byzantine, Article 50 is utterly straightforward and

one does not need any legal qualifications to understand it. The lie about Britain being dictated to and not even being allowed in the same rioom as the EU representatives has been firmly nailed here. But some points have been overlooked which add to the confusion in the debate about what would happen were Article 50 invoked.

Number One. Dr Renwick writes that the imbalance in power in favour of the EU rests in part on the guillotine: ‘An extension beyond two years might well be needed – but any one of the 27 could block that if it didn’t get its way on its own priorities.’ True but he overlooks the fact that an extension beyond two years would also require the agreement of UK, giving the UK in effect a veto.

Number Two: this whole debate is based on the assumption that the negotiations following the invoking of Article 50 are about the future relationship between the UK and the EU. This is not so. As Dr Renwick himself says, the detail is important. But first we should remember that invoking Article 50 is the only means of legally forcing the EU to negotiate anything at all. Now the detail, which is clearly stated in plain language in clause 2: ‘ the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union.’

There is no need for Britain to commit to any long term arrangement whatsoever unless it is to its advantage to do so. The terms of exit can be confined to tidying up things already in train, for example provisions for entitlements and conditions of contract involving EU parties that are made under EU laws and rules so that individuals and organisations know where they stand. Agreement would be needed on the validity of EU travel documents, the rights of people to residence etc., at least for an interim period. Indeed one should, I think, expect a number of transitional arrangements limited in time and scope.

Obviously the framework of a future relationship can be general or as detailed as needed and subjects contained in it may also be in the terms of exit. The point is that the framework need serve only as a guide to intentions, goodwill or whatever, short of any legally binding commitment. The exit terms, on the other hand need, being made under the terms of the treaty are legally binding and the political reality is that certainty of where people and organisations stand needs to be among the highest priorities.

Bottom line: the negotiations can be conducted as the parties decide but only the

agreed terms of exit would be binding and if none are agreed the UK is free to decide for itself. It is not necessary and not legally required to commit to any form of future relationship under Article 50. Indeed I very much doubt whether any treaty could legally bind a party to committing to a future relationship as a condition of terminating the existing one.

Reply

denis579 says:
February 25, 2016 at 4:57 pm

Thank you Mr Gardner. In other words Brexit is Brexit and nothing else. There will be only two choices on the ballot paper – remain or leave. In the event of a majority for “leave” nothing can be assumed or claimed as to any subsequent negotiations about the relationship between the UK and the 27 countries still in the EU, every one of whom must assent to the details and conditions of any such relationship.

On 25 February 2016 at 11:49, The Constitution Unit Blog wrote:

> Peter Gardner commented: “I have only recently started reading these > opinions and came to this from Dr Renwick’s later blog on the necessity of > invoking Article 50. Whereas much of the EU’s workings and constitution are > obscure and Byzantine, Article 50 is utterly straightforward ” >

Reply

Mike Hallett says:
March 11, 2016 at 9:31 am

If after the two years of negotiation, no agreement is reached, then what laws and agreements would be in place by default ?

Reply

denis579 says:
March 11, 2016 at 4:08 pm

Clause 3 of Article 50 is absolutely clear –

"3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."

This means that the UK would cease to have access to any provision whatsoever of the trading and other benefits of the EU. Other provisions such as WTO would apply to some but not all of the myriad trading activities we would need to carry on and it would be left to the UK government to push through the necessary legal provisions. Given the appalling situation that would entail it could be argued that our erstwhile 27 partners would not let such a situation arise (it would after all have a very damaging effect upon them) and would therefore invoke the extension of the 2 year period laid down in Clause 3. However what a dreadful risk to take with no guarantee of a successful outcome. Remember that agreement from every one of the 27 would be needed. In practice, at best, triggering Article 50 would immediately give enormous leverage to all the other Member States: we would be forced out of the EU unless we agreed to whatever terms they were willing to offer.

At least that is how I see it.

Reply

Keith says:
May 25, 2016 at 7:28 pm

Only after an application by The State. Not Joe Public via referendum.

denis579 says:
May 26, 2016 at 11:08 pm

I think this point was dealt with some time ago in this thread, the point made being that it would be technically possible for a British government to ignore the decision of a referendum to leave the EU but politically impossible. The Prime Minister has been unequivocal in stating that he would regard the referendum result as an inescapable instruction from the British people to act in accordance with their decision. How on earth could he claim any mandate to do otherwise? This does not mean the application under Article 50 need go in the day after the vote but I cannot see how the government or parliament can justify any meaningful delay.

Pingback: In the event of a Leave vote Brexit would dominate Westminster for years | The Constitution Unit Blog

Pingback: In the event of a Leave vote Brexit would dominate Westminster for years – Britain & Europe

Geoff Pearse says:
April 29, 2016 at 9:53 am

There is obviously a lot more informed commentators on this matter than myself, so perhaps someone can explain why the E.U. Act 1972 cannot be invoked as a means of exit?

Reply

Marcus says:
May 22, 2016 at 3:54 am

I found this article whilst trying to find out the process should we vote to leave the EU. Most of the arguments, from the comments, for staying in appear to be that we might get bullied by the remaining 27 states when we negotiate any exit deals or am I missing something?

Also, during the up to 2 years (or possibly longer) we have before officially leaving

surely we would also be negotiating deals with other countries outside the EU. This is being overlooked by both sides of the argument. An agreement with Norway, for example, could effectively open up the rest of Europe to us anyway if necessary. However, can you see Germany wanting us to start imposing import duty on their vehicles? We import a lot more from Europe than we export to them so this would go for most, if not all, of the major players within Europe. If no open trade deal is done then it makes sense that we would impose import duty on imports from the EU as they would on our exports to them. This would be beneficial to most of the population as this would be a tax coming into the country. It would also allow us to change our tax laws to stop businesses, especially those trading on-line, avoiding tax by registering in countries with lower tax rates and avoiding paying any tax in this country at all. Again, this would benefit most of the population.

We saw during the Scottish Referendum that there were a number of people that wanted Scotland to leave that were willing to bully the stay voters. We are seeing it again during this Referendum as well. It was disgusting then and it is now but isn't just the odd thug this time around but big business are getting in on the act too.

Reply

gandg1@gandg1.karoo.co.uk says:
May 22, 2016 at 4:23 pm

You have covered some of the points quite well in your text, but those and many others are being bounced around by the media until it is getting more and more confusing. Nearly all aspects are in fact speculation and really crystal ball gazing, but there must be some results from exit and remain that are indisputable and should be focussed on. What are they? Even if the result to stay in were to happen, who knows what changes would take place in the EU? It is reasonable to assume that the Commisson might have some changes in mind that they are holding back until after the referendum that could have serious consequences for the UK. Alternatively, if we come out the immediate effect on the UK could be little changed, but the long term effects would be advantageous. But there must be some results that cannot be argued about. Probably the most clear one would be our sovereignty. Some arguments put forward by the Remain group are that we have to already share our sovereignty with others. But surely that is voluntary and

not compulsory and WE decide on that? Another certainty is our ability to control immigration. But the main result would be that WE make our own decisions and be able to hold to account those who we elect to govern us. Surely, getting these powers back is worth the risks we take by leaving?

Reply

denis579 says:
May 22, 2016 at 7:08 pm

Marcus, your argument on this has already been put forward on many occasions by the “leave” camp. It seems to be based on the assumption that only the UK has national pride, that all the other EU member countries would feel so desperate at potential damage to their trade with the UK that they would beat a path to our door to beg for permission to reinstate all the benefits of the single market without demanding any “membership subscription”. They would (in this dream scenario) also permit the UK full freedom of movement of goods and capital but absolve us from freedom of movement of people, while still imposing all these conditions on themselves.

In the old days we referred to this sort of ludicrous assessment as “Fog in channel – continent cut off.!”

By the way, just in case you get carried away with this “We import a lot more from Europe than we export to them” stuff , bear in mind the reality set out in this passage from an report by the Centre for European Reform – “… the EU buys 45% of Britain’s exports whereas the UK accounts for little over 10 per cent of exports from the rest of the EU, so the UK would be in a weak position to negotiate access on its terms. Second, half of the EU’s trade surplus with the UK is accounted for by just two member states: Germany and the Netherlands. Most EU member states do not run substantial trade surpluses with the UK and some run deficits with it. Any agreement would require the assent of the remaining 27 members, some of whom
buy more from Britain than they sell to it.”

Reply

gandg1@gandg1.karoo.co.uk says:
May 23, 2016 at 10:06 am

Why is it that when trade agreements are made with other countries, we should have to make subscriptions, have to consider such conditions as free movement, etc. Being able to make one trade agreement with 27 countries at one fell blow might be a good thing, but the time it takes to do that and the conditions attached to the agreement make it less advantageous. Apart from that, we do not necessarily finish up with zero tariffs and we may not want to deal with all of the 27 other countries anyway.

Marcus says:
May 23, 2016 at 1:04 pm

I would be very surprised if we got away without any “membership subscription” as you call it. However, are the EU looking to charge the US a “membership subscription” if their deal goes through? I know they are a much bigger market and further away from Europe but it would be mentioned when negotiating and could help reduce any fees we are imposed with.

The “the EU buys 45% of Britain’s exports whereas the UK accounts for little over 10 per cent of exports from the rest of the EU” argument can’t be ignored but if used to negotiate better terms for Europe than for the UK would basically be bullying – but that is normal in those types of negotiations. Let’s not forget though that apparently the Pound is going to devalue by as much as 20% if we leave (according to the Stay campaign anyway). This will hugely boost our exports as any import duty imposed by Europe will be more than wiped out by that.

ganadg1 makes a good point with “Even if the result to stay in were to happen, who knows what changes would take place in the EU? It is reasonable to assume that the Commisson might have some changes in mind that they are holding back until after the referendum that could have serious consequences for the UK.”. How are we going to be treated by the rest of Europe if we vote to

remain by a small majority? That is another thing that the Stay campaigners fail to address. I can't see our relationship with the rest of Europe staying as it has been after this vote, whatever the outcome.

denis579 says:
May 23, 2016 at 5:30 pm

@Marcus

First of all do not equate membership of the EU single market with any of the 53 trade agreements the EU has concluded with "third countries" over the years. That would be "apples and pears" writ large.

Secondly you make a good point about the likelihood of changes in the EU setup in future. Any such would of course have to be agreed by the Council of Ministers – not just the Commission – and if they involved any meaningful transfer of powers from the UK government to the EU that would immediately trigger a referendum of UK voters under existing law. However I would put it to you that such changes are likely to include much more in the way of "subsidiarity" than heretofore. The powers that be in the EU are not entirely stupid and can see as well as we can the unrest arising in many countries as to the status quo. The rise of Marine le Pen in France to name just one trend. They will realise that change is essential and may well be seen to be in the interests of the UK. Getting out altogether and leaving the future of our continent to others does not seem to me to be the British way.

Reply

Keith says:
May 25, 2016 at 7:24 pm

1. 'Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.'

That isn't Joe Public via a referendum but a Prime Minister with the backing of Parliament. So a vote leave result doesn't mean that Parliament will allow or condone

such a withdrawal. It will just mean that Parliament is mandated to such a course permanently. This then empowers our Parliament to seek much more from the EU without withdrawing.

Of course the people can either accept the improved terms, or insist, at elections, on invoking their referendum at any time.

I see nothing in this that demands that any Government must comply with a referendum result.

Am I wrong?

Reply

Pingback: Post-Brexit trade negotiations would pose significant practical challenges for Whitehall | The Constitution Unit Blog

Pingback: Post-Brexit trade negotiations would pose significant practical challenges for Whitehall – Britain & Europe

Pingback: Article 50 & the Brexit Circus' Lack of Facts | ARC2020

Mike says:
June 13, 2016 at 12:33 am

If we vote to leave then a two-year negotiation will begin with no certainty to its outcome. At the end of the two years we will either have a deal we can accept or one that we would not want to accept. Surely it would not be intelligent to settle for a bad deal if further negotiation might result in a better one? so it would be unwise to use our veto to conclude negotiations. That means the 27 other member states could hold us to ransom – “OK. If you don’t want to negotiate any more then just leave. It will be worse for you than us. You will have 27 problems. We will have only one.” Also the initial two years will create great uncertainty throughout the business world who will be left hanging around wondering what will happen and that will not endear us to them and any extension that we would be unwise to refuse would make matters worse. These negotiations could drag on for years; far worse for us as outcasts on the

sidelines than the other who will just get on with the staus quo.

I think the Brexit camp have convinced many of the Brexiteers that we are far more powerful than we actually are. We seem to be arrogant enough to assume that we can survive without the EU but that they can't survive without us. The fact is that Britain is a monumental pain in the EU backside like an abscess that needs to be lanced. Nothing is ever good enough for us and we seem to think that if we want something then we have a right to get it and if we don't then we throw a tantrum like a little boy weeping in the playground "It's my ball and if you won't play my way then I'm not playing and you can't have it." I think that they have tried to be very reasonable by giving Cameron his reforms but that if out-negotiations go badly then finally they will lose patience . "Take it or leave it!" and the Brexit camp might just be stupid enough to cut off its nose to spite its face and leave with a bad deal.

If we vote to remain then we know what we are going to get and it's not THAT bad and we can try for further improvements. If we vote leave then we don't know what we are going to get and it might be disaster. The more I think about it the more scary it gets!

Reply

gandg1@gandg1.karoo.co.uk says:
June 13, 2016 at 9:08 am

This is complete Remain propaganda and an insult to the UK people. Article 50 does not necessarily have to be followed, if the people clearly vote to exit the EU we should be able to use our own legislation process to create a new law of independence if existing legislation lacks the powers to do so.

G. Pearse

Reply

swalkerttu says:
June 24, 2016 at 7:53 pm

> “Independence”? Britain is already an independent, sovereign country that in said sovereignty entered an international compact. If the British people want out, that’s one thing, but deliberately not following (i. e., abrogating) a treaty to which you agreed to be bound would call into question your willingness to honor other agreements past, present and future.

swalkerttu says:
June 24, 2016 at 7:49 pm

The EU, channeling Jay-Z: “We got 99 problems but a Brit ain’t one.”

Reply

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Official Journal of the European Union

C 202

English edition

Information and Notices

Volume 59

7 June 2016

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Note to the reader (see page 2 of the cover)

EN

NOTE TO THE READER

This publication contains the consolidated versions of the Treaty on European Union ('TEU') and of the Treaty on the Functioning of the European Union ('TFEU'), together with the annexes and protocols thereto, as they result from the amendments introduced by the Treaty of Lisbon, which was signed on 13 December 2007 in Lisbon and which entered into force on 1 December 2009. It also contains the declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon.

In addition, this publication contains an amendment effected by the Protocol amending the Protocol on Transitional Provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community and an amendment effected by Regulation (EU, Euratom) No 741/2012 of the European Parliament and of the Council of 11 August 2012 amending the Protocol on the Statute of the Court of Justice of the European Union and Annex I thereto, as well the amendments effected by European Council Decisions 2010/718/EU and 2012/419/EU of 29 October 2010 and of 11 July 2012 amending respectively the status with regard to the European Union of the island of Saint-Barthélemy and of Mayotte. Furthermore, this publication contains the addition of paragraph 3 to Article 136 TFEU, effected by European Council Decision 2011/199/EU of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro, following the completion of the ratification procedures of the Member States. This publication also contains the amendments brought about by the Act of Accession of the Republic of Croatia. This publication also contains amendments effected by Regulation (EU, Euratom) 2015/2422 of the European Parliament and of the Council of 16 December 2015 amending the Protocol on the Statute of the Court of Justice of the European Union.

This publication also contains the corrigenda that were adopted up to March 2016.

This publication also contains the Charter of Fundamental Rights of the European Union which was proclaimed at Strasbourg on 12 December 2007 by the European Parliament, the Council and the Commission (OJ C 303, 14.12.2007, p. 1). This text repeats and adapts the Charter proclaimed on 7 December 2000, and replaces it with effect from 1 December 2009, the date of entry into force of the Treaty of Lisbon. By virtue of the first subparagraph of Article 6(1) of the Treaty on European Union, the Charter proclaimed in 2007 has the same legal value as the Treaties.

This publication has been produced for documentary purposes and does not involve the responsibility of the institutions of the European Union.

CONSOLIDATED VERSIONS

OF THE TREATY ON EUROPEAN UNION

AND

THE TREATY ON THE FUNCTIONING

OF THE EUROPEAN UNION

(2016/C 202/01)

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CONSOLIDATED VERSION OF

THE TREATY ON EUROPEAN UNION

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, HER MAJESTY THE QUEEN OF DENMARK, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF IRELAND, THE PRESIDENT OF THE HELLENIC REPUBLIC, HIS MAJESTY THE KING OF SPAIN, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HIS ROYAL HIGHNESS THE GRAND DUKE OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, THE PRESIDENT OF THE PORTUGUESE REPUBLIC, HER MAJESTY THE QUEEN OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, [1]

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

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

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

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

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

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

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

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

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

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[1] The Republic of Bulgaria, the Czech Republic, the Republic of Estonia, the Republic of Croatia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden have since become members of the European Union.

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

RESOLVED to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence in accordance with the provisions of Article 42, thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world,

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

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

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

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

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows:

TITLE I

COMMON PROVISIONS

Article 1

(ex Article 1 TEU) [1]

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

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

The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties'). Those two Treaties shall have the same legal value. The Union shall replace and succeed the European Community.

[1] These references are merely indicative. For more ample information, please refer to the tables of equivalences between the old and the new numbering of the Treaties.

Article 2

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

Article 3

(ex Article 2 TEU)

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

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

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

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

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

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

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

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

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

Article 4

1. In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States.

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

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

The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

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

Article 5

(ex Article 5 TEC)

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

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

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

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

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

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

Article 6

(ex Article 6 TEU)

1. The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.

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

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

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

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

Article 7

(ex Article 7 TEU)

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

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

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

Article 8

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

2. For the purposes of paragraph 1, the Union may conclude specific agreements with the countries concerned. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

TITLE II

PROVISIONS ON DEMOCRATIC PRINCIPLES

Article 9

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

Article 10

1. The functioning of the Union shall be founded on representative democracy.

2. Citizens are directly represented at Union level in the European Parliament.

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

3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.

4. Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 11

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.

2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

Article 12

National Parliaments contribute actively to the good functioning of the Union:

(a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;

(b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;

(c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty;

(d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;

(e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;

(f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

TITLE III

PROVISIONS ON THE INSTITUTIONS

Article 13

1. The Union shall have an institutional framework which shall aim to promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of its policies and actions.

The Union's institutions shall be:

— the European Parliament,

— the European Council,

— the Council,

— the European Commission (hereinafter referred to as 'the Commission'),

— the Court of Justice of the European Union,

— the European Central Bank,

— the Court of Auditors.

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

3. The provisions relating to the European Central Bank and the Court of Auditors and detailed provisions on the other institutions are set out in the Treaty on the Functioning of the European Union.

4. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions acting in an advisory capacity.

Article 14

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

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

The European Council shall adopt by unanimity, on the initiative of the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles referred to in the first subparagraph.

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

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

Article 15

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

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The High Representative of the Union for Foreign Affairs and Security Policy shall take part in its work.

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

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

5. The European Council shall elect its President, by a qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end the President's term of office in accordance with the same procedure.

6. The President of the European Council:

(a) shall chair it and drive forward its work;

(b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;

(c) shall endeavour to facilitate cohesion and consensus within the European Council;

(d) shall present a report to the European Parliament after each of the meetings of the European Council.

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

The President of the European Council shall not hold a national office.

Article 16

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

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

3. The Council shall act by a qualified majority except where the Treaties provide otherwise.

4. As from 1 November 2014, a qualified majority shall be defined as at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union.

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

The other arrangements governing the qualified majority are laid down in Article 238(2) of the Treaty on the Functioning of the European Union.

5. The transitional provisions relating to the definition of the qualified majority which shall be applicable until 31 October 2014 and those which shall be applicable from 1 November 2014 to 31 March 2017 are laid down in the Protocol on transitional provisions.

6. The Council shall meet in different configurations, the list of which shall be adopted in accordance with Article 236 of the Treaty on the Functioning of the European Union.

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

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

7. A Committee of Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council.

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

9. The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives in the Council on the basis of equal rotation, in accordance with the conditions established in accordance with Article 236 of the Treaty on the Functioning of the European Union.

Article 17

1. The Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Treaties. With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Union legislative acts may only be adopted on the basis of a Commission proposal, except where the Treaties provide otherwise. Other acts shall be adopted on the basis of a Commission proposal where the Treaties so provide.

3. The Commission's term of office shall be five years.

The members of the Commission shall be chosen on the ground of their general competence and European commitment from persons whose independence is beyond doubt.

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. The Commission appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014, shall consist of one national of each Member State, including its President and the High Representative of the Union for Foreign Affairs and Security Policy who shall be one of its Vice-Presidents.

5. As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.

The members of the Commission shall be chosen from among the nationals of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographical range of all the Member States. This system shall be established unanimously by the European Council in accordance with Article 244 of the Treaty on the Functioning of the European Union.

6. The President of the Commission shall:

(a) lay down guidelines within which the Commission is to work;

(b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body;

(c) appoint Vice-Presidents, other than the High Representative of the Union for Foreign Affairs and Security Policy, from among the members of the Commission.

A member of the Commission shall resign if the President so requests. The High Representative of the Union for Foreign Affairs and Security Policy shall resign, in accordance with the procedure set out in Article 18(1), if the President so requests.

7. Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members. If he does not obtain the required majority, the European Council, acting by a qualified majority, shall within one month propose a new candidate who shall be elected by the European Parliament following the same procedure.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. They shall be selected, on the basis of the suggestions made by Member States, in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.

8. The Commission, as a body, shall be responsible to the European Parliament. In accordance with Article 234 of the Treaty on the Functioning of the European Union, the European Parliament may vote on a motion of censure of the Commission. If such a motion is carried, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from the duties that he carries out in the Commission.

Article 18

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his term of office by the same procedure.

2. The High Representative shall conduct the Union's common foreign and security policy. He shall contribute by his proposals to the development of that policy, which he shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The High Representative shall preside over the Foreign Affairs Council.

4. The High Representative shall be one of the Vice-Presidents of the Commission. He shall ensure the consistency of the Union's external action. He shall be responsible within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the High Representative shall be bound by Commission procedures to the extent that this is consistent with paragraphs 2 and 3.

Article 19

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

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

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

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

The Judges and the Advocates-General of the Court of Justice and the Judges of the General Court shall be chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Articles 253 and 254 of the Treaty on the Functioning of the European Union. They shall be appointed by common accord of the governments of the Member States for six years. Retiring Judges and Advocates-General may be reappointed.

3. The Court of Justice of the European Union shall, in accordance with the Treaties:

(a) rule on actions brought by a Member State, an institution or a natural or legal person;

(b) give preliminary rulings, at the request of courts or tribunals of the Member States, on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) rule in other cases provided for in the Treaties.

TITLE IV

PROVISIONS ON ENHANCED COOPERATION

Article 20

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Treaties, subject to the limits and in accordance with the detailed arrangements laid down in this Article and in Articles 326 to 334 of the Treaty on the Functioning of the European Union.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open at any time to all Member States, in accordance with Article 328 of the Treaty on the Functioning of the European Union.

2. The decision authorising enhanced cooperation shall be adopted by the Council as a last resort, when it has established that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that at least nine Member States participate in it. The Council shall act in accordance with the procedure laid down in Article 329 of the Treaty on the Functioning of the European Union.

3. All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote. The voting rules are set out in Article 330 of the Treaty on the Functioning of the European Union.

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

TITLE V

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

CHAPTER 1

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 21

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

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

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

(a) safeguard its values, fundamental interests, security, independence and integrity;

(b) consolidate and support democracy, the rule of law, human rights and the principles of international law;

(c) preserve peace, prevent conflicts and strengthen international security, in accordance with the purposes and principles of the United Nations Charter, with the principles of the Helsinki Final Act and with the aims of the Charter of Paris, including those relating to external borders;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) help develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting natural or man-made disasters; and

(h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

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

Article 22

1. On the basis of the principles and objectives set out in Article 21, the European Council shall identify the strategic interests and objectives of the Union.

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

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

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

CHAPTER 2

SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY

SECTION 1

COMMON PROVISIONS

Article 23

The Union's action on the international scene, pursuant to this Chapter, shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with, the general provisions laid down in Chapter 1.

Article 24

(ex Article 11 TEU)

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

The common foreign and security policy is subject to specific rules and procedures. It shall be defined and implemented by the European Council and the Council acting unanimously, except where the Treaties provide otherwise. The adoption of legislative acts shall be excluded. The common foreign and security policy shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy and by Member States, in accordance with the Treaties. The specific role of the European Parliament and of the Commission in this area is defined by the Treaties. The Court of Justice of the European Union shall not have jurisdiction with respect to these provisions, with the exception of its jurisdiction to monitor compliance with Article 40 of this Treaty and to review the legality of certain decisions as provided for by the second paragraph of Article 275 of the Treaty on the Functioning of the European Union.

2. Within the framework of the principles and objectives of its external action, the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

3. The Member States shall support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union's action in this area.

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

The Council and the High Representative shall ensure compliance with these principles.

Article 25

(ex Article 12 TEU)

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

(a) defining the general guidelines;

(b) adopting decisions defining:

(i) actions to be undertaken by the Union;

(ii) positions to be taken by the Union;

(iii) arrangements for the implementation of the decisions referred to in points (i) and (ii);

and by

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

Article 26

(ex Article 13 TEU)

1. The European Council shall identify the Union's strategic interests, determine the objectives of and define general guidelines for the common foreign and security policy, including for matters with defence implications. It shall adopt the necessary decisions.

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

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

The Council and the High Representative of the Union for Foreign Affairs and Security Policy shall ensure the unity, consistency and effectiveness of action by the Union.

3. The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.

Article 27

1. The High Representative of the Union for Foreign Affairs and Security Policy, who shall chair the Foreign Affairs Council, shall contribute through his proposals to the development of the common foreign and security policy and shall ensure implementation of the decisions adopted by the European Council and the Council.

2. The High Representative shall represent the Union for matters relating to the common foreign and security policy. He shall conduct political dialogue with third parties on the Union's behalf and shall express the Union's position in international organisations and at international conferences.

3. In fulfilling his mandate, the High Representative shall be assisted by a European External Action Service. This service shall work in cooperation with the diplomatic services of the Member States and shall comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. The organisation and functioning of the European External Action Service shall be established by a decision of the Council. The Council shall act on a proposal from the High Representative after consulting the European Parliament and after obtaining the consent of the Commission.

Article 28

(ex Article 14 TEU)

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

If there is a change in circumstances having a substantial effect on a question subject to such a decision, the Council shall review the principles and objectives of that decision and take the necessary decisions.

2. Decisions referred to in paragraph 1 shall commit the Member States in the positions they adopt and in the conduct of their activity.

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

4. In cases of imperative need arising from changes in the situation and failing a review of the Council decision as referred to in paragraph 1, Member States may take the necessary measures as a matter of urgency having regard to the general objectives of that decision. The Member State concerned shall inform the Council immediately of any such measures.

5. Should there be any major difficulties in implementing a decision as referred to in this Article, a Member State shall refer them to the Council which shall discuss them and seek appropriate solutions. Such solutions shall not run counter to the objectives of the decision referred to in paragraph 1 or impair its effectiveness.

Article 29

(ex Article 15 TEU)

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

Article 30

(ex Article 22 TEU)

1. Any Member State, the High Representative of the Union for Foreign Affairs and Security Policy, or the High Representative with the Commission's support, may refer any question relating to the common foreign and security policy to the Council and may submit to it, respectively, initiatives or proposals.

2. In cases requiring a rapid decision, the High Representative, of his own motion, or at the request of a Member State, shall convene an extraordinary Council meeting within 48 hours or, in an emergency, within a shorter period.

Article 31

(ex Article 23 TEU)

1. Decisions under this Chapter shall be taken by the European Council and the Council acting unanimously, except where this Chapter provides otherwise. The adoption of legislative acts shall be excluded.

When abstaining in a vote, any member of the Council may qualify its abstention by making a formal declaration under the present subparagraph. In that case, it shall not be obliged to apply the decision, but shall accept that the decision commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.

2. By derogation from the provisions of paragraph 1, the Council shall act by qualified majority:

— when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1),

— when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative,

— when adopting any decision implementing a decision defining a Union action or position,

— when appointing a special representative in accordance with Article 33.

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

3. The European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

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

5. For procedural questions, the Council shall act by a majority of its members.

Article 32

(ex Article 16 TEU)

Member States shall consult one another within the European Council and the Council on any matter of foreign and security policy of general interest in order to determine a common approach. Before undertaking any action on the international scene or entering into any 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. Member States shall show mutual solidarity.

When the European Council or the Council has defined a common approach of the Union within the meaning of the first paragraph, the High Representative of the Union for Foreign Affairs and Security Policy and the Ministers for Foreign Affairs of the Member States shall coordinate their activities within the Council.

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

Article 33

(ex Article 18 TEU)

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

Article 34

(ex Article 19 TEU)

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

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

2. In accordance with Article 24(3), Member States represented in international organisations or international conferences where not all the Member States participate shall keep the other Member States and the High Representative informed of any matter of common interest.

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

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

Article 35

(ex Article 20 TEU)

The diplomatic and consular missions of the Member States and the Union delegations in third countries and international conferences, and their representations to international organisations, shall cooperate in ensuring that decisions defining Union positions and actions adopted pursuant to this Chapter are complied with and implemented.

They shall step up cooperation by exchanging information and carrying out joint assessments.

They shall contribute to the implementation of the right of citizens of the Union to protection in the territory of third countries as referred to in Article 20(2)(c) of the Treaty on the Functioning of the European Union and of the measures adopted pursuant to Article 23 of that Treaty.

Article 36

(ex Article 21 TEU)

The High Representative of the Union for Foreign Affairs and Security Policy shall regularly consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and the common security and defence policy and inform it of how those policies evolve. He shall ensure that the views of the European Parliament are duly taken into consideration. Special representatives may be involved in briefing the European Parliament.

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

Article 37

(ex Article 24 TEU)

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

Article 38

(ex Article 25 TEU)

Without prejudice to Article 240 of the Treaty on the Functioning of the European Union, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or of the High Representative of the Union for Foreign Affairs and Security Policy or on its own initiative. It shall also monitor the implementation of agreed policies, without prejudice to the powers of the High Representative.

Within the scope of this Chapter, the Political and Security Committee shall exercise, under the responsibility of the Council and of the High Representative, the political control and strategic direction of the crisis management operations referred to in Article 43.

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

Article 39

In accordance with Article 16 of the Treaty on the Functioning of the European Union and by way of derogation from paragraph 2 thereof, the Council shall adopt a decision laying down the rules relating to the protection of individuals with regard to the processing of personal data by the Member States when carrying out activities which fall within the scope of this Chapter, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

Article 40

(ex Article 47 TEU)

The implementation of the common foreign and security policy shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences referred to in Articles 3 to 6 of the Treaty on the Functioning of the European Union.

Similarly, the implementation of the policies listed in those Articles shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter.

Article 41

(ex Article 28 TEU)

1. Administrative expenditure to which the implementation of this Chapter gives rise for the institutions shall be charged to the Union budget.

2. Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament.

Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

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

(a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;

(b) the procedures for administering the start-up fund;

(c) the financial control procedures.

When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.

SECTION 2

PROVISIONS ON THE COMMON SECURITY AND DEFENCE POLICY

Article 42

(ex Article 17 TEU)

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on civilian and military assets. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Section shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council. Those Member States which together establish multinational forces may also make them available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. The Agency in the field of defence capabilities development, research, acquisition and armaments (hereinafter referred to as 'the European Defence Agency') shall identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.

4. Decisions relating to the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council acting unanimously on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy or an initiative from a Member State. The High Representative may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to protect the Union's values and serve its interests. The execution of such a task shall be governed by Article 44.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish permanent structured cooperation within the Union framework. Such cooperation shall be governed by Article 46. It shall not affect the provisions of Article 43.

7. If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.

Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.

Article 43

1. The tasks referred to in Article 42(1), in the course of which the Union may use civilian and military means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation. All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.

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

Article 44

1. Within the framework of the decisions adopted in accordance with Article 43, the Council may entrust the implementation of a task to a group of Member States which are willing and have the necessary capability for such a task. Those Member States, in association with the High Representative of the Union for Foreign Affairs and Security Policy, shall agree among themselves on the management of the task.

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

Article 45

1. The European Defence Agency referred to in Article 42(3), subject to the authority of the Council, shall have as its task to:

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

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

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

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

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

2. The European Defence Agency shall be open to all Member States wishing to be part of it. The Council, acting by a qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

Article 46

1. Those Member States which wish to participate in the permanent structured cooperation referred to in Article 42(6), which fulfil the criteria and have made the commitments on military capabilities set out in the Protocol on permanent structured cooperation, shall notify their intention to the Council and to the High Representative of the Union for Foreign Affairs and Security Policy.

2. Within three months following the notification referred to in paragraph 1 the Council shall adopt a decision establishing permanent structured cooperation and determining the list of participating Member States. The Council shall act by a qualified majority after consulting the High Representative.

3. Any Member State which, at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council and to the High Representative.

The Council shall adopt a decision confirming the participation of the Member State concerned which fulfils the criteria and makes the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation. The Council shall act by a qualified majority after consulting the High Representative. Only members of the Council representing the participating Member States shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

4. If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments referred to in Articles 1 and 2 of the Protocol on permanent structured cooperation, the Council may adopt a decision suspending the participation of the Member State concerned.

The Council shall act by a qualified majority. Only members of the Council representing the participating Member States, with the exception of the Member State in question, shall take part in the vote.

A qualified majority shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

5. Any participating Member State which wishes to withdraw from permanent structured cooperation shall notify its intention to the Council, which shall take note that the Member State in question has ceased to participate.

6. The decisions and recommendations of the Council within the framework of permanent structured cooperation, other than those provided for in paragraphs 2 to 5, shall be adopted by unanimity. For the purposes of this paragraph, unanimity shall be constituted by the votes of the representatives of the participating Member States only.

TITLE VI

FINAL PROVISIONS

Article 47

The Union shall have legal personality.

Article 48

(ex Article 48 TEU)

1. The Treaties may be amended in accordance with an ordinary revision procedure. They may also be amended in accordance with simplified revision procedures.

Ordinary revision procedure

2. The Government of any Member State, the European Parliament or the Commission may submit to the Council proposals for the amendment of the Treaties. These proposals may, *inter alia*, serve either to increase or to reduce the competences conferred on the Union in the Treaties. These proposals shall be submitted to the European Council by the Council and the national Parliaments shall be notified.

3. If the European Council, after consulting the European Parliament and the Commission, adopts by a simple majority a decision in favour of examining the proposed amendments, the President of the European Council shall convene a Convention composed of representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area. The Convention shall examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States as provided for in paragraph 4.

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

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

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

5. If, two years after the signature of a treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.

Simplified revision procedures

6. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

7. Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.

Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.

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

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

Article 49

(ex Article 49 TEU)

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

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

Article 50

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

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

Article 51

The Protocols and Annexes to the Treaties shall form an integral part thereof.

Article 52

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

2. The territorial scope of the Treaties is specified in Article 355 of the Treaty on the Functioning of the European Union.

Article 53

(ex Article 51 TEU)

This Treaty is concluded for an unlimited period.

Article 54

(ex Article 52 TEU)

1. This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

2. This Treaty shall enter into force on 1 January 1993, provided that all the Instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step.

Article 55

(ex Article 53 TEU)

1. This Treaty, drawn up in a single original in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, the texts in each of these languages being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which will transmit a certified copy to each of the governments of the other signatory States.

2. This Treaty may also be translated into any other languages as determined by Member States among those which, in accordance with their constitutional order, enjoy official status in all or part of their territory. A certified copy of such translations shall be provided by the Member States concerned to be deposited in the archives of the Council.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Treaty.

Done at Maastricht on the seventh day of February in the year one thousand nine hundred and ninety-two.

(*List of signatories not reproduced*)

CONSOLIDATED VERSION

OF

THE TREATY ON THE FUNCTIONING OF THE

EUROPEAN UNION

PREAMBLE

HIS MAJESTY THE KING OF THE BELGIANS, THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY, THE PRESIDENT OF THE FRENCH REPUBLIC, THE PRESIDENT OF THE ITALIAN REPUBLIC, HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG, HER MAJESTY THE QUEEN OF THE NETHERLANDS, [1]

DETERMINED to lay the foundations of an ever closer union among the peoples of Europe,

RESOLVED to ensure the economic and social progress of their States by common action to eliminate the barriers which divide Europe,

AFFIRMING as the essential objective of their efforts the constant improvements of the living and working conditions of their peoples,

RECOGNISING that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

ANXIOUS to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

DESIRING to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

INTENDING to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

RESOLVED by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

DETERMINED to promote the development of the highest possible level of knowledge for their peoples through a wide access to education and through its continuous updating,

and to this end HAVE DESIGNATED as their Plenipotentiaries:

(List of plenipotentiaries not reproduced)

WHO, having exchanged their full powers, found in good and due form, have agreed as follows.

[1] The Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden and the United Kingdom of Great Britain and Northern Ireland have since become members of the European Union.

PART ONE

PRINCIPLES

Article 1

1. This Treaty organises the functioning of the Union and determines the areas of, delimitation of, and arrangements for exercising its competences.

2. This Treaty and the Treaty on European Union constitute the Treaties on which the Union is founded. These two Treaties, which have the same legal value, shall be referred to as 'the Treaties'.

TITLE I

CATEGORIES AND AREAS OF UNION COMPETENCE

Article 2

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.

2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.

3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

Article 3

1. The Union shall have exclusive competence in the following areas:

(a) customs union;

(b) the establishing of the competition rules necessary for the functioning of the internal market;

(c) monetary policy for the Member States whose currency is the euro;

(d) the conservation of marine biological resources under the common fisheries policy;

(e) common commercial policy.

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

(a) internal market;

(b) social policy, for the aspects defined in this Treaty;

(c) economic, social and territorial cohesion;

(d) agriculture and fisheries, excluding the conservation of marine biological resources;

(e) environment;

(f) consumer protection;

(g) transport;

(h) trans-European networks;

(i) energy;

(j) area of freedom, security and justice;

(k) common safety concerns in public health matters, for the aspects defined in this Treaty.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Article 5

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.

Specific provisions shall apply to those Member States whose currency is the euro.

2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.

3. The Union may take initiatives to ensure coordination of Member States' social policies.

Article 6

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

(a) protection and improvement of human health;

(b) industry;

(c) culture;

(d) tourism;

(e) education, vocational training, youth and sport;

(f) civil protection;

(g) administrative cooperation.

TITLE II

PROVISIONS HAVING GENERAL APPLICATION

Article 7

The Union shall ensure consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers.

Article 8

(ex Article 3(2) TEC) [1]

In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women.

Article 9

In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

Article 10

In defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Article 11

(ex Article 6 TEC)

Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.

[1] These references are merely indicative. For more ample information, please refer to the tables of equivalences between the old and the new numbering of the Treaties.

Article 12

(ex Article 153(2) TEC)

Consumer protection requirements shall be taken into account in defining and implementing other Union policies and activities.

Article 13

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

Article 14

(ex Article 16 TEC)

Without prejudice to Article 4 of the Treaty on European Union or to Articles 93, 106 and 107 of this Treaty, and given the place occupied by services of general economic interest in the shared values of the Union as well as their role in promoting social and territorial cohesion, the Union and the Member States, each within their respective powers and within the scope of application of the Treaties, shall take care that such services operate on the basis of principles and conditions, particularly economic and financial conditions, which enable them to fulfil their missions. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Treaties, to provide, to commission and to fund such services.

Article 15

(ex Article 255 TEC)

1. In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible.

2. The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act.

3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph.

Article 16

(ex Article 286 TEC)

1. Everyone has the right to the protection of personal data concerning them.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of independent authorities.

The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 39 of the Treaty on European Union.

Article 17

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status under national law of philosophical and non-confessional organisations.

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

PART TWO

NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION

Article 18

(ex Article 12 TEC)

Within the scope of application of the Treaties, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt rules designed to prohibit such discrimination.

Article 19

(ex Article 13 TEC)

1. Without prejudice to the other provisions of the Treaties and within the limits of the powers conferred by them upon the Union, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt the basic principles of Union incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1.

Article 20

(ex Article 17 TEC)

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21

(ex Article 18 TEC)

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 22

(ex Article 19 TEC)

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 23

(ex Article 20 TEC)

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 24

(ex Article 21 TEC)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.

Article 25

(ex Article 22 TEC)

The Commission shall report to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of the provisions of this Part. This report shall take account of the development of the Union.

On this basis, and without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, may adopt provisions to strengthen or to add to the rights listed in Article 20(2). These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

PART THREE

UNION POLICIES AND INTERNAL ACTIONS

TITLE I

THE INTERNAL MARKET

Article 26

(ex Article 14 TEC)

1. The Union shall adopt measures with the aim of establishing or ensuring the functioning of the internal market, in accordance with the relevant provisions of the Treaties.

2. The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties.

3. The Council, on a proposal from the Commission, shall determine the guidelines and conditions necessary to ensure balanced progress in all the sectors concerned.

Article 27

(ex Article 15 TEC)

When drawing up its proposals with a view to achieving the objectives set out in Article 26, the Commission shall take into account the extent of the effort that certain economies showing differences in development will have to sustain for the establishment of the internal market and it may propose appropriate provisions.

If these provisions take the form of derogations, they must be of a temporary nature and must cause the least possible disturbance to the functioning of the internal market.

TITLE II

FREE MOVEMENT OF GOODS

Article 28

(ex Article 23 TEC)

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 30 and of Chapter 3 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.

Article 29

(ex Article 24 TEC)

Products coming from a third country shall be considered to be in free circulation in a Member State if the import formalities have been complied with and any customs duties or charges having equivalent effect which are payable have been levied in that Member State, and if they have not benefited from a total or partial drawback of such duties or charges.

CHAPTER 1

THE CUSTOMS UNION

Article 30

(ex Article 25 TEC)

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

Article 31

(ex Article 26 TEC)

Common Customs Tariff duties shall be fixed by the Council on a proposal from the Commission.

Article 32

(ex Article 27 TEC)

In carrying out the tasks entrusted to it under this Chapter the Commission shall be guided by:

(a) the need to promote trade between Member States and third countries;

(b) developments in conditions of competition within the Union in so far as they lead to an improvement in the competitive capacity of undertakings;

(c) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to avoid distorting conditions of competition between Member States in respect of finished goods;

(d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union.

CHAPTER 2

CUSTOMS COOPERATION

Article 33

(ex Article 135 TEC)

Within the scope of application of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall take measures in order to strengthen customs cooperation between Member States and between the latter and the Commission.

CHAPTER 3

PROHIBITION OF QUANTITATIVE RESTRICTIONS BETWEEN MEMBER STATES

Article 34

(ex Article 28 TEC)

Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.

Article 35

(ex Article 29 TEC)

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 36

(ex Article 30 TEC)

The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Article 37

(ex Article 31 TEC)

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.

3. If a State monopoly of a commercial character has rules which are designed to make it easier to dispose of agricultural products or obtain for them the best return, steps should be taken in applying the rules contained in this Article to ensure equivalent safeguards for the employment and standard of living of the producers concerned.

TITLE III

AGRICULTURE AND FISHERIES

Article 38

(ex Article 32 TEC)

1. The Union shall define and implement a common agriculture and fisheries policy.

The internal market shall extend to agriculture, fisheries and trade in agricultural products. 'Agricultural products' means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term 'agricultural', shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

2. Save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products.

3. The products subject to the provisions of Articles 39 to 44 are listed in Annex I.

4. The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

Article 39

(ex Article 33 TEC)

1. The objectives of the common agricultural policy shall be:

(a) to increase agricultural productivity by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;

(b) thus to ensure a fair standard of living for the agricultural community, in particular by increasing the individual earnings of persons engaged in agriculture;

(c) to stabilise markets;

(d) to assure the availability of supplies;

(e) to ensure that supplies reach consumers at reasonable prices.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:

(a) the particular nature of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;

(b) the need to effect the appropriate adjustments by degrees;

(c) the fact that in the Member States agriculture constitutes a sector closely linked with the economy as a whole.

Article 40

(ex Article 34 TEC)

1. In order to attain the objectives set out in Article 39, a common organisation of agricultural markets shall be established.

This organisation shall take one of the following forms, depending on the product concerned:

(a) common rules on competition;

(b) compulsory coordination of the various national market organisations;

(c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article 39, in particular regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.

The common organisation shall be limited to pursuit of the objectives set out in Article 39 and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

Article 41

(ex Article 35 TEC)

To enable the objectives set out in Article 39 to be attained, provision may be made within the framework of the common agricultural policy for measures such as:

(a) an effective coordination of efforts in the spheres of vocational training, of research and of the dissemination of agricultural knowledge; this may include joint financing of projects or institutions;

(b) joint measures to promote consumption of certain products.

Article 42

(ex Article 36 TEC)

The provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the European Parliament and the Council within the framework of Article 43(2) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39.

The Council, on a proposal from the Commission, may authorise the granting of aid:

(a) for the protection of enterprises handicapped by structural or natural conditions;

(b) within the framework of economic development programmes.

Article 43

(ex Article 37 TEC)

1. The Commission shall submit proposals for working out and implementing the common agricultural policy, including the replacement of the national organisations by one of the forms of common organisation provided for in Article 40(1), and for implementing the measures specified in this Title.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Title.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the common organisation of agricultural markets provided for in Article 40(1) and the other provisions necessary for the pursuit of the objectives of the common agricultural policy and the common fisheries policy.

3. The Council, on a proposal from the Commission, shall adopt measures on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

4. In accordance with paragraph 2, the national market organisations may be replaced by the common organisation provided for in Article 40(1) if:

(a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;

(b) such an organisation ensures conditions for trade within the Union similar to those existing in a national market.

5. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Union.

Article 44

(ex Article 38 TEC)

Where in a Member State a product is subject to a national market organisation or to internal rules having equivalent effect which affect the competitive position of similar production in another Member State, a countervailing charge shall be applied by Member States to imports of this product coming from the Member State where such organisation or rules exist, unless that State applies a countervailing charge on export.

The Commission shall fix the amount of these charges at the level required to redress the balance; it may also authorise other measures, the conditions and details of which it shall determine.

TITLE IV

FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL

CHAPTER 1

WORKERS

Article 45

(ex Article 39 TEC)

1. Freedom of movement for workers shall be secured within the Union.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service.

Article 46

(ex Article 40 TEC)

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, issue directives or make regulations setting out the measures required to bring about freedom of movement for workers, as defined in Article 45, in particular:

(a) by ensuring close cooperation between national employment services;

(b) by abolishing those administrative procedures and practices and those qualifying periods in respect of eligibility for available employment, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to liberalisation of the movement of workers;

(c) by abolishing all such qualifying periods and other restrictions provided for either under national legislation or under agreements previously concluded between Member States as imposed on workers of other Member States conditions regarding the free choice of employment other than those imposed on workers of the State concerned;

(d) by setting up appropriate machinery to bring offers of employment into touch with applications for employment and to facilitate the achievement of a balance between supply and demand in the employment market in such a way as to avoid serious threats to the standard of living and level of employment in the various regions and industries.

Article 47

(ex Article 41 TEC)

Member States shall, within the framework of a joint programme, encourage the exchange of young workers.

Article 48

(ex Article 42 TEC)

The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, they shall make arrangements to secure for employed and self-employed migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States.

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

(a) refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure; or

(b) take no action or request the Commission to submit a new proposal; in that case, the act originally proposed shall be deemed not to have been adopted.

CHAPTER 2

RIGHT OF ESTABLISHMENT

Article 49

(ex Article 43 TEC)

Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 54, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.

Article 50

(ex Article 44 TEC)

1. In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives.

2. The European Parliament, the Council and the Commission shall carry out the duties devolving upon them under the preceding provisions, in particular:

(a) by according, as a general rule, priority treatment to activities where freedom of establishment makes a particularly valuable contribution to the development of production and trade;

(b) by ensuring close cooperation between the competent authorities in the Member States in order to ascertain the particular situation within the Union of the various activities concerned;

(c) by abolishing those administrative procedures and practices, whether resulting from national legislation or from agreements previously concluded between Member States, the maintenance of which would form an obstacle to freedom of establishment;

(d) by ensuring that workers of one Member State employed in the territory of another Member State may remain in that territory for the purpose of taking up activities therein as self-employed persons, where they satisfy the conditions which they would be required to satisfy if they were entering that State at the time when they intended to take up such activities;

(e) by enabling a national of one Member State to acquire and use land and buildings situated in the territory of another Member State, in so far as this does not conflict with the principles laid down in Article 39(2);

(f) by effecting the progressive abolition of restrictions on freedom of establishment in every branch of activity under consideration, both as regards the conditions for setting up agencies, branches or subsidiaries in the territory of a Member State and as regards the subsidiaries in the territory of a Member State and as regards the conditions governing the entry of personnel belonging to the main establishment into managerial or supervisory posts in such agencies, branches or subsidiaries;

(g) by coordinating to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms within the meaning of the second paragraph of Article 54 with a view to making such safeguards equivalent throughout the Union;

(h) by satisfying themselves that the conditions of establishment are not distorted by aids granted by Member States.

Article 51

(ex Article 45 TEC)

The provisions of this Chapter shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may rule that the provisions of this Chapter shall not apply to certain activities.

Article 52

(ex Article 46 TEC)

1. The provisions of this Chapter and measures taken in pursuance thereof shall not prejudice the applicability of provisions laid down by law, regulation or administrative action providing for special treatment for foreign nationals on grounds of public policy, public security or public health.

2. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the coordination of the abovementioned provisions.

Article 53

(ex Article 47 TEC)

1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications and for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking-up and pursuit of activities as self-employed persons.

2. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon coordination of the conditions for their exercise in the various Member States.

Article 54

(ex Article 48 TEC)

Companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the Union shall, for the purposes of this Chapter, be treated in the same way as natural persons who are nationals of Member States.

'Companies or firms' means companies or firms constituted under civil or commercial law, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit-making.

Article 55

(ex Article 294 TEC)

Member States shall accord nationals of the other Member States the same treatment as their own nationals as regards participation in the capital of companies or firms within the meaning of Article 54, without prejudice to the application of the other provisions of the Treaties.

CHAPTER 3

SERVICES

Article 56

(ex Article 49 TEC)

Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Union.

Article 57

(ex Article 50 TEC)

Services shall be considered to be 'services' within the meaning of the Treaties where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

(a) activities of an industrial character;

(b) activities of a commercial character;

(c) activities of craftsmen;

(d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the Member State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 58

(ex Article 51 TEC)

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.

2. The liberalisation of banking and insurance services connected with movements of capital shall be effected in step with the liberalisation of movement of capital.

Article 59

(ex Article 52 TEC)

1. In order to achieve the liberalisation of a specific service, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall issue directives.

2. As regards the directives referred to in paragraph 1, priority shall as a general rule be given to those services which directly affect production costs or the liberalisation of which helps to promote trade in goods.

Article 60

(ex Article 53 TEC)

The Member States shall endeavour to undertake the liberalisation of services beyond the extent required by the directives issued pursuant to Article 59(1), if their general economic situation and the situation of the economic sector concerned so permit.

To this end, the Commission shall make recommendations to the Member States concerned.

Article 61

(ex Article 54 TEC)

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of the first paragraph of Article 56.

Article 62

(ex Article 55 TEC)

The provisions of Articles 51 to 54 shall apply to the matters covered by this Chapter.

CHAPTER 4

CAPITAL AND PAYMENTS

Article 63

(ex Article 56 TEC)

1. Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.

2. Within the framework of the provisions set out in this Chapter, all restrictions on payments between Member States and between Member States and third countries shall be prohibited.

Article 64

(ex Article 57 TEC)

1. The provisions of Article 63 shall be without prejudice to the application to third countries of any restrictions which exist on 31 December 1993 under national or Union law adopted in respect of the movement of capital to or from third countries involving direct investment – including in real estate – establishment, the provision of financial services or the admission of securities to capital markets. In respect of restrictions existing under national law in Bulgaria, Estonia and Hungary, the relevant date shall be 31 December 1999. In respect of restrictions existing under national law in Croatia, the relevant date shall be 31 December 2002.

2. Whilst endeavouring to achieve the objective of free movement of capital between Member States and third countries to the greatest extent possible and without prejudice to the other Chapters of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures on the movement of capital to or from third countries involving direct investment – including investment in real estate – establishment, the provision of financial services or the admission of securities to capital markets.

3. Notwithstanding paragraph 2, only the Council, acting in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament, adopt measures which constitute a step backwards in Union law as regards the liberalisation of the movement of capital to or from third countries.

Article 65

(ex Article 58 TEC)

1. The provisions of Article 63 shall be without prejudice to the right of Member States:

(a) to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested;

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.

2. The provisions of this Chapter shall be without prejudice to the applicability of restrictions on the right of establishment which are compatible with the Treaties.

3. The measures and procedures referred to in paragraphs 1 and 2 shall not constitute a means of arbitrary discrimination or a disguised restriction on the free movement of capital and payments as defined in Article 63.

4. In the absence of measures pursuant to Article 64(3), the Commission or, in the absence of a Commission decision within three months from the request of the Member State concerned, the Council, may adopt a decision stating that restrictive tax measures adopted by a Member State concerning one or more third countries are to be considered compatible with the Treaties in so far as they are justified by one of the objectives of the Union and compatible with the proper functioning of the internal market. The Council shall act unanimously on application by a Member State.

Article 66

(ex Article 59 TEC)

Where, in exceptional circumstances, movements of capital to or from third countries cause, or threaten to cause, serious difficulties for the operation of economic and monetary union, the Council, on a proposal from the Commission and after consulting the European Central Bank, may take safeguard measures with regard to third countries for a period not exceeding six months if such measures are strictly necessary.

TITLE V

AREA OF FREEDOM, SECURITY AND JUSTICE

CHAPTER 1

GENERAL PROVISIONS

Article 67

(ex Article 61 TEC and ex Article 29 TEU)

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.

2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

Article 68

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Article 69

National Parliaments ensure that the proposals and legislative initiatives submitted under Chapters 4 and 5 comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

Article 70

Without prejudice to Articles 258, 259 and 260, the Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Title by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

Article 71

(ex Article 36 TEU)

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article 240, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

Article 72

(ex Article 64(1) TEC and ex Article 33 TEU)

This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 73

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

Article 74

(ex Article 66 TEC)

The Council shall adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Title, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article 76, and after consulting the European Parliament.

Article 75

(ex Article 60 TEC)

Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.

The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

The acts referred to in this Article shall include necessary provisions on legal safeguards.

Article 76

The acts referred to in Chapters 4 and 5, together with the measures referred to in Article 74 which ensure administrative cooperation in the areas covered by these Chapters, shall be adopted:

(a) on a proposal from the Commission, or

(b) on the initiative of a quarter of the Member States.

CHAPTER 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article 77

(ex Article 62 TEC)

1. The Union shall develop a policy with a view to:

(a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

(b) carrying out checks on persons and efficient monitoring of the crossing of external borders;

(c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

(a) the common policy on visas and other short-stay residence permits;

(b) the checks to which persons crossing external borders are subject;

(c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;

(d) any measure necessary for the gradual establishment of an integrated management system for external borders;

(e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

3. If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 20(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.

4. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article 78

(ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article 79

(ex Article 63, points 3 and 4, TEC)

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;

(d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article 80

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.

CHAPTER 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article 81

(ex Article 65 TEC)

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

(a) the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases;

(b) the cross-border service of judicial and extrajudicial documents;

(c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;

(d) cooperation in the taking of evidence;

(e) effective access to justice;

(f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;

(g) the development of alternative methods of dispute settlement;

(h) support for the training of the judiciary and judicial staff.

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

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

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

CHAPTER 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 82

(ex Article 31 TEU)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

(a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;

(b) prevent and settle conflicts of jurisdiction between Member States;

(c) support the training of the judiciary and judicial staff;

(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

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

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 83

(ex Article 31 TEU)

1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.

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

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article 84

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

Article 85

(ex Article 31 TEU)

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, the European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:

(a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;

(b) the coordination of investigations and prosecutions referred to in point (a);

(c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

These regulations shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to Article 86, formal acts of judicial procedure shall be carried out by the competent national officials.

Article 86

1. In order to combat crimes affecting the financial interests of the Union, the Council, by means of regulations adopted in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

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

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft regulation concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the regulation provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The regulations referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

CHAPTER 5

POLICE COOPERATION

Article 87

(ex Article 30 TEU)

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures concerning:

(a) the collection, storage, processing, analysis and exchange of relevant information;

(b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;

(c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. The Council, acting in accordance with a special legislative procedure, may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

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

Within the same timeframe, in case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft measures concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in Article 20(2) of the Treaty on European Union and Article 329(1) of this Treaty shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

The specific procedure provided for in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen *acquis*.

Article 88

(ex Article 30 TEU)

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. The European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Europol's structure, operation, field of action and tasks. These tasks may include:

(a) the collection, storage, processing, analysis and exchange of information, in particular that forwarded by the authorities of the Member States or third countries or bodies;

(b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

These regulations shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article 89

(ex Article 32 TEU)

The Council, acting in accordance with a special legislative procedure, shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles 82 and 87 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

TITLE VI

TRANSPORT

Article 90

(ex Article 70 TEC)

The objectives of the Treaties shall, in matters governed by this Title, be pursued within the framework of a common transport policy.

Article 91

(ex Article 71 TEC)

1. For the purpose of implementing Article 90, and taking into account the distinctive features of transport, the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, lay down:

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) measures to improve transport safety;

(d) any other appropriate provisions.

2. When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

Article 92

(ex Article 72 TEC)

Until the provisions referred to in Article 91(1) have been laid down, no Member State may, unless the Council has unanimously adopted a measure granting a derogation, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article 93

(ex Article 73 TEC)

Aids shall be compatible with the Treaties if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article 94

(ex Article 74 TEC)

Any measures taken within the framework of the Treaties in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article 95

(ex Article 75 TEC)

1. In the case of transport within the Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the country of origin or of destination of the goods in question shall be prohibited.

2. Paragraph 1 shall not prevent the European Parliament and the Council from adopting other measures pursuant to Article 91(1).

3. The Council shall, on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, lay down rules for implementing the provisions of paragraph 1.

The Council may in particular lay down the provisions needed to enable the institutions of the Union to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall take the necessary decisions within the framework of the rules laid down in accordance with the provisions of paragraph 3.

Article 96

(ex Article 76 TEC)

1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall take the necessary decisions.

3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article 97

(ex Article 77 TEC)

Charges or dues in respect of the crossing of frontiers which are charged by a carrier in addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs progressively.

The Commission may make recommendations to Member States for the application of this Article.

Article 98

(ex Article 78 TEC)

The provisions of this Title shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this Article.

Article 99

(ex Article 79 TEC)

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters.

Article 100

(ex Article 80 TEC)

1. The provisions of this Title shall apply to transport by rail, road and inland waterway.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may lay down appropriate provisions for sea and air transport. They shall act after consulting the Economic and Social Committee and the Committee of the Regions.

TITLE VII

COMMON RULES ON COMPETITION, TAXATION AND APPROXIMATION OF LAWS

CHAPTER 1

RULES ON COMPETITION

SECTION 1

RULES APPLYING TO UNDERTAKINGS

Article 101

(ex Article 81 TEC)

1. The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the internal market, and in particular those which:

(a) directly or indirectly fix purchase or selling prices or any other trading conditions;

(b) limit or control production, markets, technical development, or investment;

(c) share markets or sources of supply;

(d) apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(e) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Any agreements or decisions prohibited pursuant to this Article shall be automatically void.

3. The provisions of paragraph 1 may, however, be declared inapplicable in the case of:

— any agreement or category of agreements between undertakings,

— any decision or category of decisions by associations of undertakings,

— any concerted practice or category of concerted practices,

which contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit, and which does not:

(a) impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives;

(b) afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

Article 102

(ex Article 82 TEC)

Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.

Such abuse may, in particular, consist in:

(a) directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;

(b) limiting production, markets or technical development to the prejudice of consumers;

(c) applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage;

(d) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Article 103

(ex Article 83 TEC)

1. The appropriate regulations or directives to give effect to the principles set out in Articles 101 and 102 shall be laid down by the Council, on a proposal from the Commission and after consulting the European Parliament.

2. The regulations or directives referred to in paragraph 1 shall be designed in particular:

(a) to ensure compliance with the prohibitions laid down in Article 101(1) and in Article 102 by making provision for fines and periodic penalty payments;

(b) to lay down detailed rules for the application of Article 101(3), taking into account the need to ensure effective supervision on the one hand, and to simplify administration to the greatest possible extent on the other;

(c) to define, if need be, in the various branches of the economy, the scope of the provisions of Articles 101 and 102;

(d) to define the respective functions of the Commission and of the Court of Justice of the European Union in applying the provisions laid down in this paragraph;

(e) to determine the relationship between national laws and the provisions contained in this Section or adopted pursuant to this Article.

Article 104

(ex Article 84 TEC)

Until the entry into force of the provisions adopted in pursuance of Article 103, the authorities in Member States shall rule on the admissibility of agreements, decisions and concerted practices and on abuse of a dominant position in the internal market in accordance with the law of their country and with the provisions of Article 101, in particular paragraph 3, and of Article 102.

Article 105

(ex Article 85 TEC)

1. Without prejudice to Article 104, the Commission shall ensure the application of the principles laid down in Articles 101 and 102. On application by a Member State or on its own initiative, and in cooperation with the competent authorities in the Member States, which shall give it their assistance, the Commission shall investigate cases of suspected infringement of these principles. If it finds that there has been an infringement, it shall propose appropriate measures to bring it to an end.

2. If the infringement is not brought to an end, the Commission shall record such infringement of the principles in a reasoned decision. The Commission may publish its decision and authorise Member States to take the measures, the conditions and details of which it shall determine, needed to remedy the situation.

3. The Commission may adopt regulations relating to the categories of agreement in respect of which the Council has adopted a regulation or a directive pursuant to Article 103(2)(b).

Article 106

(ex Article 86 TEC)

1. In the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109.

2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.

3. The Commission shall ensure the application of the provisions of this Article and shall, where necessary, address appropriate directives or decisions to Member States.

SECTION 2

AIDS GRANTED BY STATES

Article 107

(ex Article 87 TEC)

1. Save as otherwise provided in the Treaties, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.

2. The following shall be compatible with the internal market:

(a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned;

(b) aid to make good the damage caused by natural disasters or exceptional occurrences;

(c) aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division. Five years after the entry into force of the Treaty of Lisbon, the Council, acting on a proposal from the Commission, may adopt a decision repealing this point.

3. The following may be considered to be compatible with the internal market:

(a) aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, and of the regions referred to in Article 349, in view of their structural, economic and social situation;

(b) aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State;

(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest;

(e) such other categories of aid as may be specified by decision of the Council on a proposal from the Commission.

Article 108

(ex Article 88 TEC)

1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the internal market having regard to Article 107, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 258 and 259, refer the matter to the Court of Justice of the European Union direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from the provisions of Article 107 or from the regulations provided for in Article 109, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article 107, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt regulations relating to the categories of State aid that the Council has, pursuant to Article 109, determined may be exempted from the procedure provided for by paragraph 3 of this Article.

Article 109

(ex Article 89 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 107 and 108 and may in particular determine the conditions in which Article 108(3) shall apply and the categories of aid exempted from this procedure.

CHAPTER 2

TAX PROVISIONS

Article 110

(ex Article 90 TEC)

No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

Article 111

(ex Article 91 TEC)

Where products are exported to the territory of any Member State, any repayment of internal taxation shall not exceed the internal taxation imposed on them whether directly or indirectly.

Article 112

(ex Article 92 TEC)

In the case of charges other than turnover taxes, excise duties and other forms of indirect taxation, remissions and repayments in respect of exports to other Member States may not be granted and countervailing charges in respect of imports from Member States may not be imposed unless the measures contemplated have been previously approved for a limited period by the Council on a proposal from the Commission.

Article 113

(ex Article 93 TEC)

The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.

CHAPTER 3

APPROXIMATION OF LAWS

Article 114

(ex Article 95 TEC)

1. Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 36, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by the European Parliament and the Council, by the Council or by the Commission, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.

9. By way of derogation from the procedure laid down in Articles 258 and 259, the Commission and any Member State may bring the matter directly before the Court of Justice of the European Union if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 36, provisional measures subject to a Union control procedure.

Article 115

(ex Article 94 TEC)

Without prejudice to Article 114, the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.

Article 116

(ex Article 96 TEC)

Where the Commission finds that a difference between the provisions laid down by law, regulation or administrative action in Member States is distorting the conditions of competition in the internal market and that the resultant distortion needs to be eliminated, it shall consult the Member States concerned.

If such consultation does not result in an agreement eliminating the distortion in question, the European, Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall issue the necessary directives. Any other appropriate measures provided for in the Treaties may be adopted.

Article 117

(ex Article 97 TEC)

1. Where there is a reason to fear that the adoption or amendment of a provision laid down by law, regulation or administrative action may cause distortion within the meaning of Article 116, a Member State desiring to proceed therewith shall consult the Commission. After consulting the Member States, the Commission shall recommend to the States concerned such measures as may be appropriate to avoid the distortion in question.

2. If a State desiring to introduce or amend its own provisions does not comply with the recommendation addressed to it by the Commission, other Member States shall not be required, pursuant to Article 116, to amend their own provisions in order to eliminate such distortion. If the Member State which has ignored the recommendation of the Commission causes distortion detrimental only to itself, the provisions of Article 116 shall not apply.

Article 118

In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament.

TITLE VIII

ECONOMIC AND MONETARY POLICY

Article 119

(ex Article 4 TEC)

1. For the purposes set out in Article 3 of the Treaty on European Union, the activities of the Member States and the Union shall include, as provided in the Treaties, the adoption of an economic policy which is based on the close coordination of Member States' economic policies, on the internal market and on the definition of common objectives, and conducted in accordance with the principle of an open market economy with free competition.

2. Concurrently with the foregoing, and as provided in the Treaties and in accordance with the procedures set out therein, these activities shall include a single currency, the euro, and the definition and conduct of a single monetary policy and exchange-rate policy the primary objective of both of which shall be to maintain price stability and, without prejudice to this objective, to support the general economic policies in the Union, in accordance with the principle of an open market economy with free competition.

3. These activities of the Member States and the Union shall entail compliance with the following guiding principles: stable prices, sound public finances and monetary conditions and a sustainable balance of payments.

CHAPTER 1

ECONOMIC POLICY

Article 120

(ex Article 98 TEC)

Member States shall conduct their economic policies with a view to contributing to the achievement of the objectives of the Union, as defined in Article 3 of the Treaty on European Union, and in the context of the broad guidelines referred to in Article 121(2). The Member States and the Union shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

Article 121

(ex Article 99 TEC)

1. Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council, in accordance with the provisions of Article 120.

2. The Council shall, on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union, and shall report its findings to the European Council.

The European Council shall, acting on the basis of the report from the Council, discuss a conclusion on the broad guidelines of the economic policies of the Member States and of the Union.

On the basis of this conclusion, the Council shall adopt a recommendation setting out these broad guidelines. The Council shall inform the European Parliament of its recommendation.

3. In order to ensure closer coordination of economic policies and sustained convergence of the economic performances of the Member States, the Council shall, on the basis of reports submitted by the Commission, monitor economic developments in each of the Member States and in the Union as well as the consistency of economic policies with the broad guidelines referred to in paragraph 2, and regularly carry out an overall assessment.

For the purpose of this multilateral surveillance, Member States shall forward information to the Commission about important measures taken by them in the field of their economic policy and such other information as they deem necessary.

4. Where it is established, under the procedure referred to in paragraph 3, that the economic policies of a Member State are not consistent with the broad guidelines referred to in paragraph 2 or that they risk jeopardising the proper functioning of economic and monetary union, the Commission may address a warning to the Member State concerned. The Council, on a recommendation from the Commission, may address the necessary recommendations to the Member State concerned. The Council may, on a proposal from the Commission, decide to make its recommendations public.

Within the scope of this paragraph, the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

5. The President of the Council and the Commission shall report to the European Parliament on the results of multilateral surveillance. The President of the Council may be invited to appear before the competent committee of the European Parliament if the Council has made its recommendations public.

6. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, may adopt detailed rules for the multilateral surveillance procedure referred to in paragraphs 3 and 4.

Article 122

(ex Article 100 TEC)

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

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

Article 123

(ex Article 101 TEC)

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as 'national central banks') in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

Article 124

(ex Article 102 TEC)

Any measure, not based on prudential considerations, establishing privileged access by Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States to financial institutions, shall be prohibited.

Article 125

(ex Article 103 TEC)

1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article.

Article 126

(ex Article 104 TEC)

1. Member States shall avoid excessive government deficits.

2. The Commission shall monitor the development of the budgetary situation and of the stock of government debt in the Member States with a view to identifying gross errors. In particular it shall examine compliance with budgetary discipline on the basis of the following two criteria:

(a) whether the ratio of the planned or actual government deficit to gross domestic product exceeds a reference value, unless:

— either the ratio has declined substantially and continuously and reached a level that comes close to the reference value,

— or, alternatively, the excess over the reference value is only exceptional and temporary and the ratio remains close to the reference value;

(b) whether the ratio of government debt to gross domestic product exceeds a reference value, unless the ratio is sufficiently diminishing and approaching the reference value at a satisfactory pace.

The reference values are specified in the Protocol on the excessive deficit procedure annexed to the Treaties.

3. If a Member State does not fulfil the requirements under one or both of these criteria, the Commission shall prepare a report. The report of the Commission shall also take into account whether the government deficit exceeds government investment expenditure and take into account all other relevant factors, including the medium-term economic and budgetary position of the Member State.

The Commission may also prepare a report if, notwithstanding the fulfilment of the requirements under the criteria, it is of the opinion that there is a risk of an excessive deficit in a Member State.

4. The Economic and Financial Committee shall formulate an opinion on the report of the Commission.

5. If the Commission considers that an excessive deficit in a Member State exists or may occur, it shall address an opinion to the Member State concerned and shall inform the Council accordingly.

6. The Council shall, on a proposal from the Commission, and having considered any observations which the Member State concerned may wish to make, decide after an overall assessment whether an excessive deficit exists.

7. Where the Council decides, in accordance with paragraph 6, that an excessive deficit exists, it shall adopt, without undue delay, on a recommendation from the Commission, recommendations addressed to the Member State concerned with a view to bringing that situation to an end within a given period. Subject to the provisions of paragraph 8, these recommendations shall not be made public.

8. Where it establishes that there has been no effective action in response to its recommendations within the period laid down, the Council may make its recommendations public.

9. If a Member State persists in failing to put into practice the recommendations of the Council, the Council may decide to give notice to the Member State to take, within a specified time limit, measures for the deficit reduction which is judged necessary by the Council in order to remedy the situation.

In such a case, the Council may request the Member State concerned to submit reports in accordance with a specific timetable in order to examine the adjustment efforts of that Member State.

10. The rights to bring actions provided for in Articles 258 and 259 may not be exercised within the framework of paragraphs 1 to 9 of this Article.

11. As long as a Member State fails to comply with a decision taken in accordance with paragraph 9, the Council may decide to apply or, as the case may be, intensify one or more of the following measures:

— to require the Member State concerned to publish additional information, to be specified by the Council, before issuing bonds and securities,

— to invite the European Investment Bank to reconsider its lending policy towards the Member State concerned,

— to require the Member State concerned to make a non-interest-bearing deposit of an appropriate size with the Union until the excessive deficit has, in the view of the Council, been corrected,

— to impose fines of an appropriate size.

The President of the Council shall inform the European Parliament of the decisions taken.

12. The Council shall abrogate some or all of its decisions or recommendations referred to in paragraphs 6 to 9 and 11 to the extent that the excessive deficit in the Member State concerned has, in the view of the Council, been corrected. If the Council has previously made public recommendations, it shall, as soon as the decision under paragraph 8 has been abrogated, make a public statement that an excessive deficit in the Member State concerned no longer exists.

13. When taking the decisions or recommendations referred to in paragraphs 8, 9, 11 and 12, the Council shall act on a recommendation from the Commission.

When the Council adopts the measures referred to in paragraphs 6 to 9, 11 and 12, it shall act without taking into account the vote of the member of the Council representing the Member State concerned.

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

14. Further provisions relating to the implementation of the procedure described in this Article are set out in the Protocol on the excessive deficit procedure annexed to the Treaties.

The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Central Bank, adopt the appropriate provisions which shall then replace the said Protocol.

Subject to the other provisions of this paragraph, the Council shall, on a proposal from the Commission and after consulting the European Parliament, lay down detailed rules and definitions for the application of the provisions of the said Protocol.

CHAPTER 2

MONETARY POLICY

Article 127

(ex Article 105 TEC)

1. The primary objective of the European System of Central Banks (hereinafter referred to as 'the ESCB') shall be to maintain price stability. Without prejudice to the objective of price stability, the ESCB shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119.

2. The basic tasks to be carried out through the ESCB shall be:

— to define and implement the monetary policy of the Union,

— to conduct foreign-exchange operations consistent with the provisions of Article 219,

— to hold and manage the official foreign reserves of the Member States,

— to promote the smooth operation of payment systems.

3. The third indent of paragraph 2 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

4. The European Central Bank shall be consulted:

— on any proposed Union act in its fields of competence,

— by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 129(4).

The European Central Bank may submit opinions to the appropriate Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

5. The ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

6. The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

Article 128

(ex Article 106 TEC)

1. The European Central Bank shall have the exclusive right to authorise the issue of euro banknotes within the Union. The European Central Bank and the national central banks may issue such notes. The banknotes issued by the European Central Bank and the national central banks shall be the only such notes to have the status of legal tender within the Union.

2. Member States may issue euro coins subject to approval by the European Central Bank of the volume of the issue. The Council, on a proposal from the Commission and after consulting the European Parliament and the European Central Bank, may adopt measures to harmonise the denominations and technical specifications of all coins intended for circulation to the extent necessary to permit their smooth circulation within the Union.

Article 129

(ex Article 107 TEC)

1. The ESCB shall be governed by the decision-making bodies of the European Central Bank which shall be the Governing Council and the Executive Board.

2. The Statute of the European System of Central Banks and of the European Central Bank (hereinafter referred to as 'the Statute of the ESCB and of the ECB') is laid down in a Protocol annexed to the Treaties.

3. Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of the Statute of the ESCB and of the ECB may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure. They shall act either on a recommendation from the European Central Bank and after consulting the Commission or on a proposal from the Commission and after consulting the European Central Bank.

4. The Council, either on a proposal from the Commission and after consulting the European Parliament and the European Central Bank or on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of the Statute of the ESCB and of the ECB.

Article 130

(ex Article 108 TEC)

When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the European Central Bank or of the national central banks in the performance of their tasks.

Article 131

(ex Article 109 TEC)

Each Member State shall ensure that its national legislation including the statutes of its national central bank is compatible with the Treaties and the Statute of the ESCB and of the ECB.

Article 132

(ex Article 110 TEC)

1. In order to carry out the tasks entrusted to the ESCB, the European Central Bank shall, in accordance with the provisions of the Treaties and under the conditions laid down in the Statute of the ESCB and of the ECB:

— make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 and 25.2 of the Statute of the ESCB and of the ECB in cases which shall be laid down in the acts of the Council referred to in Article 129(4),

— take decisions necessary for carrying out the tasks entrusted to the ESCB under the Treaties and the Statute of the ESCB and of the ECB,

— make recommendations and deliver opinions.

2. The European Central Bank may decide to publish its decisions, recommendations and opinions.

3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 129(4), the European Central Bank shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 133

Without prejudice to the powers of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency. Such measures shall be adopted after consultation of the European Central Bank.

CHAPTER 3

INSTITUTIONAL PROVISIONS

Article 134

(ex Article 114 TEC)

1. In order to promote coordination of the policies of Member States to the full extent needed for the functioning of the internal market, an Economic and Financial Committee is hereby set up.

2. The Economic and Financial Committee shall have the following tasks:

— to deliver opinions at the request of the Council or of the Commission, or on its own initiative for submission to those institutions,

— to keep under review the economic and financial situation of the Member States and of the Union and to report regularly thereon to the Council and to the Commission, in particular on financial relations with third countries and international institutions,

— without prejudice to Article 240, to contribute to the preparation of the work of the Council referred to in Articles 66, 75, 121(2), (3), (4) and (6), 122, 124, 125, 126, 127(6), 128(2), 129(3) and (4), 138, 140(2) and (3), 143, 144(2) and (3), and in Article 219, and to carry out other advisory and preparatory tasks assigned to it by the Council,

— to examine, at least once a year, the situation regarding the movement of capital and the freedom of payments, as they result from the application of the Treaties and of measures adopted by the Council; the examination shall cover all measures relating to capital movements and payments; the Committee shall report to the Commission and to the Council on the outcome of this examination.

The Member States, the Commission and the European Central Bank shall each appoint no more than two members of the Committee.

3. The Council shall, on a proposal from the Commission and after consulting the European Central Bank and the Committee referred to in this Article, lay down detailed provisions concerning the composition of the Economic and Financial Committee. The President of the Council shall inform the European Parliament of such a decision.

4. In addition to the tasks set out in paragraph 2, if and as long as there are Member States with a derogation as referred to in Article 139, the Committee shall keep under review the monetary and financial situation and the general payments system of those Member States and report regularly thereon to the Council and to the Commission.

Article 135

(ex Article 115 TEC)

For matters within the scope of Articles 121(4), 126 with the exception of paragraph 14, 138, 140(1), 140(2), first subparagraph, 140(3) and 219, the Council or a Member State may request the Commission to make a recommendation or a proposal, as appropriate. The Commission shall examine this request and submit its conclusions to the Council without delay.

CHAPTER 4

PROVISIONS SPECIFIC TO MEMBER STATES WHOSE CURRENCY IS THE EURO

Article 136

1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:

(a) to strengthen the coordination and surveillance of their budgetary discipline;

(b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.

2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.

Article 137

Arrangements for meetings between ministers of those Member States whose currency is the euro are laid down by the Protocol on the Euro Group.

Article 138

(ex Article 111(4), TEC)

1. In order to secure the euro's place in the international monetary system, the Council, on a proposal from the Commission, shall adopt a decision establishing common positions on matters of particular interest for economic and monetary union within the competent international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

2. The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences. The Council shall act after consulting the European Central Bank.

3. For the measures referred to in paragraphs 1 and 2, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).

CHAPTER 5

TRANSITIONAL PROVISIONS

Article 139

1. Member States in respect of which the Council has not decided that they fulfil the necessary conditions for the adoption of the euro shall hereinafter be referred to as 'Member States with a derogation'.

2. The following provisions of the Treaties shall not apply to Member States with a derogation:

(a) adoption of the parts of the broad economic policy guidelines which concern the euro area generally (Article 121(2));

(b) coercive means of remedying excessive deficits (Article 126(9) and (11));

(c) the objectives and tasks of the ESCB (Article 127(1) to (3) and (5));

(d) issue of the euro (Article 128);

(e) acts of the European Central Bank (Article 132);

(f) measures governing the use of the euro (Article 133);

(g) monetary agreements and other measures relating to exchange-rate policy (Article 219);

(h) appointment of members of the Executive Board of the European Central Bank (Article 283(2));

(i) decisions establishing common positions on issues of particular relevance for economic and monetary union within the competent international financial institutions and conferences (Article 138(1));

(j) measures to ensure unified representation within the international financial institutions and conferences (Article 138(2)).

In the Articles referred to in points (a) to (j), 'Member States' shall therefore mean Member States whose currency is the euro.

3. Under Chapter IX of the Statute of the ESCB and of the ECB, Member States with a derogation and their national central banks are excluded from rights and obligations within the ESCB.

4. The voting rights of members of the Council representing Member States with a derogation shall be suspended for the adoption by the Council of the measures referred to in the Articles listed in paragraph 2, and in the following instances:

(a) recommendations made to those Member States whose currency is the euro in the framework of multilateral surveillance, including on stability programmes and warnings (Article 121(4));

(b) measures relating to excessive deficits concerning those Member States whose currency is the euro (Article 126(6), (7), (8), (12) and (13)).

A qualified majority of the other members of the Council shall be defined in accordance with Article 238(3)(a).

Article 140

(ex Articles 121(1), 122(2), second sentence, and 123(5) TEC)

1. At least once every two years, or at the request of a Member State with a derogation, the Commission and the European Central Bank shall report to the Council on the progress made by the Member States with a derogation in fulfilling their obligations regarding the achievement

of economic and monetary union. These reports shall include an examination of the compatibility between the national legislation of each of these Member States, including the statutes of its national central bank, and Articles 130 and 131 and the Statute of the ESCB and of the ECB. The reports shall also examine the achievement of a high degree of sustainable convergence by reference to the fulfilment by each Member State of the following criteria:

— the achievement of a high degree of price stability; this will be apparent from a rate of inflation which is close to that of, at most, the three best performing Member States in terms of price stability,

— the sustainability of the government financial position; this will be apparent from having achieved a government budgetary position without a deficit that is excessive as determined in accordance with Article 126(6),

— the observance of the normal fluctuation margins provided for by the exchange-rate mechanism of the European Monetary System, for at least two years, without devaluing against the euro,

— the durability of convergence achieved by the Member State with a derogation and of its participation in the exchange-rate mechanism being reflected in the long-term interest-rate levels.

The four criteria mentioned in this paragraph and the relevant periods over which they are to be respected are developed further in a Protocol annexed to the Treaties. The reports of the Commission and the European Central Bank shall also take account of the results of the integration of markets, the situation and development of the balances of payments on current account and an examination of the development of unit labour costs and other price indices.

2. After consulting the European Parliament and after discussion in the European Council, the Council shall, on a proposal from the Commission, decide which Member States with a derogation fulfil the necessary conditions on the basis of the criteria set out in paragraph 1, and abrogate the derogations of the Member States concerned.

The Council shall act having received a recommendation of a qualified majority of those among its members representing Member States whose currency is the euro. These members shall act within six months of the Council receiving the Commission's proposal.

The qualified majority of the said members, as referred to in the second subparagraph, shall be defined in accordance with Article 238(3)(a).

3. If it is decided, in accordance with the procedure set out in paragraph 2, to abrogate a derogation, the Council shall, acting with the unanimity of the Member States whose currency is the euro and the Member State concerned, on a proposal from the Commission and after consulting

the European Central Bank, irrevocably fix the rate at which the euro shall be substituted for the currency of the Member State concerned, and take the other measures necessary for the introduction of the euro as the single currency in the Member State concerned.

Article 141

(ex Articles 123(3) and 117(2) first five indents, TEC)

1. If and as long as there are Member States with a derogation, and without prejudice to Article 129(1), the General Council of the European Central Bank referred to in Article 44 of the Statute of the ESCB and of the ECB shall be constituted as a third decision-making body of the European Central Bank.

2. If and as long as there are Member States with a derogation, the European Central Bank shall, as regards those Member States:

— strengthen cooperation between the national central banks,

— strengthen the coordination of the monetary policies of the Member States, with the aim of ensuring price stability,

— monitor the functioning of the exchange-rate mechanism,

— hold consultations concerning issues falling within the competence of the national central banks and affecting the stability of financial institutions and markets,

— carry out the former tasks of the European Monetary Cooperation Fund which had subsequently been taken over by the European Monetary Institute.

Article 142

(ex Article 124(1) TEC)

Each Member State with a derogation shall treat its exchange-rate policy as a matter of common interest. In so doing, Member States shall take account of the experience acquired in cooperation within the framework of the exchange-rate mechanism.

Article 143

(ex Article 119 TEC)

1. Where a Member State with a derogation is in difficulties or is seriously threatened with difficulties as regards its balance of payments either as a result of an overall disequilibrium in its balance of payments, or as a result of the type of currency at its disposal, and where such difficulties are liable in particular to jeopardise the functioning of the internal market or the implementation of the common commercial policy, the Commission shall immediately investigate the position of the State in question and the action which, making use of all the means at its disposal, that State has taken or may take in accordance with the provisions of the Treaties. The Commission shall state what measures it recommends the State concerned to take.

If the action taken by a Member State with a derogation and the measures suggested by the Commission do not prove sufficient to overcome the difficulties which have arisen or which threaten, the Commission shall, after consulting the Economic and Financial Committee, recommend to the Council the granting of mutual assistance and appropriate methods therefor.

The Commission shall keep the Council regularly informed of the situation and of how it is developing.

2. The Council shall grant such mutual assistance; it shall adopt directives or decisions laying down the conditions and details of such assistance, which may take such forms as:

(a) a concerted approach to or within any other international organisations to which Member States with a derogation may have recourse;

(b) measures needed to avoid deflection of trade where the Member State with a derogation which is in difficulties maintains or reintroduces quantitative restrictions against third countries;

(c) the granting of limited credits by other Member States, subject to their agreement.

3. If the mutual assistance recommended by the Commission is not granted by the Council or if the mutual assistance granted and the measures taken are insufficient, the Commission shall authorise the Member State with a derogation which is in difficulties to take protective measures, the conditions and details of which the Commission shall determine.

Such authorisation may be revoked and such conditions and details may be changed by the Council.

Article 144

(ex Article 120 TEC)

1. Where a sudden crisis in the balance of payments occurs and a decision within the meaning of Article 143(2) is not immediately taken, a Member State with a derogation may, as a precaution, take the necessary protective measures. Such measures must cause the least possible disturbance in the functioning of the internal market and must not be wider in scope than is strictly necessary to remedy the sudden difficulties which have arisen.

2. The Commission and the other Member States shall be informed of such protective measures not later than when they enter into force. The Commission may recommend to the Council the granting of mutual assistance under Article 143.

3. After the Commission has delivered a recommendation and the Economic and Financial Committee has been consulted, the Council may decide that the Member State concerned shall amend, suspend or abolish the protective measures referred to above.

TITLE IX

EMPLOYMENT

Article 145

(ex Article 125 TEC)

Member States and the Union shall, in accordance with this Title, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article 3 of the Treaty on European Union.

Article 146

(ex Article 126 TEC)

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article 145 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article 121(2).

2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with the provisions of Article 148.

Article 147

(ex Article 127 TEC)

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.

2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

Article 148

(ex Article 128 TEC)

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council and the Commission.

2. On the basis of the conclusions of the European Council, the Council, on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, the Committee of the Regions and the Employment Committee referred to in Article 150, shall each year draw up guidelines which the Member States shall take into account in their employment policies. These guidelines shall be consistent with the broad guidelines adopted pursuant to Article 121(2).

3. Each Member State shall provide the Council and the Commission with an annual report on the principal measures taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.

4. The Council, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council, on a recommendation from the Commission, may, if it considers it appropriate in the light of that examination, make recommendations to Member States.

5. On the basis of the results of that examination, the Council and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

Article 149

(ex Article 129 TEC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects.

Those measures shall not include harmonisation of the laws and regulations of the Member States.

Article 150

(ex Article 130 TEC)

The Council, acting by a simple majority after consulting the European Parliament, shall establish an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. The tasks of the Committee shall be:

— to monitor the employment situation and employment policies in the Member States and the Union,

— without prejudice to Article 240, to formulate opinions at the request of either the Council or the Commission or on its own initiative, and to contribute to the preparation of the Council proceedings referred to in Article 148.

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

TITLE X

SOCIAL POLICY

Article 151

(ex Article 136 TEC)

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall implement measures which take account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Treaties and from the approximation of provisions laid down by law, regulation or administrative action.

Article 152

The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy.

The Tripartite Social Summit for Growth and Employment shall contribute to social dialogue.

Article 153

(ex Article 137 TEC)

1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:

(a) improvement in particular of the working environment to protect workers' health and safety;

(b) working conditions;

(c) social security and social protection of workers;

(d) protection of workers where their employment contract is terminated;

(e) the information and consultation of workers;

(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;

(g) conditions of employment for third-country nationals legally residing in Union territory;

(h) the integration of persons excluded from the labour market, without prejudice to Article 166;

(i) equality between men and women with regard to labour market opportunities and treatment at work;

(j) the combating of social exclusion;

(k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the European Parliament and the Council:

(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.

In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.

The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155.

In this case, it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision.

4. The provisions adopted pursuant to this Article:

— shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,

— shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

Article 154

(ex Article 138 TEC)

1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall take any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.

3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of the consultation referred to in paragraphs 2 and 3, management and labour may inform the Commission of their wish to initiate the process provided for in Article 155. The duration of this process shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

Article 155

(ex Article 139 TEC)

1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article 153, at the joint request of the signatory parties, by a Council decision on a proposal from the Commission. The European Parliament shall be informed.

The Council shall act unanimously where the agreement in question contains one or more provisions relating to one of the areas for which unanimity is required pursuant to Article 153(2).

Article 156

(ex Article 140 TEC)

With a view to achieving the objectives of Article 151 and without prejudice to the other provisions of the Treaties, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Chapter, particularly in matters relating to:

— employment,

— labour law and working conditions,

— basic and advanced vocational training,

— social security,

— prevention of occupational accidents and diseases,

— occupational hygiene,

— the right of association and collective bargaining between employers and workers.

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

Article 157

(ex Article 141 TEC)

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

2. For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Economic and Social Committee, shall adopt measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay for equal work or work of equal value.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article 158

(ex Article 142 TEC)

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

Article 159

(ex Article 143 TEC)

The Commission shall draw up a report each year on progress in achieving the objectives of Article 151, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

Article 160

(ex Article 144 TEC)

The Council, acting by a simple majority after consulting the European Parliament, shall establish a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The tasks of the Committee shall be:

— to monitor the social situation and the development of social protection policies in the Member States and the Union,

— to promote exchanges of information, experience and good practice between Member States and with the Commission,

— without prejudice to Article 240, to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council or the Commission or on its own initiative.

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Article 161

(ex Article 145 TEC)

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

TITLE XI

THE EUROPEAN SOCIAL FUND

Article 162

(ex Article 146 TEC)

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with the provisions set out below; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article 163

(ex Article 147 TEC)

The Fund shall be administered by the Commission.

The Commission shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of governments, trade unions and employers' organisations.

Article 164

(ex Article 148 TEC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt implementing regulations relating to the European Social Fund.

TITLE XII

EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT

Article 165

(ex Article 149 TEC)

1. The Union shall contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action, while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function.

2. Union action shall be aimed at:

— developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States,

— encouraging mobility of students and teachers, by encouraging inter alia, the academic recognition of diplomas and periods of study,

— promoting cooperation between educational establishments,

— developing exchanges of information and experience on issues common to the education systems of the Member States,

— encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe,

— encouraging the development of distance education,

— developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education and sport, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article:

— the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,

— the Council, on a proposal from the Commission, shall adopt recommendations.

Article 166

(ex Article 150 TEC)

1. The Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

2. Union action shall aim to:

— facilitate adaptation to industrial changes, in particular through vocational training and retraining,

— improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market,

— facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people,

— stimulate cooperation on training between educational or training establishments and firms,

— develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall adopt measures to contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States, and the Council, on a proposal from the Commission, shall adopt recommendations.

TITLE XIII

CULTURE

Article 167

(ex Article 151 TEC)

1. The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Union shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

— improvement of the knowledge and dissemination of the culture and history of the European peoples,

— conservation and safeguarding of cultural heritage of European significance,

— non-commercial cultural exchanges,

— artistic and literary creation, including in the audiovisual sector.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture, in particular the Council of Europe.

4. The Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures.

5. In order to contribute to the achievement of the objectives referred to in this Article:

— the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonisation of the laws and regulations of the Member States,

— the Council, on a proposal from the Commission, shall adopt recommendations.

TITLE XIV

PUBLIC HEALTH

Article 168

(ex Article 152 TEC)

1. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Union action, which shall complement national policies, shall be directed towards improving public health, preventing physical and mental illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education, and monitoring, early warning of and combating serious cross-border threats to health.

The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. It shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of public health.

4. By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting in order to meet common safety concerns:

(a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

(b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

(c) measures setting high standards of quality and safety for medicinal products and devices for medical use.

5. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, may also adopt incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, measures concerning monitoring, early warning of and combating serious cross-border threats to health, and measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States.

6. The Council, on a proposal from the Commission, may also adopt recommendations for the purposes set out in this Article.

7. Union action shall respect the responsibilities of the Member States for the definition of their health policy and for the organisation and delivery of health services and medical care. The

responsibilities of the Member States shall include the management of health services and medical care and the allocation of the resources assigned to them. The measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

TITLE XV

CONSUMER PROTECTION

Article 169

(ex Article 153 TEC)

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article 114 in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 2(b).

4. Measures adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. The Commission shall be notified of them.

TITLE XVI

TRANS-EUROPEAN NETWORKS

Article 170

(ex Article 154 TEC)

1. To help achieve the objectives referred to in Articles 26 and 174 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

Article 171

(ex Article 155 TEC)

1. In order to achieve the objectives referred to in Article 170, the Union:

— shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest,

— shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation,

— may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in the first indent, particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund set up pursuant to Article 177, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article 170. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

3. The Union may decide to cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

Article 172

(ex Article 156 TEC)

The guidelines and other measures referred to in Article 171(1) shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

TITLE XVII

INDUSTRY

Article 173

(ex Article 157 TEC)

1. The Union and the Member States shall ensure that the conditions necessary for the competitiveness of the Union's industry exist.

For that purpose, in accordance with a system of open and competitive markets, their action shall be aimed at:

— speeding up the adjustment of industry to structural changes,

— encouraging an environment favourable to initiative and to the development of undertakings throughout the Union, particularly small and medium-sized undertakings,

— encouraging an environment favourable to cooperation between undertakings,

— fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

2. The Member States shall consult each other in liaison with the Commission and, where necessary, shall coordinate their action. The Commission may take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

3. The Union shall contribute to the achievement of the objectives set out in paragraph 1 through the policies and activities it pursues under other provisions of the Treaties. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, may decide on specific measures in support of action taken in the Member States to achieve the objectives set out in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

This Title shall not provide a basis for the introduction by the Union of any measure which could lead to a distortion of competition or contains tax provisions or provisions relating to the rights and interests of employed persons.

TITLE XVIII

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

Article 174

(ex Article 158 TEC)

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions.

Among the regions concerned, particular attention shall be paid to rural areas, areas affected by industrial transition, and regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions.

Article 175

(ex Article 159 TEC)

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 174 and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing Financial Instruments.

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic, social and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Union policies, such actions may be adopted by the European Parliament and the Council acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

Article 176

(ex Article 160 TEC)

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

Article 177

(ex Article 161 TEC)

Without prejudice to Article 178, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and consulting the Economic and Social Committee and the Committee of the Regions, shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing Financial Instruments shall also be defined by the same procedure.

A Cohesion Fund set up in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

Article 178

(ex Article 162 TEC)

Implementing regulations relating to the European Regional Development Fund shall be taken by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 43 and 164 respectively shall continue to apply.

TITLE XIX

RESEARCH AND TECHNOLOGICAL DEVELOPMENT AND SPACE

Article 179

(ex Article 163 TEC)

1. The Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties.

2. For this purpose the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at permitting researchers to cooperate freely across borders and at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All Union activities under the Treaties in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this Title.

Article 180

(ex Article 164 TEC)

In pursuing these objectives, the Union shall carry out the following activities, complementing the activities carried out in the Member States:

(a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;

(b) promotion of cooperation in the field of Union research, technological development and demonstration with third countries and international organisations;

(c) dissemination and optimisation of the results of activities in Union research, technological development and demonstration;

(d) stimulation of the training and mobility of researchers in the Union.

Article 181

(ex Article 165 TEC)

1. The Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Union policy are mutually consistent.

2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Article 182

(ex Article 166 TEC)

1. A multiannual framework programme, setting out all the activities of the Union, shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee.

The framework programme shall:

— establish the scientific and technological objectives to be achieved by the activities provided for in Article 180 and fix the relevant priorities,

— indicate the broad lines of such activities,

— fix the maximum overall amount and the detailed rules for Union financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

5. As a complement to the activities planned in the multiannual framework programme, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall establish the measures necessary for the implementation of the European research area.

Article 183

(ex Article 167 TEC)

For the implementation of the multiannual framework programme the Union shall:

— determine the rules for the participation of undertakings, research centres and universities,

— lay down the rules governing the dissemination of research results.

Article 184

(ex Article 168 TEC)

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible Union participation.

The Union shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

Article 185

(ex Article 169 TEC)

In implementing the multiannual framework programme, the Union may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Article 186

(ex Article 170 TEC)

In implementing the multiannual framework programme the Union may make provision for cooperation in Union research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Union and the third parties concerned.

Article 187

(ex Article 171 TEC)

The Union may set up joint undertakings or any other structure necessary for the efficient execution of Union research, technological development and demonstration programmes.

Article 188

(ex Article 172 TEC)

The Council, on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 187.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 183, 184 and 185. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

Article 189

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States.

3. The Union shall establish any appropriate relations with the European Space Agency.

4. This Article shall be without prejudice to the other provisions of this Title.

Article 190

(ex Article 173 TEC)

At the beginning of each year the Commission shall send a report to the European Parliament and to the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

TITLE XX

ENVIRONMENT

Article 191

(ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:

— preserving, protecting and improving the quality of the environment,

— protecting human health,

— prudent and rational utilisation of natural resources,

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

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

— available scientific and technical data,

— environmental conditions in the various regions of the Union,

— the potential benefits and costs of action or lack of action,

— the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 192

(ex Article 175 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

— town and country planning,

— quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,

— land use, with the exception of waste management;

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.

3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of:

— temporary derogations, and/or

— financial support from the Cohesion Fund set up pursuant to Article 177.

Article 193

(ex Article 176 TEC)

The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.

TITLE XXI

ENERGY

Article 194

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

(a) ensure the functioning of the energy market;

(b) ensure security of energy supply in the Union;

(c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

(d) promote the interconnection of energy networks.

2. Without prejudice to the application of other provisions of the Treaties, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures necessary to achieve the objectives in paragraph 1. Such measures shall be adopted after consultation of the Economic and Social Committee and the Committee of the Regions.

Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c).

3. By way of derogation from paragraph 2, the Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament, establish the measures referred to therein when they are primarily of a fiscal nature.

TITLE XXII

TOURISM

Article 195

1. The Union shall complement the action of the Member States in the tourism sector, in particular by promoting the competitiveness of Union undertakings in that sector.

To that end, Union action shall be aimed at:

(a) encouraging the creation of a favourable environment for the development of undertakings in this sector;

(b) promoting cooperation between the Member States, particularly by the exchange of good practice.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish specific measures to complement actions within the Member States to achieve the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States.

TITLE XXIII

CIVIL PROTECTION

Article 196

1. The Union shall encourage cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters.

Union action shall aim to:

(a) support and complement Member States' action at national, regional and local level in risk prevention, in preparing their civil-protection personnel and in responding to natural or man-made disasters within the Union;

(b) promote swift, effective operational cooperation within the Union between national civil-protection services;

(c) promote consistency in international civil-protection work.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure shall establish the measures necessary to help achieve the objectives referred to in paragraph 1, excluding any harmonisation of the laws and regulations of the Member States.

TITLE XXIV

ADMINISTRATIVE COOPERATION

Article 197

1. Effective implementation of Union law by the Member States, which is essential for the proper functioning of the Union, shall be regarded as a matter of common interest.

2. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. Such action may include facilitating the exchange of information and of civil servants as well as supporting training schemes. No Member State shall be obliged to avail itself of such support. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish the necessary measures to this end, excluding any harmonisation of the laws and regulations of the Member States.

3. This Article shall be without prejudice to the obligations of the Member States to implement Union law or to the prerogatives and duties of the Commission. It shall also be without prejudice to other provisions of the Treaties providing for administrative cooperation among the Member States and between them and the Union.

PART FOUR

ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES

Article 198

(ex Article 182 TEC)

The Member States agree to associate with the Union the non-European countries and territories which have special relations with Denmark, France, the Netherlands and the United Kingdom. These countries and territories (hereinafter called the 'countries and territories') are listed in Annex II.

The purpose of association shall be to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Union as a whole.

In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.

Article 199

(ex Article 183 TEC)

Association shall have the following objectives.

1. Member States shall apply to their trade with the countries and territories the same treatment as they accord each other pursuant to the Treaties.

2. Each country or territory shall apply to its trade with Member States and with the other countries and territories the same treatment as that which it applies to the European State with which is has special relations.

3. The Member States shall contribute to the investments required for the progressive development of these countries and territories.

4. For investments financed by the Union, participation in tenders and supplies shall be open on equal terms to all natural and legal persons who are nationals of a Member State or of one of the countries and territories.

5. In relations between Member States and the countries and territories the right of establishment of nationals and companies or firms shall be regulated in accordance with the provisions and procedures laid down in the Chapter relating to the right of establishment and on a non-discriminatory basis, subject to any special provisions laid down pursuant to Article 203.

Article 200

(ex Article 184 TEC)

1. Customs duties on imports into the Member States of goods originating in the countries and territories shall be prohibited in conformity with the prohibition of customs duties between Member States in accordance with the provisions of the Treaties.

2. Customs duties on imports into each country or territory from Member States or from the other countries or territories shall be prohibited in accordance with the provisions of Article 30.

3. The countries and territories may, however, levy customs duties which meet the needs of their development and industrialisation or produce revenue for their budgets.

The duties referred to in the preceding subparagraph may not exceed the level of those imposed on imports of products from the Member State with which each country or territory has special relations.

4. Paragraph 2 shall not apply to countries and territories which, by reason of the particular international obligations by which they are bound, already apply a non-discriminatory customs tariff.

5. The introduction of or any change in customs duties imposed on goods imported into the countries and territories shall not, either in law or in fact, give rise to any direct or indirect discrimination between imports from the various Member States.

Article 201

(ex Article 185 TEC)

If the level of the duties applicable to goods from a third country on entry into a country or territory is liable, when the provisions of Article 200(1) have been applied, to cause deflections of trade to the detriment of any Member State, the latter may request the Commission to propose to the other Member States the measures needed to remedy the situation.

Article 202

(ex Article 186 TEC)

Subject to the provisions relating to public health, public security or public policy, freedom of movement within Member States for workers from the countries and territories, and within the countries and territories for workers from Member States, shall be regulated by acts adopted in accordance with Article 203.

Article 203

(ex Article 187 TEC)

The Council, acting unanimously on a proposal from the Commission, shall, on the basis of the experience acquired under the association of the countries and territories with the Union and of the principles set out in the Treaties, lay down provisions as regards the detailed rules and the procedure for the association of the countries and territories with the Union. Where the provisions in question are adopted by the Council in accordance with a special legislative procedure, it shall act unanimously on a proposal from the Commission and after consulting the European Parliament.

Article 204

(ex Article 188 TEC)

The provisions of Articles 198 to 203 shall apply to Greenland, subject to the specific provisions for Greenland set out in the Protocol on special arrangements for Greenland, annexed to the Treaties.

PART FIVE

THE UNION'S EXTERNAL ACTION

TITLE I

GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION

Article 205

The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union.

TITLE II

COMMON COMMERCIAL POLICY

Article 206

(ex Article 131 TEC)

By establishing a customs union in accordance with Articles 28 to 32, the Union shall contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

Article 207

(ex Article 133 TEC)

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, Article 218 shall apply, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. For the negotiation and conclusion of the agreements referred to in paragraph 3, the Council shall act by a qualified majority.

For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council shall also act unanimously for the negotiation and conclusion of agreements:

(a) in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;

(b) in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

5. The negotiation and conclusion of international agreements in the field of transport shall be subject to Title VI of Part Three and to Article 218.

6. The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States in so far as the Treaties exclude such harmonisation.

TITLE III

COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

CHAPTER 1

DEVELOPMENT COOPERATION

Article 208

(ex Article 177 TEC)

1. Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

Article 209

(ex Article 179 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article 21 of the Treaty on European Union and in Article 208 of this Treaty.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

Article 210

(ex Article 180 TEC)

1. In order to promote the complementarity and efficiency of their action, the Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences. They may undertake joint action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Article 211

(ex Article 181 TEC)

Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations.

CHAPTER 2

ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION WITH THIRD COUNTRIES

Article 212

(ex Article 181*a* TEC)

1. Without prejudice to the other provisions of the Treaties, and in particular Articles 208 to 211, the Union shall carry out economic, financial and technical cooperation measures, including assistance, in particular financial assistance, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's operations and those of the Member States shall complement and reinforce each other.

2. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The first subparagraph shall be without prejudice to the Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 213

When the situation in a third country requires urgent financial assistance from the Union, the Council shall adopt the necessary decisions on a proposal from the Commission.

CHAPTER 3

HUMANITARIAN AID

Article 214

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide *ad hoc* assistance and relief and protection for people in third countries who are victims of natural or man-made disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's measures and those of the Member States shall complement and reinforce each other.

2. Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.

3. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.

4. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in paragraph 1 and in Article 21 of the Treaty on European Union.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude agreements.

5. In order to establish a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union, a European Voluntary Humanitarian Aid Corps shall be set up. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall determine the rules and procedures for the operation of the Corps.

6. The Commission may take any useful initiative to promote coordination between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.

7. The Union shall ensure that its humanitarian aid operations are coordinated and consistent with those of international organisations and bodies, in particular those forming part of the United Nations system.

TITLE IV

RESTRICTIVE MEASURES

Article 215

(ex Article 301 TEC)

1. Where a decision, adopted in accordance with Chapter 2 of Title V of the Treaty on European Union, provides for the interruption or reduction, in part or completely, of economic and financial relations with one or more third countries, the Council, acting by a qualified majority on a joint proposal from the High Representative of the Union for Foreign Affairs and Security Policy and the Commission, shall adopt the necessary measures. It shall inform the European Parliament thereof.

2. Where a decision adopted in accordance with Chapter 2 of Title V of the Treaty on European Union so provides, the Council may adopt restrictive measures under the procedure referred to in paragraph 1 against natural or legal persons and groups or non-State entities.

3. The acts referred to in this Article shall include necessary provisions on legal safeguards.

TITLE V

INTERNATIONAL AGREEMENTS

Article 216

1. The Union may conclude an agreement with one or more third countries or international organisations where the Treaties so provide or where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope.

2. Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.

Article 217

(ex Article 310 TEC)

The Union may conclude with one or more third countries or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedure.

Article 218

(ex Article 300 TEC)

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.

3. The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.

4. The Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.

6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Except where agreements relate exclusively to the common foreign and security policy, the Council shall adopt the decision concluding the agreement:

(a) after obtaining the consent of the European Parliament in the following cases:

(i) association agreements;

(ii) agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(iii) agreements establishing a specific institutional framework by organising cooperation procedures;

(iv) agreements with important budgetary implications for the Union;

(v) agreements covering fields to which either the ordinary legislative procedure applies, or the special legislative procedure where consent by the European Parliament is required.

The European Parliament and the Council may, in an urgent situation, agree upon a time-limit for consent.

(b) after consulting the European Parliament in other cases. The European Parliament shall deliver its opinion within a time-limit which the Council may set depending on the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

8. The Council shall act by a qualified majority throughout the procedure.

However, it shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and the agreements referred to in Article 212 with the States which are candidates for accession. The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms; the decision concluding this agreement shall enter into force after it has been approved by the Member States in accordance with their respective constitutional requirements.

9. The Council, on a proposal from the Commission or the High Representative of the Union for Foreign Affairs and Security Policy, shall adopt a decision suspending application of an agreement and establishing the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.

10. The European Parliament shall be immediately and fully informed at all stages of the procedure.

11. A Member State, the European Parliament, the Council or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised.

Article 219

(ex Article 111(1) to (3) and (5) TEC)

1. By way of derogation from Article 218, the Council, either on a recommendation from the European Central Bank or on a recommendation from the Commission and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, may conclude formal agreements on an exchange-rate system for the euro in relation to the currencies of third States. The Council shall act unanimously after consulting the European Parliament and in accordance with the procedure provided for in paragraph 3.

The Council may, either on a recommendation from the European Central Bank or on a recommendation from the Commission, and after consulting the European Central Bank, in an endeavour to reach a consensus consistent with the objective of price stability, adopt, adjust or abandon the central rates of the euro within the exchange-rate system. The President of the Council shall inform the European Parliament of the adoption, adjustment or abandonment of the euro central rates.

2. In the absence of an exchange-rate system in relation to one or more currencies of third States as referred to in paragraph 1, the Council, either on a recommendation from the Commission and after consulting the European Central Bank or on a recommendation from the European Central Bank, may formulate general orientations for exchange-rate policy in relation to these currencies. These general orientations shall be without prejudice to the primary objective of the ESCB to maintain price stability.

3. By way of derogation from Article 218, where agreements concerning monetary or foreign exchange regime matters need to be negotiated by the Union with one or more third States or international organisations, the Council, on a recommendation from the Commission and after consulting the European Central Bank, shall decide the arrangements for the negotiation and for the conclusion of such agreements. These arrangements shall ensure that the Union expresses a single position. The Commission shall be fully associated with the negotiations.

4. Without prejudice to Union competence and Union agreements as regards economic and monetary union, Member States may negotiate in international bodies and conclude international agreements.

TITLE VI

THE UNION'S RELATIONS WITH INTERNATIONAL ORGANISATIONS AND THIRD COUNTRIES AND UNION DELEGATIONS

Article 220

(ex Articles 302 to 304 TEC)

1. The Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development.

The Union shall also maintain such relations as are appropriate with other international organisations.

2. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission shall implement this Article.

Article 221

1. Union delegations in third countries and at international organisations shall represent the Union.

2. Union delegations shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy. They shall act in close cooperation with Member States' diplomatic and consular missions.

TITLE VII

SOLIDARITY CLAUSE

Article 222

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a) — prevent the terrorist threat in the territory of the Member States;

— protect democratic institutions and the civilian population from any terrorist attack;

— assist a Member State in its territory, at the request of its political authorities, in the event of a terrorist attack;

(b) assist a Member State in its territory, at the request of its political authorities, in the event of a natural or man-made disaster.

2. Should a Member State be the object of a terrorist attack or the victim of a natural or man-made disaster, the other Member States shall assist it at the request of its political authorities. To that end, the Member States shall coordinate between themselves in the Council.

3. The arrangements for the implementation by the Union of the solidarity clause shall be defined by a decision adopted by the Council acting on a joint proposal by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy. The Council shall act in accordance with Article 31(1) of the Treaty on European Union where this decision has defence implications. The European Parliament shall be informed.

For the purposes of this paragraph and without prejudice to Article 240, the Council shall be assisted by the Political and Security Committee with the support of the structures developed in the context of the common security and defence policy and by the Committee referred to in Article 71; the two committees shall, if necessary, submit joint opinions.

4. The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action.

PART SIX
INSTITUTIONAL AND FINANCIAL PROVISIONS

TITLE I
INSTITUTIONAL PROVISIONS

CHAPTER 1
THE INSTITUTIONS

SECTION 1
THE EUROPEAN PARLIAMENT

Article 223

(ex Article 190(4) and (5) TEC)

1. The European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its Members by direct universal suffrage in accordance with a uniform procedure in all Member States or in accordance with principles common to all Member States.

The Council, acting unanimously in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, which shall act by a majority of its component Members, shall lay down the necessary provisions. These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements.

2. The European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure after seeking an opinion from the Commission and with the consent of the Council, shall lay down the regulations and general conditions governing the performance of the duties of its Members. All rules or conditions relating to the taxation of Members or former Members shall require unanimity within the Council.

Article 224

(ex Article 191, second subparagraph, TEC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding.

Article 225

(ex Article 192, second subparagraph, TEC)

The European Parliament may, acting by a majority of its component Members, request the Commission to submit any appropriate proposal on matters on which it considers that a Union act is required for the purpose of implementing the Treaties. If the Commission does not submit a proposal, it shall inform the European Parliament of the reasons.

Article 226

(ex Article 193 TEC)

In the course of its duties, the European Parliament may, at the request of a quarter of its component Members, set up a temporary Committee of Inquiry to investigate, without prejudice to the powers conferred by the Treaties on other institutions or bodies, alleged contraventions or maladministration in the implementation of Union law, except where the alleged facts are being examined before a court and while the case is still subject to legal proceedings.

The temporary Committee of Inquiry shall cease to exist on the submission of its report.

The detailed provisions governing the exercise of the right of inquiry shall be determined by the European Parliament, acting by means of regulations on its own initiative in accordance with a special legislative procedure, after obtaining the consent of the Council and the Commission.

Article 227

(ex Article 194 TEC)

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the right to address, individually or in association with other citizens or persons, a petition to the European Parliament on a matter which comes within the Union's fields of activity and which affects him, her or it directly.

Article 228

(ex Article 195 TEC)

1. A European Ombudsman, elected by the European Parliament, shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the Court of Justice of the European Union acting in its judicial role. He or she shall examine such complaints and report on them.

In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution, body, office or agency concerned, which shall have a period of three months in which to inform him of its views. The Ombudsman shall then forward a report to the European Parliament and the institution, body, office or agency concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The Ombudsman shall be elected after each election of the European Parliament for the duration of its term of office. The Ombudsman shall be eligible for reappointment.

The Ombudsman may be dismissed by the Court of Justice at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

4. The European Parliament acting by means of regulations on its own initiative in accordance with a special legislative procedure shall, after seeking an opinion from the Commission and with the consent of the Council, lay down the regulations and general conditions governing the performance of the Ombudsman's duties.

Article 229

(ex Article 196 TEC)

The European Parliament shall hold an annual session. It shall meet, without requiring to be convened, on the second Tuesday in March.

The European Parliament may meet in extraordinary part-session at the request of a majority of its component Members or at the request of the Council or of the Commission.

Article 230

(ex Article 197, second, third and fourth paragraph, TEC)

The Commission may attend all the meetings and shall, at its request, be heard.

The Commission shall reply orally or in writing to questions put to it by the European Parliament or by its Members.

The European Council and the Council shall be heard by the European Parliament in accordance with the conditions laid down in the Rules of Procedure of the European Council and those of the Council.

Article 231

(ex Article 198 TEC)

Save as otherwise provided in the Treaties, the European Parliament shall act by a majority of the votes cast.

The Rules of Procedure shall determine the quorum.

Article 232

(ex Article 199 TEC)

The European Parliament shall adopt its Rules of Procedure, acting by a majority of its Members.

The proceedings of the European Parliament shall be published in the manner laid down in the Treaties and in its Rules of Procedure.

Article 233

(ex Article 200 TEC)

The European Parliament shall discuss in open session the annual general report submitted to it by the Commission.

Article 234

(ex Article 201 TEC)

If a motion of censure on the activities of the Commission is tabled before it, the European Parliament shall not vote thereon until at least three days after the motion has been tabled and only by open vote.

If the motion of censure is carried by a two-thirds majority of the votes cast, representing a majority of the component Members of the European Parliament, the members of the Commission shall resign as a body and the High Representative of the Union for Foreign Affairs and Security Policy shall resign from duties that he or she carries out in the Commission. They shall remain in office and continue to deal with current business until they are replaced in accordance with Article 17 of the Treaty on European Union. In this case, the term of office of the members of the Commission appointed to replace them shall expire on the date on which the term of office of the members of the Commission obliged to resign as a body would have expired.

SECTION 2

THE EUROPEAN COUNCIL

Article 235

1. Where a vote is taken, any member of the European Council may also act on behalf of not more than one other member.

Article 16(4) of the Treaty on European Union and Article 238(2) of this Treaty shall apply to the European Council when it is acting by a qualified majority. Where the European Council decides by vote, its President and the President of the Commission shall not take part in the vote.

Abstentions by members present in person or represented shall not prevent the adoption by the European Council of acts which require unanimity.

2. The President of the European Parliament may be invited to be heard by the European Council.

3. The European Council shall act by a simple majority for procedural questions and for the adoption of its Rules of Procedure.

4. The European Council shall be assisted by the General Secretariat of the Council.

Article 236

The European Council shall adopt by a qualified majority:

(a) a decision establishing the list of Council configurations, other than those of the General Affairs Council and of the Foreign Affairs Council, in accordance with Article 16(6) of the Treaty on European Union;

(b) a decision on the Presidency of Council configurations, other than that of Foreign Affairs, in accordance with Article 16(9) of the Treaty on European Union.

SECTION 3

THE COUNCIL

Article 237

(ex Article 204 TEC)

The Council shall meet when convened by its President on his own initiative or at the request of one of its Members or of the Commission.

Article 238

(ex Article 205(1) and (2), TEC)

1. Where it is required to act by a simple majority, the Council shall act by a majority of its component members.

2. By way of derogation from Article 16(4) of the Treaty on European Union, as from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional

provisions, where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council, representing Member States comprising at least 65 % of the population of the Union.

3. As from 1 November 2014 and subject to the provisions laid down in the Protocol on transitional provisions, in cases where, under the Treaties, not all the members of the Council participate in voting, a qualified majority shall be defined as follows:

(a) A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

A blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained;

(b) By way of derogation from point (a), where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States.

4. Abstentions by Members present in person or represented shall not prevent the adoption by the Council of acts which require unanimity.

Article 239

(ex Article 206 TEC)

Where a vote is taken, any Member of the Council may also act on behalf of not more than one other member.

Article 240

(ex Article 207 TEC)

1. A committee consisting of the Permanent Representatives of the Governments of the Member States shall be responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the latter. The Committee may adopt procedural decisions in cases provided for in the Council's Rules of Procedure.

2. The Council shall be assisted by a General Secretariat, under the responsibility of a Secretary-General appointed by the Council.

The Council shall decide on the organisation of the General Secretariat by a simple majority.

3. The Council shall act by a simple majority regarding procedural matters and for the adoption of its Rules of Procedure.

Article 241

(ex Article 208 TEC)

The Council, acting by a simple majority, may request the Commission to undertake any studies the Council considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals. If the Commission does not submit a proposal, it shall inform the Council of the reasons.

Article 242

(ex Article 209 TEC)

The Council, acting by a simple majority shall, after consulting the Commission, determine the rules governing the committees provided for in the Treaties.

Article 243

(ex Article 210 TEC)

The Council shall determine the salaries, allowances and pensions of the President of the European Council, the President of the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, the Members of the Commission, the Presidents, Members and Registrars of the Court of Justice of the European Union, and the Secretary-General of the Council. It shall also determine any payment to be made instead of remuneration.

SECTION 4

THE COMMISSION

Article 244

In accordance with Article 17(5) of the Treaty on European Union, the Members of the Commission shall be chosen on the basis of a system of rotation established unanimously by the European Council and on the basis of the following principles:

(a) Member States shall be treated on a strictly equal footing as regards determination of the sequence of, and the time spent by, their nationals as members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one;

(b) subject to point (a), each successive Commission shall be so composed as to reflect satisfactorily the demographic and geographical range of all the Member States.

Article 245

(ex Article 213 TEC)

The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.

Article 246

(ex Article 215 TEC)

Apart from normal replacement, or death, the duties of a Member of the Commission shall end when he resigns or is compulsorily retired.

A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the Member's term of office by a new Member of the same nationality appointed by the Council, by common accord with the President of the Commission, after consulting the European Parliament and in accordance with the criteria set out in the second subparagraph of Article 17(3) of the Treaty on European Union.

The Council may, acting unanimously on a proposal from the President of the Commission, decide that such a vacancy need not be filled, in particular when the remainder of the Member's term of office is short.

In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his term of office. The procedure laid down in the first subparagraph of Article 17(7) of the Treaty on European Union shall be applicable for the replacement of the President.

In the event of resignation, compulsory retirement or death, the High Representative of the Union for Foreign Affairs and Security Policy shall be replaced, for the remainder of his or her term of office, in accordance with Article 18(1) of the Treaty on European Union.

In the case of the resignation of all the Members of the Commission, they shall remain in office and continue to deal with current business until they have been replaced, for the remainder of their term of office, in accordance with Article 17 of the Treaty on European Union.

Article 247

(ex Article 216 TEC)

If any Member of the Commission no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, compulsorily retire him.

Article 248

(ex Article 217(2) TEC)

Without prejudice to Article 18(4) of the Treaty on European Union, the responsibilities incumbent upon the Commission shall be structured and allocated among its members by its President, in accordance with Article 17(6) of that Treaty. The President may reshuffle the allocation of those responsibilities during the Commission's term of office. The Members of the Commission shall carry out the duties devolved upon them by the President under his authority.

Article 249

(ex Articles 218(2) and 212 TEC)

1. The Commission shall adopt its Rules of Procedure so as to ensure that both it and its departments operate. It shall ensure that these Rules are published.

2. The Commission shall publish annually, not later than one month before the opening of the session of the European Parliament, a general report on the activities of the Union.

Article 250

(ex Article 219 TEC)

The Commission shall act by a majority of its Members.

Its Rules of Procedure shall determine the quorum.

SECTION 5

THE COURT OF JUSTICE OF THE EUROPEAN UNION

Article 251

(ex Article 221 TEC)

The Court of Justice shall sit in chambers or in a Grand Chamber, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice of the European Union.

When provided for in the Statute, the Court of Justice may also sit as a full Court.

Article 252

(ex Article 222 TEC)

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council, acting unanimously, may increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his involvement.

Article 253

(ex Article 223 TEC)

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Retiring Judges and Advocates-General may be reappointed.

The Court of Justice shall appoint its Registrar and lay down the rules governing his service.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the approval of the Council.

Article 254

(ex Article 224 TEC)

The number of Judges of the General Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the General Court to be assisted by Advocates-General.

The members of the General Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States for a term of six years, after consultation of the panel provided for in Article 255. The membership shall be partially renewed every three years. Retiring members shall be eligible for reappointment.

The Judges shall elect the President of the General Court from among their number for a term of three years. He may be re-elected.

The General Court shall appoint its Registrar and lay down the rules governing his service.

The General Court shall establish its Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the Statute of the Court of Justice of the European Union provides otherwise, the provisions of the Treaties relating to the Court of Justice shall apply to the General Court.

Article 255

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court before the governments of the Member States make the appointments referred to in Articles 253 and 254.

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a decision establishing the panel's operating rules and a decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

Article 256

(ex Article 225 TEC)

1. The General Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles 263, 265, 268, 270 and 272, with the exception of those assigned to a specialised court set up under Article 257 and those reserved in the Statute for the Court of Justice. The Statute may provide for the General Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the General Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The General Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts.

Decisions given by the General Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3. The General Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article 267, in specific areas laid down by the Statute.

Where the General Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the General Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

Article 257

(ex Article 225*a* TEC)

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish specialised courts attached to the General Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. The European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

The regulation establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.

Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the regulation establishing the specialised court, a right of appeal also on matters of fact, before the General Court.

The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

Unless the regulation establishing the specialised court provides otherwise, the provisions of the Treaties relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.

Article 258

(ex Article 226 TEC)

If the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

Article 259

(ex Article 227 TEC)

A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Treaties, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

Article 260

(ex Article 228 TEC)

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article 259.

3. When the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

Article 261

(ex Article 229 TEC)

Regulations adopted jointly by the European Parliament and the Council, and by the Council, pursuant to the provisions of the Treaties, may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in such regulations.

Article 262

(ex Article 229*a* TEC)

Without prejudice to the other provisions of the Treaties, the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, may adopt provisions to confer jurisdiction, to the extent that it shall determine, on the Court of Justice of the European Union in disputes relating to the application of acts adopted on the basis of the Treaties which create European intellectual property rights. These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements.

Article 263

(ex Article 230 TEC)

The Court of Justice of the European Union shall review the legality of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects *vis-à-vis* third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties.

It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaties or of any rule of law relating to their application, or misuse of powers.

The Court shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies, offices or agencies intended to produce legal effects in relation to them.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Article 264

(ex Article 231 TEC)

If the action is well founded, the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

Article 265

(ex Article 232 TEC)

Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Treaties, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This Article shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article 266

(ex Article 233 TEC)

The institution, body, office or entity whose act has been declared void or whose failure to act has been declared contrary to the Treaties shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article 340.

Article 267

(ex Article 234 TEC)

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.

Article 268

(ex Article 235 TEC)

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article 340.

Article 269

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or by the Council pursuant to Article 7 of the Treaty on European Union solely at the request of the Member State concerned by a determination of the European Council or of the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

Article 270

(ex Article 236 TEC)

The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

Article 271

(ex Article 237 TEC)

The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

(a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article 258;

(b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article 263;

(c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article 263, and solely on the grounds of non-compliance with the procedure provided for in Article 19(2), (5), (6) and (7) of the Statute of the Bank;

(d) the fulfilment by national central banks of obligations under the Treaties and the Statute of the ESCB and of the ECB. In this connection the powers of the Governing Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article 258. If the Court finds that a national central bank has failed to fulfil an obligation under the Treaties, that bank shall be required to take the necessary measures to comply with the judgment of the Court.

Article 272

(ex Article 238 TEC)

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

Article 273

(ex Article 239 TEC)

The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties.

Article 274

(ex Article 240 TEC)

Save where jurisdiction is conferred on the Court of Justice of the European Union by the Treaties, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

Article 275

The Court of Justice of the European Union shall not have jurisdiction with respect to the provisions relating to the common foreign and security policy nor with respect to acts adopted on the basis of those provisions.

However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union.

Article 276

In exercising its powers regarding the provisions of Chapters 4 and 5 of Title V of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 277

(ex Article 241 TEC)

Notwithstanding the expiry of the period laid down in Article 263, sixth paragraph, any party may, in proceedings in which an act of general application adopted by an institution, body, office or agency of the Union is at issue, plead the grounds specified in Article 263, second paragraph, in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

Article 278

(ex Article 242 TEC)

Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

Article 279

(ex Article 243 TEC)

The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

Article 280

(ex Article 244 TEC)

The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article 299.

Article 281

(ex Article 245 TEC)

The Statute of the Court of Justice of the European Union shall be laid down in a separate Protocol.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may amend the provisions of the Statute, with the exception of Title I and Article 64. The European Parliament and the Council shall act either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.

SECTION 6

THE EUROPEAN CENTRAL BANK

Article 282

1. The European Central Bank, together with the national central banks, shall constitute the European System of Central Banks (ESCB). The European Central Bank, together with the national central banks of the Member States whose currency is the euro, which constitute the Eurosystem, shall conduct the monetary policy of the Union.

2. The ESCB shall be governed by the decision-making bodies of the European Central Bank. The primary objective of the ESCB shall be to maintain price stability. Without prejudice to that objective, it shall support the general economic policies in the Union in order to contribute to the achievement of the latter's objectives.

3. The European Central Bank shall have legal personality. It alone may authorise the issue of the euro. It shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.

4. The European Central Bank shall adopt such measures as are necessary to carry out its tasks in accordance with Articles 127 to 133, with Article 138, and with the conditions laid down in the Statute of the ESCB and of the ECB. In accordance with these same Articles, those Member States whose currency is not the euro, and their central banks, shall retain their powers in monetary matters.

5. Within the areas falling within its responsibilities, the European Central Bank shall be consulted on all proposed Union acts, and all proposals for regulation at national level, and may give an opinion.

Article 283

(ex Article 112 TEC)

1. The Governing Council of the European Central Bank shall comprise the members of the Executive Board of the European Central Bank and the Governors of the national central banks of the Member States whose currency is the euro.

2. The Executive Board shall comprise the President, the Vice-President and four other members.

The President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after it has consulted the European Parliament and the Governing Council of the European Central Bank.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

Article 284

(ex Article 113 TEC)

1. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the Governing Council of the European Central Bank.

The President of the Council may submit a motion for deliberation to the Governing Council of the European Central Bank.

2. The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ESCB.

3. The European Central Bank shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and current year to the European Parliament, the Council and the Commission, and also to the European Council. The President of the European Central Bank shall present this report to the Council and to the European Parliament, which may hold a general debate on that basis.

The President of the European Central Bank and the other members of the Executive Board may, at the request of the European Parliament or on their own initiative, be heard by the competent committees of the European Parliament.

SECTION 7

THE COURT OF AUDITORS

Article 285

(ex Article 246 TEC)

The Court of Auditors shall carry out the Union's audit.

It shall consist of one national of each Member State. Its Members shall be completely independent in the performance of their duties, in the Union's general interest.

Article 286

(ex Article 247 TEC)

1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

2. The Members of the Court of Auditors shall be appointed for a term of six years. The Council, after consulting the European Parliament, shall adopt the list of Members drawn up in accordance with the proposals made by each Member State. The term of office of the Members of the Court of Auditors shall be renewable.

They shall elect the President of the Court of Auditors from among their number for a term of three years. The President may be re-elected.

3. In the performance of these duties, the Members of the Court of Auditors shall neither seek nor take instructions from any government or from any other body. The Members of the Court of Auditors shall refrain from any action incompatible with their duties.

4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 6.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

7. The Council shall determine the conditions of employment of the President and the Members of the Court of Auditors and in particular their salaries, allowances and pensions. It shall also determine any payment to be made instead of remuneration.

8. The provisions of the Protocol on the privileges and immunities of the European Union applicable to the Judges of the Court of Justice of the European Union shall also apply to the Members of the Court of Auditors.

Article 287

(ex Article 248 TEC)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council.

CHAPTER 2

LEGAL ACTS OF THE UNION, ADOPTION PROCEDURES AND OTHER PROVISIONS

SECTION 1

THE LEGAL ACTS OF THE UNION

Article 288

(ex Article 249 TEC)

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

Article 289

1. The ordinary legislative procedure shall consist in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission. This procedure is defined in Article 294.

2. In the specific cases provided for by the Treaties, the adoption of a regulation, directive or decision by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, shall constitute a special legislative procedure.

3. Legal acts adopted by legislative procedure shall constitute legislative acts.

4. In the specific cases provided for by the Treaties, legislative acts may be adopted on the initiative of a group of Member States or of the European Parliament, on a recommendation from the European Central Bank or at the request of the Court of Justice or the European Investment Bank.

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective ‘delegated’ shall be inserted in the title of delegated acts.

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word 'implementing' shall be inserted in the title of implementing acts.

Article 292

The Council shall adopt recommendations. It shall act on a proposal from the Commission in all cases where the Treaties provide that it shall adopt acts on a proposal from the Commission. It shall act unanimously in those areas in which unanimity is required for the adoption of a Union act . The Commission, and the European Central Bank in the specific cases provided for in the Treaties, shall adopt recommendations.

SECTION 2

PROCEDURES FOR THE ADOPTION OF ACTS AND OTHER PROVISIONS

Article 293

(ex Article 250 TEC)

1. Where, pursuant to the Treaties, the Council acts on a proposal from the Commission, it may amend that proposal only by acting unanimously, except in the cases referred to in paragraphs 10 and 13 of Article 294, in Articles 310, 312 and 314 and in the second paragraph of Article 315.

2. As long as the Council has not acted, the Commission may alter its proposal at any time during the procedures leading to the adoption of a Union act.

Article 294

(ex Article 251 TEC)

1. Where reference is made in the Treaties to the ordinary legislative procedure for the adoption of an act, the following procedure shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council.

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council.

4. If the Council approves the European Parliament's position, the act concerned shall be adopted in the wording which corresponds to the position of the European Parliament.

5. If the Council does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament:

(a) approves the Council's position at first reading or has not taken a decision, the act concerned shall be deemed to have been adopted in the wording which corresponds to the position of the Council;

(b) rejects, by a majority of its component members, the Council's position at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by a majority of its component members, amendments to the Council's position at first reading, the text thus amended shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council, acting by a qualified majority:

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the members representing the European Parliament within six weeks of its being convened, on the basis of the positions of the European Parliament and the Council at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

12. If, within six weeks of its being convened, the Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If they fail to do so, the proposed act shall be deemed not to have been adopted.

14. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

Special provisions

15. Where, in the cases provided for in the Treaties, a legislative act is submitted to the ordinary legislative procedure on the initiative of a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice, paragraph 2, the second sentence of paragraph 6, and paragraph 9 shall not apply.

In such cases, the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems it necessary, take part in the Conciliation Committee in accordance with paragraph 11.

Article 295

The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature.

Article 296

(ex Article 253 TEC)

Where the Treaties do not specify the type of act to be adopted, the institutions shall select it on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.

Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties.

When considering draft legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by the relevant legislative procedure in the area in question.

Article 297

(ex Article 254 TEC)

1. Legislative acts adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council.

Legislative acts adopted under a special legislative procedure shall be signed by the President of the institution which adopted them.

Legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

2. Non-legislative acts adopted in the form of regulations, directives or decisions, when the latter do not specify to whom they are addressed, shall be signed by the President of the institution which adopted them.

Regulations and directives which are addressed to all Member States, as well as decisions which do not specify to whom they are addressed, shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the twentieth day following that of their publication.

Other directives, and decisions which specify to whom they are addressed, shall be notified to those to whom they are addressed and shall take effect upon such notification.

Article 298

1. In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.

2. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.

Article 299

(ex Article 256 TEC)

Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

CHAPTER 3

THE UNION'S ADVISORY BODIES

Article 300

1. The European Parliament, the Council and the Commission shall be assisted by an Economic and Social Committee and a Committee of the Regions, exercising advisory functions.

2. The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas.

3. The Committee of the Regions shall consist of representatives of regional and local bodies who either hold a regional or local authority electoral mandate or are politically accountable to an elected assembly.

4. The members of the Economic and Social Committee and of the Committee of the Regions shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest.

5. The rules referred to in paragraphs 2 and 3 governing the nature of the composition of the Committees shall be reviewed at regular intervals by the Council to take account of economic, social and demographic developments within the Union. The Council, on a proposal from the Commission, shall adopt decisions to that end.

SECTION 1

THE ECONOMIC AND SOCIAL COMMITTEE

Article 301

(ex Article 258 TEC)

The number of members of the Economic and Social Committee shall not exceed 350.

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The Council shall determine the allowances of members of the Committee.

Article 302

(ex Article 259 TEC)

1. The members of the Committee shall be appointed for five years The Council shall adopt the list of members drawn up in accordance with the proposals made by each Member State. The term of office of the members of the Committee shall be renewable.

2. The Council shall act after consulting the Commission. It may obtain the opinion of European bodies which are representative of the various economic and social sectors and of civil society to which the Union's activities are of concern.

Article 303

(ex Article 260 TEC)

The Committee shall elect its chairman and officers from among its members for a term of two and a half years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the European Parliament, the Council or of the Commission. It may also meet on its own initiative.

Article 304

(ex Article 262 TEC)

The Committee shall be consulted by the European Parliament, by the Council or by the Commission where the Treaties so provide. The Committee may be consulted by these institutions in all cases in which they consider it appropriate. It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

SECTION 2

THE COMMITTEE OF THE REGIONS

Article 305

(ex Article 263, second, third and fourth paragraphs, TEC)

The number of members of the Committee of the Regions shall not exceed 350.

The Council, acting unanimously on a proposal from the Commission, shall adopt a decision determining the Committee's composition.

The members of the Committee and an equal number of alternate members shall be appointed for five years. Their term of office shall be renewable. The Council shall adopt the list of members and alternate members drawn up in accordance with the proposals made by each Member State. When the mandate referred to in Article 300(3) on the basis of which they were proposed comes to an end, the term of office of members of the Committee shall terminate automatically and they shall then be replaced for the remainder of the said term of office in accordance with the same procedure. No member of the Committee shall at the same time be a Member of the European Parliament.

Article 306

(ex Article 264 TEC)

The Committee of the Regions shall elect its chairman and officers from among its members for a term of two and a half years.

It shall adopt its Rules of Procedure.

The Committee shall be convened by its chairman at the request of the European Parliament, the Council or of the Commission. It may also meet on its own initiative.

Article 307

(ex Article 265 TEC)

The Committee of the Regions shall be consulted by the European Parliament, by the Council or by the Commission where the Treaties so provide and in all other cases, in particular those which concern cross-border cooperation, in which one of these institutions considers it appropriate.

The European Parliament, the Council or the Commission shall, if it considers it necessary, set the Committee, for the submission of its opinion, a time limit which may not be less than one month from the date on which the chairman receives notification to this effect. Upon expiry of the time limit, the absence of an opinion shall not prevent further action.

Where the Economic and Social Committee is consulted pursuant to Article 304, the Committee of the Regions shall be informed by the European Parliament, the Council or the Commission of the request for an opinion. Where it considers that specific regional interests are involved, the Committee of the Regions may issue an opinion on the matter.

It may issue an opinion on its own initiative in cases in which it considers such action appropriate.

The opinion of the Committee, together with a record of the proceedings, shall be forwarded to the European Parliament, to the Council and to the Commission.

CHAPTER 4

THE EUROPEAN INVESTMENT BANK

Article 308

(ex Article 266 TEC)

The European Investment Bank shall have legal personality.

The members of the European Investment Bank shall be the Member States.

The Statute of the European Investment Bank is laid down in a Protocol annexed to the Treaties. The Council acting unanimously in accordance with a special legislative procedure, at the request of the European Investment Bank and after consulting the European Parliament and the Commission, or on a proposal from the Commission and after consulting the European Parliament and the European Investment Bank, may amend the Statute of the Bank.

Article 309

(ex Article 267 TEC)

The task of the European Investment Bank shall be to contribute, by having recourse to the capital market and utilising its own resources, to the balanced and steady development of the internal market in the interest of the Union. For this purpose the Bank shall, operating on a non-profit-making basis, grant loans and give guarantees which facilitate the financing of the following projects in all sectors of the economy:

(a) projects for developing less-developed regions;

(b) projects for modernising or converting undertakings or for developing fresh activities called for by the establishment or functioning of the internal market, where these projects are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States;

(c) projects of common interest to several Member States which are of such a size or nature that they cannot be entirely financed by the various means available in the individual Member States.

In carrying out its task, the Bank shall facilitate the financing of investment programmes in conjunction with assistance from the Structural Funds and other Union Financial Instruments.

TITLE II

FINANCIAL PROVISIONS

Article 310

(ex Article 268 TEC)

1. All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

The Union's annual budget shall be established by the European Parliament and the Council in accordance with Article 314.

The revenue and expenditure shown in the budget shall be in balance.

2. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the regulation referred to in Article 322.

3. The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure in accordance with the regulation referred to in Article 322, except in cases for which that law provides.

4. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework referred to in Article 312.

5. The budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with this principle.

6. The Union and the Member States, in accordance with Article 325, shall counter fraud and any other illegal activities affecting the financial interests of the Union.

CHAPTER 1

THE UNION'S OWN RESOURCES

Article 311

(ex Article 269 TEC)

The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The Council, acting by means of regulations in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system in so far as this is provided for in the decision adopted on the basis of the third paragraph. The Council shall act after obtaining the consent of the European Parliament.

CHAPTER 2

THE MULTIANNUAL FINANCIAL FRAMEWORK

Article 312

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources.

It shall be established for a period of at least five years.

The annual budget of the Union shall comply with the multiannual financial framework.

2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

The European Council may, unanimously, adopt a decision authorising the Council to act by a qualified majority when adopting the regulation referred to in the first subparagraph.

3. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity.

The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.

4. Where no Council regulation determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted.

5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption.

CHAPTER 3

THE UNION'S ANNUAL BUDGET

Article 313

(ex Article 272(1), TEC)

The financial year shall run from 1 January to 31 December.

Article 314

(ex Article 272(2) to (10), TEC)

The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions.

1. With the exception of the European Central Bank, each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget. which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.

4. If, within forty-two days of such communication, the European Parliament:

(a) approves the position of the Council, the budget shall be adopted;

(b) has not taken a decision, the budget shall be deemed to have been adopted;

(c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the

Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.

5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.

7. If, within the period of fourteen days referred to in paragraph 6:

(a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text; or

(b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission; or

(c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission; or

(d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation Committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.

8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted.

10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.

Article 315

(ex Article 273 TEC)

If, at the beginning of a financial year, the budget has not yet been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget in accordance with the provisions of the Regulations made pursuant to Article 322; that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

The Council on a proposal by the Commission, may, provided that the other conditions laid down in the first paragraph are observed, authorise expenditure in excess of one twelfth in accordance with the regulations made pursuant to Article 322. The Council shall forward the decision immediately to the European Parliament.

The decision referred to in the second paragraph shall lay down the necessary measures relating to resources to ensure application of this Article, in accordance with the acts referred to in Article 311.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component Members, has not decided to reduce this expenditure within that time-limit.

Article 316

(ex Article 271 TEC)

In accordance with conditions to be laid down pursuant to Article 322, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the regulations made pursuant to Article 322.

The expenditure of the European Parliament, the European Council and the Council, the Commission and the Court of Justice of the European Union shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

CHAPTER 4

IMPLEMENTATION OF THE BUDGET AND DISCHARGE

Article 317

(ex Article 274 TEC)

The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 322, transfer appropriations from one chapter to another or from one subdivision to another.

Article 318

(ex Article 275 TEC)

The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union.

The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 319.

Article 319

(ex Article 276 TEC)

1. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in Article 318, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 287(1), second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

CHAPTER 5

COMMON PROVISIONS

Article 320

(ex Article 277 TEC)

The multiannual financial framework and the annual budget shall be drawn up in euro.

Article 321

(ex Article 278 TEC)

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of the Treaties. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Article 322

(ex Article 279 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations:

(a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;

(b) rules providing for checks on the responsibility of financial actors, in particular authorising officers and accounting officers.

2. The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

Article 323

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.

Article 324

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened, on the initiative of the Commission, under the budgetary procedures referred to in this Title. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the positions of the institutions over which they preside in order to facilitate the implementation of this Title.

CHAPTER 6

COMBATTING FRAUD

Article 325

(ex Article 280 TEC)

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

TITLE III

ENHANCED COOPERATION

Article 326

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

Any enhanced cooperation shall comply with the Treaties and Union law.

Such cooperation shall not undermine the internal market or economic, social and territorial cohesion. It shall not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.

Article 327

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

Any enhanced cooperation shall respect the competences, rights and obligations of those Member States which do not participate in it. Those Member States shall not impede its implementation by the participating Member States.

Article 328

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

1. When enhanced cooperation is being established, it shall be open to all Member States, subject to compliance with any conditions of participation laid down by the authorising decision. It shall also be open to them at any other time, subject to compliance with the acts already adopted within that framework, in addition to those conditions.

The Commission and the Member States participating in enhanced cooperation shall ensure that they promote participation by as many Member States as possible.

2. The Commission and, where appropriate, the High Representative of the Union for Foreign Affairs and Security Policy shall keep the European Parliament and the Council regularly informed regarding developments in enhanced cooperation.

Article 329

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Treaties, with the exception of fields of exclusive competence and the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with the enhanced cooperation referred to in the first subparagraph shall be granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. The request of the Member States which wish to establish enhanced cooperation between themselves within the framework of the common foreign and security policy shall be addressed to the Council. It shall be forwarded to the High Representative of the Union for Foreign Affairs and Security Policy, who shall give an opinion on whether the enhanced cooperation proposed is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.

Article 330

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

All members of the Council may participate in its deliberations, but only members of the Council representing the Member States participating in enhanced cooperation shall take part in the vote.

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

A qualified majority shall be defined in accordance with Article 238(3).

Article 331

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

1. Any Member State which wishes to participate in enhanced cooperation in progress in one of the areas referred to in Article 329(1) shall notify its intention to the Council and the Commission.

The Commission shall, within four months of the date of receipt of the notification, confirm the participation of the Member State concerned. It shall note where necessary that the conditions of participation have been fulfilled and shall adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation.

However, if the Commission considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request. On the expiry of that deadline, it shall re-examine the request, in accordance with the procedure set out in the second subparagraph. If the Commission considers that the conditions of participation have still not been met, the Member State concerned may refer the matter to the Council, which shall decide on the request. The Council shall act in accordance with Article 330. It may also adopt the transitional measures referred to in the second subparagraph on a proposal from the Commission.

2. Any Member State which wishes to participate in enhanced cooperation in progress in the framework of the common foreign and security policy shall notify its intention to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after noting, where necessary, that the conditions of participation have been fulfilled. The Council, on a proposal from the High Representative, may also adopt any transitional measures necessary with regard to the application of the acts already adopted within the framework of enhanced cooperation. However, if the Council considers that the conditions of participation have not been fulfilled, it shall indicate the arrangements to be adopted to fulfil those conditions and shall set a deadline for re-examining the request for participation.

For the purposes of this paragraph, the Council shall act unanimously and in accordance with Article 330.

Article 332

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 333

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

1. Where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall act unanimously, the Council, acting unanimously in accordance with the arrangements laid down in Article 330, may adopt a decision stipulating that it will act by a qualified majority.

2. Where a provision of the Treaties which may be applied in the context of enhanced cooperation stipulates that the Council shall adopt acts under a special legislative procedure, the Council, acting unanimously in accordance with the arrangements laid down in Article 330, may adopt a decision stipulating that it will act under the ordinary legislative procedure. The Council shall act after consulting the European Parliament.

3. Paragraphs 1 and 2 shall not apply to decisions having military or defence implications.

Article 334

(ex Articles 27*a* to 27*e*, 40 to 40*b* and 43 to 45 TEU and ex Articles 11 and 11*a* TEC)

The Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation and the consistency of such activities with the policies of the Union, and shall cooperate to that end.

PART SEVEN

GENERAL AND FINAL PROVISIONS

Article 335

(ex Article 282 TEC)

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.

Article 336

(ex Article 283 TEC)

The European Parliament and the Council shall, acting by means of regulations in accordance with the ordinary legislative procedure and after consulting the other institutions concerned, lay down the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union.

Article 337

(ex Article 284 TEC)

The Commission may, within the limits and under conditions laid down by the Council acting by a simple majority in accordance with the provisions of the Treaties, collect any information and carry out any checks required for the performance of the tasks entrusted to it.

Article 338

(ex Article 285 TEC)

1. Without prejudice to Article 5 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for the production of statistics where necessary for the performance of the activities of the Union.

2. The production of Union statistics shall conform to impartiality, reliability, objectivity, scientific independence, cost-effectiveness and statistical confidentiality; it shall not entail excessive burdens on economic operators.

Article 339

(ex Article 287 TEC)

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

Article 340

(ex Article 288 TEC)

The contractual liability of the Union shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

Article 341

(ex Article 289 TEC)

The seat of the institutions of the Union shall be determined by common accord of the governments of the Member States.

Article 342

(ex Article 290 TEC)

The rules governing the languages of the institutions of the Union shall, without prejudice to the provisions contained in the Statute of the Court of Justice of the European Union, be determined by the Council, acting unanimously by means of regulations.

Article 343

(ex Article 291 TEC)

The Union shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol of 8 April 1965 on the privileges and immunities of the European Union. The same shall apply to the European Central Bank and the European Investment Bank.

Article 344

(ex Article 292 TEC)

Member States undertake not to submit a dispute concerning the interpretation or application of the Treaties to any method of settlement other than those provided for therein.

Article 345

(ex Article 295 TEC)

The Treaties shall in no way prejudice the rules in Member States governing the system of property ownership.

Article 346

(ex Article 296 TEC)

1. The provisions of the Treaties shall not preclude the application of the following rules:

(a) no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security;

(b) any Member State may take such measures as it considers necessary for the protection of the essential interests of its security which are connected with the production of or trade in arms, munitions and war material; such measures shall not adversely affect the conditions of competition in the internal market regarding products which are not intended for specifically military purposes.

2. The Council may, acting unanimously on a proposal from the Commission, make changes to the list, which it drew up on 15 April 1958, of the products to which the provisions of paragraph 1(b) apply.

Article 347

(ex Article 297 TEC)

Member States shall consult each other with a view to taking together the steps needed to prevent the functioning of the internal market being affected by measures which a Member State may be called upon to take in the event of serious internal disturbances affecting the maintenance of law and order, in the event of war, serious international tension constituting a threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security.

Article 348

(ex Article 298 TEC)

If measures taken in the circumstances referred to in Articles 346 and 347 have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the State concerned, examine how these measures can be adjusted to the rules laid down in the Treaties.

By way of derogation from the procedure laid down in Articles 258 and 259, the Commission or any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in Articles 346 and 347. The Court of Justice shall give its ruling in camera.

Article 349

(ex Article 299(2), second, third and fourth subparagraphs, TEC)

Taking account of the structural social and economic situation of Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands, which is compounded by their remoteness, insularity, small size, difficult topography and climate, economic dependence on a few products, the permanence and combination of which severely restrain their development, the Council, on a proposal from the Commission and after consulting the European Parliament, shall adopt specific measures aimed, in particular, at laying down the conditions of application of the Treaties to those regions, including common policies. Where the specific measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act on a proposal from the Commission and after consulting the European Parliament.

The measures referred to in the first paragraph concern in particular areas such as customs and trade policies, fiscal policy, free zones, agriculture and fisheries policies, conditions for supply of raw materials and essential consumer goods, State aids and conditions of access to structural funds and to horizontal Union programmes.

The Council shall adopt the measures referred to in the first paragraph taking into account the special characteristics and constraints of the outermost regions without undermining the integrity and the coherence of the Union legal order, including the internal market and common policies.

Article 350

(ex Article 306 TEC)

The provisions of the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Treaties.

Article 351

(ex Article 307 TEC)

The rights and obligations arising from agreements concluded before 1 January 1958 or, for acceding States, before the date of their accession, between one or more Member States on the one hand, and one or more third countries on the other, shall not be affected by the provisions of the Treaties.

To the extent that such agreements are not compatible with the Treaties, the Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end and shall, where appropriate, adopt a common attitude.

In applying the agreements referred to in the first paragraph, Member States shall take into account the fact that the advantages accorded under the Treaties by each Member State form an integral part of the establishment of the Union and are thereby inseparably linked with the creation of common institutions, the conferring of powers upon them and the granting of the same advantages by all the other Member States.

Article 352

(ex Article 308 TEC)

1. If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

2. Using the procedure for monitoring the subsidiarity principle referred to in Article 5(3) of the Treaty on European Union, the Commission shall draw national Parliaments' attention to proposals based on this Article.

3. Measures based on this Article shall not entail harmonisation of Member States' laws or regulations in cases where the Treaties exclude such harmonisation.

4. This Article cannot serve as a basis for attaining objectives pertaining to the common foreign and security policy and any acts adopted pursuant to this Article shall respect the limits set out in Article 40, second paragraph, of the Treaty on European Union.

Article 353

Article 48(7) of the Treaty on European Union shall not apply to the following Articles:

— Article 311, third and fourth paragraphs,

— Article 312(2), first subparagraph,

— Article 352, and

— Article 354.

Article 354

(ex Article 309 TEC)

For the purposes of Article 7 of the Treaty on European Union on the suspension of certain rights resulting from Union membership, the member of the European Council or of the Council representing the Member State in question shall not take part in the vote and the Member State in question shall not be counted in the calculation of the one third or four fifths of Member States referred to in paragraphs 1 and 2 of that Article. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2 of that Article.

For the adoption of the decisions referred to in paragraphs 3 and 4 of Article 7 of the Treaty on European Union, a qualified majority shall be defined in accordance with Article 238(3)(b) of this Treaty.

Where, following a decision to suspend voting rights adopted pursuant to paragraph 3 of Article 7 of the Treaty on European Union, the Council acts by a qualified majority on the basis of a provision of the Treaties, that qualified majority shall be defined in accordance with Article 238(3)(b) of this Treaty, or, where the Council acts on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, in accordance with Article 238(3)(a).

For the purposes of Article 7 of the Treaty on European Union, the European Parliament shall act by a two-thirds majority of the votes cast, representing the majority of its component Members.

Article 355

(ex Article 299(2), first subparagraph, and Article 299(3) to (6) TEC)

In addition to the provisions of Article 52 of the Treaty on European Union relating to the territorial scope of the Treaties, the following provisions shall apply:

1. The provisions of the Treaties shall apply to Guadeloupe, French Guiana, Martinique, Mayotte, Réunion, Saint-Martin, the Azores, Madeira and the Canary Islands in accordance with Article 349.

2. The special arrangements for association set out in Part Four shall apply to the overseas countries and territories listed in Annex II.

The Treaties shall not apply to those overseas countries and territories having special relations with the United Kingdom of Great Britain and Northern Ireland which are not included in the aforementioned list.

3. The provisions of the Treaties shall apply to the European territories for whose external relations a Member State is responsible.

4. The provisions of the Treaties shall apply to the Åland Islands in accordance with the provisions set out in Protocol 2 to the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden.

5. Notwithstanding Article 52 of the Treaty on European Union and paragraphs 1 to 4 of this Article:

(a) the Treaties shall not apply to the Faeroe Islands;

(b) the Treaties shall not apply to the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus except to the extent necessary to ensure the implementation of the arrangements set out in the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus annexed to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and in accordance with the terms of that Protocol;

(c) the Treaties shall apply to the Channel Islands and the Isle of Man only to the extent necessary to ensure the implementation of the arrangements for those islands set out in the Treaty concerning the accession of new Member States to the European Economic Community and to the European Atomic Energy Community signed on 22 January 1972.

6. The European Council may, on the initiative of the Member State concerned, adopt a decision amending the status, with regard to the Union, of a Danish, French or Netherlands country or territory referred to in paragraphs 1 and 2. The European Council shall act unanimously after consulting the Commission.

Article 356

(ex Article 312 TEC)

This Treaty is concluded for an unlimited period.

Article 357

(ex Article 313 TEC)

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The Instruments of ratification shall be deposited with the Government of the Italian Republic.

This Treaty shall enter into force on the first day of the month following the deposit of the Instrument of ratification by the last signatory State to take this step. If, however, such deposit is made less than 15 days before the beginning of the following month, this Treaty shall not enter into force until the first day of the second month after the date of such deposit.

Article 358

The provisions of Article 55 of the Treaty on European Union shall apply to this Treaty.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Treaty.

Done at Rome this twenty-fifth day of March in the year one thousand nine hundred and fifty-seven.

(List of signatories not reproduced)

PROTOCOLS

PROTOCOL (No 1)

ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

Article 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

Article 2

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

Article 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

Article 4

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

Article 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

Article 6

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

Article 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II

INTERPARLIAMENTARY COOPERATION

Article 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

Article 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

PROTOCOL (No 2)

ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

Article 3

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank, for the adoption of a legislative act.

Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

(a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;

(b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

PROTOCOL (No 3)

ON THE STATUTE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the Court of Justice of the European Union provided for in Article 281 of the Treaty on the Functioning of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

Article 1

The Court of Justice of the European Union shall be constituted and shall function in accordance with the provisions of the Treaties, of the Treaty establishing the European Atomic Energy Community (the EAEC Treaty) and of this Statute.

TITLE I

JUDGES AND ADVOCATES-GENERAL

Article 2

Before taking up his duties each Judge shall, before the Court of Justice sitting in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 3

The Judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in their official capacity, including words spoken or written.

The Court of Justice, sitting as a full Court, may waive the immunity. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Where immunity has been waived and criminal proceedings are instituted against a Judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Articles 11 to 14 and Article 17 of the Protocol on the privileges and immunities of the European Union shall apply to the Judges, Advocates-General, Registrar and Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions relating to immunity from legal proceedings of Judges which are set out in the preceding paragraphs.

Article 4

The Judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Council, acting by a simple majority.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice. If the decision concerns a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

Article 5

Apart from normal replacement, or death, the duties of a Judge shall end when he resigns.

Where a Judge resigns, his letter of resignation shall be addressed to the President of the Court of Justice for transmission to the President of the Council. Upon this notification a vacancy shall arise on the bench.

Save where Article 6 applies, a Judge shall continue to hold office until his successor takes up his duties.

Article 6

A Judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the unanimous opinion of the Judges and Advocates-General of the Court of Justice, he no longer fulfils the requisite conditions or meets the obligations arising from his office. The Judge concerned shall not take part in any such deliberations. If the person concerned is a member of the General Court or of a specialised court, the Court shall decide after consulting the court concerned.

The Registrar of the Court shall communicate the decision of the Court to the President of the European Parliament and to the President of the Commission and shall notify it to the President of the Council.

In the case of a decision depriving a Judge of his office, a vacancy shall arise on the bench upon this latter notification.

Article 7

A Judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

Article 8

The provisions of Articles 2 to 7 shall apply to the Advocates-General.

TITLE II

ORGANISATION OF THE COURT OF JUSTICE

Article 9

When, every three years, the Judges are partially replaced, one half of the number of Judges shall be replaced. If the number of Judges is an uneven number, the number of Judges who shall be replaced shall alternately be the number which is the next above one half of the number of Judges and the number which is next below one half.

The first paragraph shall also apply when the Advocates General are partially replaced, every three years.

Article 9a

The Judges shall elect the President and the Vice-President of the Court of Justice from among their number for a term of three years. They may be re-elected.

The Vice-President shall assist the President in accordance with the conditions laid down in the Rules of Procedure. He shall take the President's place when the latter is prevented from attending or when the office of President is vacant.

Article 10

The Registrar shall take an oath before the Court of Justice to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court of Justice.

Article 11

The Court of Justice shall arrange for replacement of the Registrar on occasions when he is prevented from attending the Court of Justice.

Article 12

Officials and other servants shall be attached to the Court of Justice to enable it to function. They shall be responsible to the Registrar under the authority of the President.

Article 13

At the request of the Court of Justice, the European Parliament and the Council may, acting in accordance with the ordinary legislative procedure, provide for the appointment of Assistant Rapporteurs and lay down the rules governing their service. The Assistant Rapporteurs may be required, under conditions laid down in the Rules of Procedure, to participate in preparatory inquiries in cases pending before the Court and to cooperate with the Judge who acts as Rapporteur.

The Assistant Rapporteurs shall be chosen from persons whose independence is beyond doubt and who possess the necessary legal qualifications; they shall be appointed by the Council, acting by a simple majority. They shall take an oath before the Court to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 14

The Judges, the Advocates-General and the Registrar shall be required to reside at the place where the Court of Justice has its seat.

Article 15

The Court of Justice shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

Article 16

The Court of Justice shall form chambers consisting of three and five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The Grand Chamber shall consist of 15 Judges. It shall be presided over by the President of the Court. The Vice- President of the Court and, in accordance with the conditions laid down in the Rules of Procedure, three of the Presidents of the chambers of five Judges and other Judges shall also form part of the Grand Chamber.

The Court shall sit in a Grand Chamber when a Member State or an institution of the Union that is party to the proceedings so requests.

The Court shall sit as a full Court where cases are brought before it pursuant to Article 228(2), Article 245(2), Article 247 or Article 286(6) of the Treaty on the Functioning of the European Union.

Moreover, where it considers that a case before it is of exceptional importance, the Court may decide, after hearing the Advocate-General, to refer the case to the full Court.

Article 17

Decisions of the Court of Justice shall be valid only when an uneven number of its members is sitting in the deliberations.

Decisions of the chambers consisting of either three or five Judges shall be valid only if they are taken by three Judges.

Decisions of the Grand Chamber shall be valid only if 11 Judges are sitting.

Decisions of the full Court shall be valid only if 17 Judges are sitting.

In the event of one of the Judges of a chamber being prevented from attending, a Judge of another chamber may be called upon to sit in accordance with conditions laid down in the Rules of Procedure.

Article 18

No Judge or Advocate-General may take part in the disposal of any case in which he has previously taken part as agent or adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any Judge or Advocate-General considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any Judge or Advocate-General should not sit or make submissions in a particular case, he shall notify him accordingly.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court of Justice.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a Judge or the absence from the Court or from the chamber of a Judge of the nationality of that party.

TITLE III

PROCEDURE BEFORE THE COURT OF JUSTICE

Article 19

The Member States and the institutions of the Union shall be represented before the Court of Justice by an agent appointed for each case; the agent may be assisted by an adviser or by a lawyer.

The States, other than the Member States, which are parties to the Agreement on the European Economic Area and also the EFTA Surveillance Authority referred to in that Agreement shall be represented in same manner.

Other parties must be represented by a lawyer.

Only a lawyer authorised to practise before a court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court.

Such agents, advisers and lawyers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such advisers and lawyers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

University teachers being nationals of a Member State whose law accords them a right of audience shall have the same rights before the Court as are accorded by this Article to lawyers.

Article 20

The procedure before the Court of Justice shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the parties and to the institutions of the Union whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registrar in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the hearing by the Court of agents, advisers and lawyers and of the submissions of the Advocate-General, as well as the hearing, if any, of witnesses and experts.

Where it considers that the case raises no new point of law, the Court may decide, after hearing the Advocate-General, that the case shall be determined without a submission from the Advocate-General.

Article 21

A case shall be brought before the Court of Justice by a written application addressed to the Registrar. The application shall contain the applicant's name and permanent address and the description of the signatory, the name of the party or names of the parties against whom the application is made, the subject-matter of the dispute, the form of order sought and a brief statement of the pleas in law on which the application is based.

The application shall be accompanied, where appropriate, by the measure the annulment of which is sought or, in the circumstances referred to in Article 265 of the Treaty on the Functioning of the European Union, by documentary evidence of the date on which an institution was, in accordance with those Articles, requested to act. If the documents are not submitted with the application, the Registrar shall ask the party concerned to produce them within a reasonable period, but in that event the rights of the party shall not lapse even if such documents are produced after the time limit for bringing proceedings.

Article 22

A case governed by Article 18 of the EAEC Treaty shall be brought before the Court of Justice by an appeal addressed to the Registrar. The appeal shall contain the name and permanent address of the applicant and the description of the signatory, a reference to the decision against which the appeal is brought, the names of the respondents, the subject-matter of the dispute, the submissions and a brief statement of the grounds on which the appeal is based.

The appeal shall be accompanied by a certified copy of the decision of the Arbitration Committee which is contested.

If the Court rejects the appeal, the decision of the Arbitration Committee shall become final.

If the Court annuls the decision of the Arbitration Committee, the matter may be re-opened, where appropriate, on the initiative of one of the parties in the case, before the Arbitration Committee. The latter shall conform to any decisions on points of law given by the Court.

Article 23

In the cases governed by Article 267 of the Treaty on the Functioning of the European Union, the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the Commission, and to the institution, body, office or agency of the Union which adopted the act the validity or interpretation of which is in dispute.

Within two months of this notification, the parties, the Member States, the Commission and, where appropriate, the institution, body, office or agency which adopted the act the validity or interpretation of which is in dispute, shall be entitled to submit statements of case or written observations to the Court.

In the cases governed by Article 267 of the Treaty on the Functioning of the European Union, the decision of the national court or tribunal shall, moreover, be notified by the Registrar of the Court to the States, other than the Member States, which are parties to the Agreement on the European Economic Area and also to the EFTA Surveillance Authority referred to in that Agreement which may, within two months of notification, where one of the fields of application of that Agreement is concerned, submit statements of case or written observations to the Court.

Where an agreement relating to a specific subject matter, concluded by the Council and one or more non-member States, provides that those States are to be entitled to submit statements of case or written observations where a court or tribunal of a Member State refers to the Court of Justice for a preliminary ruling a question falling within the scope of the agreement, the decision of the national court or tribunal containing that question shall also be notified to the non-member States concerned. Within two months from such notification, those States may lodge at the Court statements of case or written observations.

Article 23a (*)

The Rules of Procedure may provide for an expedited or accelerated procedure and, for references for a preliminary ruling relating to the area of freedom, security and justice, an urgent procedure.

Those procedures may provide, in respect of the submission of statements of case or written observations, for a shorter period than that provided for by Article 23, and, in derogation from the fourth paragraph of Article 20, for the case to be determined without a submission from the Advocate General.

In addition, the urgent procedure may provide for restriction of the parties and other interested persons mentioned in Article 23, authorised to submit statements of case or written observations and, in cases of extreme urgency, for the written stage of the procedure to be omitted.

(*) Article inserted by Decision 2008/79/EC, Euratom (OJ L 24, 29.1.2008, p. 42).

Article 24

The Court of Justice may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

The Court may also require the Member States and institutions, bodies, offices and agencies not being parties to the case to supply all information which the Court considers necessary for the proceedings.

Article 25

The Court of Justice may at any time entrust any individual, body, authority, committee or other organisation it chooses with the task of giving an expert opinion.

Article 26

Witnesses may be heard under conditions laid down in the Rules of Procedure.

Article 27

With respect to defaulting witnesses the Court of Justice shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

Article 28

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

Article 29

The Court of Justice may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

Article 30

A Member State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court of Justice, the Member State concerned shall prosecute the offender before its competent court.

Article 31

The hearing in court shall be public, unless the Court of Justice, of its own motion or on application by the parties, decides otherwise for serious reasons.

Article 32

During the hearings the Court of Justice may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court of Justice only through their representatives.

Article 33

Minutes shall be made of each hearing and signed by the President and the Registrar.

Article 34

The case list shall be established by the President.

Article 35

The deliberations of the Court of Justice shall be and shall remain secret.

Article 36

Judgments shall state the reasons on which they are based. They shall contain the names of the Judges who took part in the deliberations.

Article 37

Judgments shall be signed by the President and the Registrar. They shall be read in open court.

Article 38

The Court of Justice shall adjudicate upon costs.

Article 39

The President of the Court of Justice may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Statute and which shall be laid down in the Rules of Procedure, adjudicate upon applications to suspend execution, as provided for in Article 278 of the Treaty on the Functioning of the European Union and Article 157 of the EAEC Treaty, or to prescribe interim measures pursuant to Article 279 of the Treaty on the Functioning of the European Union, or to suspend enforcement in accordance with the fourth paragraph of Article 299 of the Treaty on the Functioning of the European Union or the third paragraph of Article 164 of the EAEC Treaty.

The powers referred to in the first paragraph may, under the conditions laid down in the Rules of Procedure, be exercised by the Vice-President of the Court of Justice.

Should the President and the Vice-President be prevented from attending, another Judge shall take their place under the conditions laid down in the Rules of Procedure.

The ruling of the President or of the Judge replacing him shall be provisional and shall in no way prejudice the decision of the Court on the substance of the case.

Article 40

Member States and institutions of the Union may intervene in cases before the Court of Justice.

The same right shall be open to the bodies, offices and agencies of the Union and to any other person which can establish an interest in the result of a case submitted to the Court. Natural or legal persons shall not intervene in cases between Member States, between institutions of the Union or between Member States and institutions of the Union.

Without prejudice to the second paragraph, the States, other than the Member States, which are parties to the Agreement on the European Economic Area, and also the EFTA Surveillance Authority referred to in that Agreement, may intervene in cases before the Court where one of the fields of application of that Agreement is concerned.

An application to intervene shall be limited to supporting the form of order sought by one of the parties.

Article 41

Where the defending party, after having been duly summoned, fails to file written submissions in defence, judgment shall be given against that party by default. An objection may be lodged against the judgment within one month of it being notified. The objection shall not have the effect of staying enforcement of the judgment by default unless the Court of Justice decides otherwise.

Article 42

Member States, institutions, bodies, offices and agencies of the Union and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.

Article 43

If the meaning or scope of a judgment is in doubt, the Court of Justice shall construe it on application by any party or any institution of the Union establishing an interest therein.

Article 44

An application for revision of a judgment may be made to the Court of Justice only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognising that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground.

No application for revision may be made after the lapse of 10 years from the date of the judgment.

Article 45

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.

Article 46

Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article 263 of the Treaty on the Functioning of the European Union; the provisions of the second paragraph of Article 265 of the Treaty on the Functioning of the European Union shall apply where appropriate.

This Article shall also apply to proceedings against the European Central Bank regarding non-contractual liability.

TITLE IV

GENERAL COURT

Article 47

The first paragraph of Article 9, Article 9a, Articles 14 and 15, the first, second, fourth and fifth paragraphs of Article 17 and Article 18 shall apply to the General Court and its members.

The fourth paragraph of Article 3 and Articles 10, 11 and 14 shall apply to the Registrar of the General Court *mutatis mutandis*.

Article 48

The General Court shall consist of:

(a) 40 Judges as from 25 December 2015;

(b) 47 Judges as from 1 September 2016;

(c) two Judges per Member State as from 1 September 2019.

Article 49

The Members of the General Court may be called upon to perform the task of an Advocate-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on certain cases brought before the General Court in order to assist the General Court in the performance of its task.

The criteria for selecting such cases, as well as the procedures for designating the Advocates-General, shall be laid down in the Rules of Procedure of the General Court.

A Member called upon to perform the task of Advocate-General in a case may not take part in the judgment of the case.

Article 50

The General Court shall sit in chambers of three or five Judges. The Judges shall elect the Presidents of the chambers from among their number. The Presidents of the chambers of five Judges shall be elected for three years. They may be re-elected once.

The composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure. In certain cases governed by the Rules of Procedure, the General Court may sit as a full court or be constituted by a single Judge.

The Rules of Procedure may also provide that the General Court may sit in a Grand Chamber in cases and under the conditions specified therein.

Article 51

By way of derogation from the rule laid down in Article 256(1) of the Treaty on the Functioning of the European Union, jurisdiction shall be reserved to the Court of Justice in the actions referred to in Articles 263 and 265 of the Treaty on the Functioning of the European Union when they are brought by a Member State against:

(a) an act of or failure to act by the European Parliament or the Council, or by those institutions acting jointly, except for:

— decisions taken by the Council under the third subparagraph of Article 108(2) of the Treaty on the Functioning of the European Union;

— acts of the Council adopted pursuant to a Council regulation concerning measures to protect trade within the meaning of Article 207 of the Treaty on the Functioning of the European Union;

— acts of the Council by which the Council exercises implementing powers in accordance with the second paragraph of Article 291 of the Treaty on the Functioning of the European Union;

(b) against an act of or failure to act by the Commission under the first paragraph of Article 331 of the Treaty on the Functioning of the European Union.

Jurisdiction shall also be reserved to the Court of Justice in the actions referred to in the same Articles when they are brought by an institution of the Union against an act of or failure to act by the European Parliament, the Council, both those institutions acting jointly, or the Commission, or brought by an institution of the Union against an act of or failure to act by the European Central Bank.

Article 52

The President of the Court of Justice and the President of the General Court shall determine, by common accord, the conditions under which officials and other servants attached to the Court of Justice shall render their services to the General Court to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the General Court under the authority of the President of the General Court.

Article 53

The procedure before the General Court shall be governed by Title III.

Such further and more detailed provisions as may be necessary shall be laid down in its Rules of Procedure. The Rules of Procedure may derogate from the fourth paragraph of Article 40 and from Article 41 in order to take account of the specific features of litigation in the field of intellectual property.

Notwithstanding the fourth paragraph of Article 20, the Advocate-General may make his reasoned submissions in writing.

Article 54

Where an application or other procedural document addressed to the General Court is lodged by mistake with the Registrar of the Court of Justice, it shall be transmitted immediately by that Registrar to the Registrar of the General Court; likewise, where an application or other procedural document addressed to the Court of Justice is lodged by mistake with the Registrar of the General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice.

Where the General Court finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice has jurisdiction, it shall refer that action to the Court of Justice; likewise, where the Court of Justice finds that an action falls within the jurisdiction of the General Court, it shall refer that action to the General Court, whereupon that Court may not decline jurisdiction.

Where the Court of Justice and the General Court are seised of cases in which the same relief is sought, the same issue of interpretation is raised or the validity of the same act is called in question, the General Court may, after hearing the parties, stay the proceedings before it until such time as the Court of Justice has delivered judgment or, where the action is one brought pursuant to Article 263 of the Treaty on the Functioning of the European Union, may decline jurisdiction so as to allow the Court of Justice to rule on such actions. In the same circumstances, the Court of Justice may also decide to stay the proceedings before it; in that event, the proceedings before the General Court shall continue.

Where a Member State and an institution of the Union are challenging the same act, the General Court shall decline jurisdiction so that the Court of Justice may rule on those applications.

Article 55

Final decisions of the General Court, decisions disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility, shall be notified by the Registrar of the General Court to all parties as well as all Member States and the institutions of the Union even if they did not intervene in the case before the General Court.

Article 56

An appeal may be brought before the Court of Justice, within two months of the notification of the decision appealed against, against final decisions of the General Court and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the General Court directly affects them.

With the exception of cases relating to disputes between the Union and its servants, an appeal may also be brought by Member States and institutions of the Union which did not intervene in the proceedings before the General Court. Such Member States and institutions shall be in the same position as Member States or institutions which intervened at first instance.

Article 57

Any person whose application to intervene has been dismissed by the General Court may appeal to the Court of Justice within two weeks from the notification of the decision dismissing the application.

The parties to the proceedings may appeal to the Court of Justice against any decision of the General Court made pursuant to Article 278 or Article 279 or the fourth paragraph of Article 299 of the Treaty on the Functioning of the European Union or Article 157 or the third paragraph of Article 164 of the EAEC Treaty within two months from their notification.

The appeal referred to in the first two paragraphs of this Article shall be heard and determined under the procedure referred to in Article 39.

Article 58

An appeal to the Court of Justice shall be limited to points of law. It shall lie on the grounds of lack of competence of the General Court, a breach of procedure before it which adversely affects the interests of the appellant as well as the infringement of Union law by the General Court.

No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 59

Where an appeal is brought against a decision of the General Court, the procedure before the Court of Justice shall consist of a written part and an oral part. In accordance with conditions laid down in the Rules of Procedure, the Court of Justice, having heard the Advocate-General and the parties, may dispense with the oral procedure.

Article 60

Without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Article 157 of the EAEC Treaty, an appeal shall not have suspensory effect.

By way of derogation from Article 280 of the Treaty on the Functioning of the European Union, decisions of the General Court declaring a regulation to be void shall take effect only as from the date of expiry of the period referred to in the first paragraph of Article 56 of this Statute or, if an appeal shall have been brought within that period, as from the date of dismissal of the appeal, without prejudice, however, to the right of a party to apply to the Court of Justice, pursuant to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Article 157 of the EAEC Treaty, for the suspension of the effects of the regulation which has been declared void or for the prescription of any other interim measure.

Article 61

If the appeal is well founded, the Court of Justice shall quash the decision of the General Court. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the General Court for judgment.

Where a case is referred back to the General Court, that Court shall be bound by the decision of the Court of Justice on points of law.

When an appeal brought by a Member State or an institution of the Union, which did not intervene in the proceedings before the General Court, is well founded, the Court of Justice may, if it considers this necessary, state which of the effects of the decision of the General Court which has been quashed shall be considered as definitive in respect of the parties to the litigation.

Article 62

In the cases provided for in Article 256(2) and (3) of the Treaty on the Functioning of the European Union, where the First Advocate-General considers that there is a serious risk of the unity or consistency of Union law being affected, he may propose that the Court of Justice review the decision of the General Court.

The proposal must be made within one month of delivery of the decision by the General Court. Within one month of receiving the proposal made by the First Advocate-General, the Court of Justice shall decide whether or not the decision should be reviewed.

Article 62a

The Court of Justice shall give a ruling on the questions which are subject to review by means of an urgent procedure on the basis of the file forwarded to it by the General Court.

Those referred to in Article 23 of this Statute and, in the cases provided for in Article 256(2) of the EC Treaty, the parties to the proceedings before the General Court shall be entitled to lodge statements or written observations with the Court of Justice relating to questions which are subject to review within a period prescribed for that purpose.

The Court of Justice may decide to open the oral procedure before giving a ruling.

Article 62b

In the cases provided for in Article 256(2) of the Treaty on the Functioning of the European Union, without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union, proposals for review and decisions to open the review procedure shall not have suspensory effect. If the Court of Justice finds that the decision of the General Court affects the unity or consistency of Union law, it shall refer the case back to the General Court which shall be bound by the points of law decided by the Court of Justice; the Court of Justice may state which of the effects of the decision of the General Court are to be considered as definitive in respect of the parties to the litigation. If, however, having regard to the result of the review, the outcome of the proceedings flows from the findings of fact on which the decision of the General Court was based, the Court of Justice shall give final judgment.

In the cases provided for in Article 256(3) of the Treaty on the Functioning of the European Union, in the absence of proposals for review or decisions to open the review procedure, the answer(s) given by the General Court to the questions submitted to it shall take effect upon expiry of the periods prescribed for that purpose in the second paragraph of Article 62. Should a review procedure be opened, the answer(s) subject to review shall take effect following that procedure, unless the Court of Justice decides otherwise. If the Court of Justice finds that the decision of the General Court affects the unity or consistency of Union law, the answer given by the Court of Justice to the questions subject to review shall be substituted for that given by the General Court.

TITLE IVa

SPECIALISED COURTS

Article 62c

The provisions relating to the jurisdiction, composition, organisation and procedure of the specialised courts established under Article 257 of the Treaty on the Functioning of the European Union are set out in an Annex to this Statute.

The European Parliament and the Council, acting in accordance with Article 257 of the Treaty on the Functioning of the European Union, may attach temporary Judges to the specialised courts in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the disposal of cases for a lengthy period of time. In that event, the European Parliament and the Council shall lay down the conditions under which the temporary Judges shall be appointed, their rights and duties, the detailed rules governing the performance of their duties and the circumstances in which they shall cease to perform those duties.

TITLE V

FINAL PROVISIONS

Article 63

The Rules of Procedure of the Court of Justice and of the General Court shall contain any provisions necessary for applying and, where required, supplementing this Statute.

Article 64

The rules governing the language arrangements applicable at the Court of Justice of the European Union shall be laid down by a regulation of the Council acting unanimously. This regulation shall be adopted either at the request of the Court of Justice and after consultation of the Commission and the European Parliament, or on a proposal from the Commission and after consultation of the Court of Justice and of the European Parliament.

Until those rules have been adopted, the provisions of the Rules of Procedure of the Court of Justice and of the Rules of Procedure of the General Court governing language arrangements shall continue to apply. By way of derogation from Articles 253 and 254 of the Treaty on the Functioning of the European Union, those provisions may only be amended or repealed with the unanimous consent of the Council.

ANNEX I

THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Article 1

The European Union Civil Service Tribunal (hereafter "the Civil Service Tribunal") shall exercise at first instance jurisdiction in disputes between the Union and its servants referred to in Article 270 of the Treaty on the Functioning of the European Union, including disputes between all bodies or agencies and their servants in respect of which jurisdiction is conferred on the Court of Justice of the European Union.

Article 2

1. The Civil Service Tribunal shall consist of seven judges. Should the Court of Justice so request, the Council, acting by a qualified majority, may increase the number of judges.

The judges shall be appointed for a period of six years. Retiring judges may be reappointed.

Any vacancy shall be filled by the appointment of a new judge for a period of six years.

2. Temporary Judges shall be appointed, in addition to the Judges referred to in the first subparagraph of paragraph 1, in order to cover the absence of Judges who, while not suffering from disablement deemed to be total, are prevented from participating in the disposal of cases for a lengthy period of time.

Article 3

1. The judges shall be appointed by the Council, acting in accordance with the fourth paragraph of Article 257 of the Treaty on the Functioning of the European Union, after consulting the committee provided for by this Article. When appointing judges, the Council shall ensure a balanced composition of the Civil Service Tribunal on as broad a geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented.

2. Any person who is a Union citizen and fulfils the conditions laid down in the fourth paragraph of Article 257 of the Treaty on the Functioning of the European Union may submit an application. The Council, acting on a recommendation from the Court of Justice, shall determine the conditions and the arrangements governing the submission and processing of such applications.

3. A committee shall be set up comprising seven persons chosen from among former members of the Court of Justice and the General Court and lawyers of recognised competence. The committee's membership and operating rules shall be determined by the Council, acting on a recommendation by the President of the Court of Justice.

4. The committee shall give an opinion on candidates' suitability to perform the duties of judge at the Civil Service Tribunal. The committee shall append to its opinion a list of candidates having the most suitable high-level experience. Such list shall contain the names of at least twice as many candidates as there are judges to be appointed by the Council.

Article 4

1. The judges shall elect the President of the Civil Service Tribunal from among their number for a term of three years. He may be re-elected.

2. The Civil Service Tribunal shall sit in chambers of three judges. It may, in certain cases determined by its rules of procedure, sit in full court or in a chamber of five judges or of a single judge.

3. The President of the Civil Service Tribunal shall preside over the full court and the chamber of five judges. The Presidents of the chambers of three judges shall be designated as provided in paragraph 1. If the President of the Civil Service Tribunal is assigned to a chamber of three judges, he shall preside over that chamber.

4. The jurisdiction of and quorum for the full court as well as the composition of the chambers and the assignment of cases to them shall be governed by the Rules of Procedure.

Article 5

Articles 2 to 6, 14, 15, the first, second and fifth paragraphs of Article 17, and Article 18 of the Statute of the Court of Justice of the European Union shall apply to the Civil Service Tribunal and its members.

The oath referred to in Article 2 of the Statute shall be taken before the Court of Justice, and the decisions referred to in Articles 3, 4 and 6 thereof shall be adopted by the Court of Justice after consulting the Civil Service Tribunal.

Article 6

1. The Civil Service Tribunal shall be supported by the departments of the Court of Justice and of the General Court. The President of the Court of Justice or, in appropriate cases, the President of the General Court, shall determine by common accord with the President of the Civil Service Tribunal the conditions under which officials and other servants attached to the Court of Justice or the General Court shall render their services to the Civil Service Tribunal to enable it to function. Certain officials or other servants shall be responsible to the Registrar of the Civil Service Tribunal under the authority of the President of that Tribunal.

2. The Civil Service Tribunal shall appoint its Registrar and lay down the rules governing his service. The fourth paragraph of Article 3 and Articles 10, 11 and 14 of the Statute of the Court of Justice of the European Union shall apply to the Registrar of the Tribunal.

Article 7

1. The procedure before the Civil Service Tribunal shall be governed by Title III of the Statute of the Court of Justice of the European Union, with the exception of Articles 22 and 23. Such further and more detailed provisions as may be necessary shall be laid down in the Rules of Procedure.

2. The provisions concerning the General Court's language arrangements shall apply to the Civil Service Tribunal.

3. The written stage of the procedure shall comprise the presentation of the application and of the statement of defence, unless the Civil Service Tribunal decides that a second exchange of written pleadings is necessary. Where there is such second exchange, the Civil Service Tribunal may, with the agreement of the parties, decide to proceed to judgment without an oral procedure.

4. At all stages of the procedure, including the time when the application is filed, the Civil Service Tribunal may examine the possibilities of an amicable settlement of the dispute and may try to facilitate such settlement.

5. The Civil Service Tribunal shall rule on the costs of a case. Subject to the specific provisions of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs should the court so decide.

Article 8

1. Where an application or other procedural document addressed to the Civil Service Tribunal is lodged by mistake with the Registrar of the Court of Justice or General Court, it shall be transmitted immediately by that Registrar to the Registrar of the Civil Service Tribunal. Likewise, where an application or other procedural document addressed to the Court of Justice or to the General Court is lodged by mistake with the Registrar of the Civil Service Tribunal, it shall be transmitted immediately by that Registrar to the Registrar of the Court of Justice or General Court.

2. Where the Civil Service Tribunal finds that it does not have jurisdiction to hear and determine an action in respect of which the Court of Justice or the General Court has jurisdiction, it shall refer that action to the Court of Justice or to the General Court. Likewise, where the Court of Justice or the General Court finds that an action falls within the jurisdiction of the Civil Service Tribunal, the Court seised shall refer that action to the Civil Service Tribunal, whereupon that Tribunal may not decline jurisdiction.

3. Where the Civil Service Tribunal and the General Court are seised of cases in which the same issue of interpretation is raised or the validity of the same act is called in question, the Civil Service Tribunal, after hearing the parties, may stay the proceedings until the judgment of the General Court has been delivered.

Where the Civil Service Tribunal and the General Court are seised of cases in which the same relief is sought, the Civil Service Tribunal shall decline jurisdiction so that the General Court may act on those cases.

Article 9

An appeal may be brought before the General Court, within two months of notification of the decision appealed against, against final decisions of the Civil Service Tribunal and decisions of that Tribunal disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of jurisdiction or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the Civil Service Tribunal directly affects them.

Article 10

1. Any person whose application to intervene has been dismissed by the Civil Service Tribunal may appeal to the General Court within two weeks of notification of the decision dismissing the application.

2. The parties to the proceedings may appeal to the General Court against any decision of the Civil Service Tribunal made pursuant to Article 278 or Article 279 or the fourth paragraph of Article 299 of the Treaty on the Functioning of the European Union or Article 157 or the third paragraph of Article 164 of the EAEC Treaty within two months of its notification.

3. The President of the General Court may, by way of summary procedure, which may, in so far as necessary, differ from some of the rules contained in this Annex and which shall be laid down in the rules of procedure of the General Court, adjudicate upon appeals brought in accordance with paragraphs 1 and 2.

Article 11

1. An appeal to the General Court shall be limited to points of law. It shall lie on the grounds of lack of jurisdiction of the Civil Service Tribunal, a breach of procedure before it which adversely affects the interests of the appellant, as well as the infringement of Union law by the Tribunal.

2. No appeal shall lie regarding only the amount of the costs or the party ordered to pay them.

Article 12

1. Without prejudice to Articles 278 and 279 of the Treaty on the Functioning of the European Union or Article 157 of the EAEC Treaty, an appeal before the General Court shall not have suspensory effect.

2. Where an appeal is brought against a decision of the Civil Service Tribunal, the procedure before the General Court shall consist of a written part and an oral part. In accordance with conditions laid down in the rules of procedure, the General Court, having heard the parties, may dispense with the oral procedure.

Article 13

1. If the appeal is well founded, the General Court shall quash the decision of the Civil Service Tribunal and itself give judgment in the matter. It shall refer the case back to the Civil Service Tribunal for judgment where the state of the proceedings does not permit a decision by the Court.

2. Where a case is referred back to the Civil Service Tribunal, the Tribunal shall be bound by the decision of the General Court on points of law.

PROTOCOL (No 4)

ON THE STATUTE OF THE EUROPEAN SYSTEM OF CENTRAL BANKS AND OF THE EUROPEAN CENTRAL BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European System of Central Banks and of the European Central Bank provided for in the second paragraph of Article 129 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

CHAPTER I

THE EUROPEAN SYSTEM OF CENTRAL BANKS

Article 1

The European System of Central Banks

In accordance with Article 282(1) of the Treaty on the Functioning of the European Union, the European Central Bank (ECB) and the national central banks shall constitute the European System of Central Banks (ESCB). The ECB and the national central banks of those Member States whose currency is the euro shall constitute the Eurosystem.

The ESCB and the ECB shall perform their tasks and carry on their activities in accordance with the provisions of the Treaties and of this Statute.

CHAPTER II

OBJECTIVES AND TASKS OF THE ESCB

Article 2

Objectives

In accordance with Article 127(1) and Article 282(2) of the Treaty on the Functioning of the European Union, the primary objective of the ESCB shall be to maintain price stability. Without prejudice to the objective of price stability, it shall support the general economic policies in the Union with a view to contributing to the achievement of the objectives of the Union as laid down in Article 3 of the Treaty on European Union. The ESCB shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources, and in compliance with the principles set out in Article 119 of the Treaty on the Functioning of the European Union.

Article 3

Tasks

3.1. In accordance with Article 127(2) of the Treaty on the Functioning of the European Union, the basic tasks to be carried out through the ESCB shall be:

— to define and implement the monetary policy of the Union;

— to conduct foreign-exchange operations consistent with the provisions of Article 219 of that Treaty;

— to hold and manage the official foreign reserves of the Member States;

— to promote the smooth operation of payment systems.

3.2. In accordance with Article 127(3) of the Treaty on the Functioning of the European Union, the third indent of Article 3.1 shall be without prejudice to the holding and management by the governments of Member States of foreign-exchange working balances.

3.3. In accordance with Article 127(5) of the Treaty on the Functioning of the European Union, the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the prudential supervision of credit institutions and the stability of the financial system.

Article 4

Advisory functions

In accordance with Article 127(4) of the Treaty on the Functioning of the European Union:

(a) the ECB shall be consulted:

— on any proposed Union act in its fields of competence;

— by national authorities regarding any draft legislative provision in its fields of competence, but within the limits and under the conditions set out by the Council in accordance with the procedure laid down in Article 41;

(b) the ECB may submit opinions to the Union institutions, bodies, offices or agencies or to national authorities on matters in its fields of competence.

Article 5

Collection of statistical information

5.1. In order to undertake the tasks of the ESCB, the ECB, assisted by the national central banks, shall collect the necessary statistical information either from the competent national authorities or directly from economic agents. For these purposes it shall cooperate with the Union institutions, bodies, offices or agencies and with the competent authorities of the Member States or third countries and with international organisations.

5.2. The national central banks shall carry out, to the extent possible, the tasks described in Article 5.1.

5.3. The ECB shall contribute to the harmonisation, where necessary, of the rules and practices governing the collection, compilation and distribution of statistics in the areas within its fields of competence.

5.4. The Council, in accordance with the procedure laid down in Article 41, shall define the natural and legal persons subject to reporting requirements, the confidentiality regime and the appropriate provisions for enforcement.

Article 6

International cooperation

6.1. In the field of international cooperation involving the tasks entrusted to the ESCB, the ECB shall decide how the ESCB shall be represented.

6.2. The ECB and, subject to its approval, the national central banks may participate in international monetary institutions.

6.3. Articles 6.1 and 6.2 shall be without prejudice to Article 138 of the Treaty on the Functioning of the European Union.

CHAPTER III

ORGANISATION OF THE ESCB

Article 7

Independence

In accordance with Article 130 of the Treaty on the Functioning of the European Union, when exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and this Statute, neither the ECB, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body. The Union institutions, bodies, offices or agencies and the governments of the Member States undertake to respect this principle and not to seek to influence the members of the decision-making bodies of the ECB or of the national central banks in the performance of their tasks.

Article 8

General principle

The ESCB shall be governed by the decision-making bodies of the ECB.

Article 9

The European Central Bank

9.1. The ECB which, in accordance with Article 282(3) of the Treaty on the Functioning of the European Union, shall have legal personality, shall enjoy in each of the Member States the most extensive legal capacity accorded to legal persons under its law; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.

9.2. The ECB shall ensure that the tasks conferred upon the ESCB under Article 127(2), (3) and (5) of the Treaty on the Functioning of the European Union are implemented either by its own activities pursuant to this Statute or through the national central banks pursuant to Articles 12.1 and 14.

9.3. In accordance with Article 129(1) of the Treaty on the Functioning of the European Union, the decision making bodies of the ECB shall be the Governing Council and the Executive Board.

Article 10

The Governing Council

10.1. In accordance with Article 283(1) of the Treaty on the Functioning of the European Union, the Governing Council shall comprise the members of the Executive Board of the ECB and the governors of the national central banks of the Member States whose currency is the euro.

10.2. Each member of the Governing Council shall have one vote. As from the date on which the number of members of the Governing Council exceeds 21, each member of the Executive Board shall have one vote and the number of governors with a voting right shall be 15. The latter voting rights shall be assigned and shall rotate as follows:

— as from the date on which the number of governors exceeds 15, until it reaches 22, the governors shall be allocated to two groups, according to a ranking of the size of the share of their national central bank's Member State in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions of the Member States whose currency is the euro. The shares in the aggregate gross domestic product at market prices and in the total aggregated balance sheet of the monetary financial institutions shall be assigned weights of 5/6 and 1/6, respectively. The first group shall be composed of five governors and the second group of the remaining governors. The frequency of voting rights of the governors allocated to the first group shall not be lower than the frequency of voting rights of those of the second group. Subject to the previous sentence, the first group shall be assigned four voting rights and the second group eleven voting rights,

— as from the date on which the number of governors reaches 22, the governors shall be allocated to three groups according to a ranking based on the above criteria. The first group shall be composed of five governors and shall be assigned four voting rights. The second group shall be composed of half of the total number of governors, with any fraction rounded up to the nearest integer, and shall be assigned eight voting rights. The third group shall be composed of the remaining governors and shall be assigned three voting rights,

— within each group, the governors shall have their voting rights for equal amounts of time,

— for the calculation of the shares in the aggregate gross domestic product at market prices Article 29.2 shall apply. The total aggregated balance sheet of the monetary financial institutions shall be calculated in accordance with the statistical framework applying in the Union at the time of the calculation,

— whenever the aggregate gross domestic product at market prices is adjusted in accordance with Article 29.3, or whenever the number of governors increases, the size and/or composition of the groups shall be adjusted in accordance with the above principles,

— the Governing Council, acting by a two-thirds majority of all its members, with and without a voting right, shall take all measures necessary for the implementation of the above principles and may decide to postpone the start of the rotation system until the date on which the number of governors exceeds 18.

The right to vote shall be exercised in person. By way of derogation from this rule, the Rules of Procedure referred to in Article 12.3 may lay down that members of the Governing Council may cast their vote by means of teleconferencing. These rules shall also provide that a member of the Governing Council who is prevented from attending meetings of the Governing Council for a prolonged period may appoint an alternate as a member of the Governing Council.

The provisions of the previous paragraphs are without prejudice to the voting rights of all members of the Governing Council, with and without a voting right, under Articles 10.3, 40.2 and 40.3.

Save as otherwise provided for in this Statute, the Governing Council shall act by a simple majority of the members having a voting right. In the event of a tie, the President shall have the casting vote.

In order for the Governing Council to vote, there shall be a quorum of two-thirds of the members having a voting right. If the quorum is not met, the President may convene an extraordinary meeting at which decisions may be taken without regard to the quorum.

10.3. For any decisions to be taken under Articles 28, 29, 30, 32 and 33, the votes in the Governing Council shall be weighted according to the national central banks' shares in the subscribed capital of the ECB. The weights of the votes of the members of the Executive Board shall be zero. A decision requiring a qualified majority shall be adopted if the votes cast in favour represent at least two thirds of the subscribed capital of the ECB and represent at least half of the shareholders. If a Governor is unable to be present, he may nominate an alternate to cast his weighted vote.

10.4. The proceedings of the meetings shall be confidential. The Governing Council may decide to make the outcome of its deliberations public.

10.5. The Governing Council shall meet at least 10 times a year.

Article 11

The Executive Board

11.1. In accordance with the first subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the Executive Board shall comprise the President, the Vice-President and four other members.

The members shall perform their duties on a full-time basis. No member shall engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Governing Council.

11.2. In accordance with the second subparagraph of Article 283(2) of the Treaty on the Functioning of the European Union, the President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council after it has consulted the European Parliament and the Governing Council.

Their term of office shall be eight years and shall not be renewable.

Only nationals of Member States may be members of the Executive Board.

11.3. The terms and conditions of employment of the members of the Executive Board, in particular their salaries, pensions and other social security benefits shall be the subject of contracts with the ECB and shall be fixed by the Governing Council on a proposal from a Committee comprising three members appointed by the Governing Council and three members appointed by the Council. The members of the Executive Board shall not have the right to vote on matters referred to in this paragraph.

11.4. If a member of the Executive Board no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Governing Council or the Executive Board, compulsorily retire him.

11.5. Each member of the Executive Board present in person shall have the right to vote and shall have, for that purpose, one vote. Save as otherwise provided, the Executive Board shall act by a simple majority of the votes cast. In the event of a tie, the President shall have the casting vote. The voting arrangements shall be specified in the Rules of Procedure referred to in Article 12.3.

11.6. The Executive Board shall be responsible for the current business of the ECB.

11.7. Any vacancy on the Executive Board shall be filled by the appointment of a new member in accordance with Article 11.2.

Article 12

Responsibilities of the decision-making bodies

12.1. The Governing Council shall adopt the guidelines and take the decisions necessary to ensure the performance of the tasks entrusted to the ESCB under these Treaties and this Statute. The Governing Council shall formulate the monetary policy of the Union including, as appropriate, decisions relating to intermediate monetary objectives, key interest rates and the supply of reserves in the ESCB, and shall establish the necessary guidelines for their implementation.

The Executive Board shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council. In doing so the Executive Board shall give the necessary instructions to national central banks. In addition the Executive Board may have certain powers delegated to it where the Governing Council so decides.

To the extent deemed possible and appropriate and without prejudice to the provisions of this Article, the ECB shall have recourse to the national central banks to carry out operations which form part of the tasks of the ESCB.

12.2. The Executive Board shall have responsibility for the preparation of meetings of the Governing Council.

12.3. The Governing Council shall adopt Rules of Procedure which determine the internal organisation of the ECB and its decision-making bodies.

12.4. The Governing Council shall exercise the advisory functions referred to in Article 4.

12.5. The Governing Council shall take the decisions referred to in Article 6.

Article 13

The President

13.1. The President or, in his absence, the Vice-President shall chair the Governing Council and the Executive Board of the ECB.

13.2. Without prejudice to Article 38, the President or his nominee shall represent the ECB externally.

Article 14

National central banks

14.1. In accordance with Article 131 of the Treaty on the Functioning of the European Union, each Member State shall ensure that its national legislation, including the statutes of its national central bank, is compatible with these Treaties and this Statute.

14.2. The statutes of the national central banks shall, in particular, provide that the term of office of a Governor of a national central bank shall be no less than five years.

A Governor may be relieved from office only if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct. A decision to this effect may be referred to the Court of Justice by the Governor concerned or the Governing Council on grounds of infringement of these Treaties or of any rule of law relating to their application. Such proceedings shall be instituted within two months of the publication of the decision or of its notification to the plaintiff or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

14.3. The national central banks are an integral part of the ESCB and shall act in accordance with the guidelines and instructions of the ECB. The Governing Council shall take the necessary steps to ensure compliance with the guidelines and instructions of the ECB, and shall require that any necessary information be given to it.

14.4. National central banks may perform functions other than those specified in this Statute unless the Governing Council finds, by a majority of two thirds of the votes cast, that these interfere with the objectives and tasks of the ESCB. Such functions shall be performed on the responsibility and liability of national central banks and shall not be regarded as being part of the functions of the ESCB.

Article 15

Reporting commitments

15.1. The ECB shall draw up and publish reports on the activities of the ESCB at least quarterly.

15.2. A consolidated financial statement of the ESCB shall be published each week.

15.3. In accordance with Article 284(3) of the Treaty on the Functioning of the European Union, the ECB shall address an annual report on the activities of the ESCB and on the monetary policy of both the previous and the current year to the European Parliament, the Council and the Commission, and also to the European Council.

15.4. The reports and statements referred to in this Article shall be made available to interested parties free of charge.

Article 16

Banknotes

In accordance with Article 128(1) of the Treaty on the Functioning of the European Union, the Governing Council shall have the exclusive right to authorise the issue of euro banknotes within the Union. The ECB and the national central banks may issue such notes. The banknotes issued by the ECB and the national central banks shall be the only such notes to have the status of legal tender within the Union.

The ECB shall respect as far as possible existing practices regarding the issue and design of banknotes.

CHAPTER IV

MONETARY FUNCTIONS AND OPERATIONS OF THE ESCB

Article 17

Accounts with the ECB and the national central banks

In order to conduct their operations, the ECB and the national central banks may open accounts for credit institutions, public entities and other market participants and accept assets, including book entry securities, as collateral.

Article 18

Open market and credit operations

18.1. In order to achieve the objectives of the ESCB and to carry out its tasks, the ECB and the national central banks may:

— operate in the financial markets by buying and selling outright (spot and forward) or under repurchase agreement and by lending or borrowing claims and marketable instruments, whether in euro or other currencies, as well as precious metals;

— conduct credit operations with credit institutions and other market participants, with lending being based on adequate collateral.

18.2. The ECB shall establish general principles for open market and credit operations carried out by itself or the national central banks, including for the announcement of conditions under which they stand ready to enter into such transactions.

Article 19

Minimum reserves

19.1. Subject to Article 2, the ECB may require credit institutions established in Member States to hold minimum reserve on accounts with the ECB and national central banks in pursuance of monetary policy objectives. Regulations concerning the calculation and determination of the required minimum reserves may be established by the Governing Council. In cases of non-compliance the ECB shall be entitled to levy penalty interest and to impose other sanctions with comparable effect.

19.2. For the application of this Article, the Council shall, in accordance with the procedure laid down in Article 41, define the basis for minimum reserves and the maximum permissible ratios between those reserves and their basis, as well as the appropriate sanctions in cases of non-compliance.

Article 20

Other instruments of monetary control

The Governing Council may, by a majority of two thirds of the votes cast, decide upon the use of such other operational methods of monetary control as it sees fit, respecting Article 2.

The Council shall, in accordance with the procedure laid down in Article 41, define the scope of such methods if they impose obligations on third parties.

Article 21

Operations with public entities

21.1. In accordance with Article 123 of the Treaty on the Functioning of the European Union, overdrafts or any other type of credit facility with the ECB or with the national central banks in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the ECB or national central banks of debt instruments.

21.2. The ECB and national central banks may act as fiscal agents for the entities referred to in Article 21.1.

21.3. The provisions of this Article shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the ECB as private credit institutions.

Article 22

Clearing and payment systems

The ECB and national central banks may provide facilities, and the ECB may make regulations, to ensure efficient and sound clearing and payment systems within the Union and with other countries.

Article 23

External operations

The ECB and national central banks may:

— establish relations with central banks and financial institutions in other countries and, where appropriate, with international organisations;

— acquire and sell spot and forward all types of foreign exchange assets and precious metals; the term "foreign exchange asset" shall include securities and all other assets in the currency of any country or units of account and in whatever form held;

— hold and manage the assets referred to in this Article;

— conduct all types of banking transactions in relations with third countries and international organisations, including borrowing and lending operations.

Article 24

Other operations

In addition to operations arising from their tasks, the ECB and national central banks may enter into operations for their administrative purposes or for their staff.

CHAPTER V

PRUDENTIAL SUPERVISION

Article 25

Prudential supervision

25.1. The ECB may offer advice to and be consulted by the Council, the Commission and the competent authorities of the Member States on the scope and implementation of Union legislation relating to the prudential supervision of credit institutions and to the stability of the financial system.

25.2. In accordance with any regulation of the Council under Article 127(6) of the Treaty on the Functioning of the European Union, the ECB may perform specific tasks concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

CHAPTER VI

FINANCIAL PROVISIONS OF THE ESCB

Article 26

Financial accounts

26.1. The financial year of the ECB and national central banks shall begin on the first day of January and end on the last day of December.

26.2. The annual accounts of the ECB shall be drawn up by the Executive Board, in accordance with the principles established by the Governing Council. The accounts shall be approved by the Governing Council and shall thereafter be published.

26.3. For analytical and operational purposes, the Executive Board shall draw up a consolidated balance sheet of the ESCB, comprising those assets and liabilities of the national central banks that fall within the ESCB.

26.4. For the application of this Article, the Governing Council shall establish the necessary rules for standardising the accounting and reporting of operations undertaken by the national central banks.

Article 27

Auditing

27.1. The accounts of the ECB and national central banks shall be audited by independent external auditors recommended by the Governing Council and approved by the Council. The auditors shall have full power to examine all books and accounts of the ECB and national central banks and obtain full information about their transactions.

27.2. The provisions of Article 287 of the Treaty on the Functioning of the European Union shall only apply to an examination of the operational efficiency of the management of the ECB.

Article 28

Capital of the ECB

28.1. The capital of the ECB shall be euro 5 000 million. The capital may be increased by such amounts as may be decided by the Governing Council acting by the qualified majority provided for in Article 10.3, within the limits and under the conditions set by the Council under the procedure laid down in Article 41.

28.2. The national central banks shall be the sole subscribers to and holders of the capital of the ECB. The subscription of capital shall be according to the key established in accordance with Article 29.

28.3. The Governing Council, acting by the qualified majority provided for in Article 10.3, shall determine the extent to which and the form in which the capital shall be paid up.

28.4. Subject to Article 28.5, the shares of the national central banks in the subscribed capital of the ECB may not be transferred, pledged or attached.

28.5. If the key referred to in Article 29 is adjusted, the national central banks shall transfer among themselves capital shares to the extent necessary to ensure that the distribution of capital shares corresponds to the adjusted key. The Governing Council shall determine the terms and conditions of such transfers.

Article 29

Key for capital subscription

29.1. The key for subscription of the ECB's capital, fixed for the first time in 1998 when the ESCB was established, shall be determined by assigning to each national central bank a weighting in this key equal to the sum of:

— 50 % of the share of its respective Member State in the population of the Union in the penultimate year preceding the establishment of the ESCB;

— 50 % of the share of its respective Member State in the gross domestic product at market prices of the Union as recorded in the last five years preceding the penultimate year before the establishment of the ESCB.

The percentages shall be rounded up or down to the nearest multiple of 0,0001 percentage points.

29.2. The statistical data to be used for the application of this Article shall be provided by the Commission in accordance with the rules adopted by the Council under the procedure provided for in Article 41.

29.3. The weightings assigned to the national central banks shall be adjusted every five years after the establishment of the ESCB by analogy with the provisions laid down in Article 29.1. The adjusted key shall apply with effect from the first day of the following year.

29.4. The Governing Council shall take all other measures necessary for the application of this Article.

Article 30

Transfer of foreign reserve assets to the ECB

30.1. Without prejudice to Article 28, the ECB shall be provided by the national central banks with foreign reserve assets, other than Member States' currencies, euro, IMF reserve positions and SDRs, up to an amount equivalent to euro 50 000 million. The Governing Council shall decide upon the proportion to be called up by the ECB following its establishment and the amounts called up at later dates. The ECB shall have the full right to hold and manage the foreign reserves that are transferred to it and to use them for the purposes set out in this Statute.

30.2. The contributions of each national central bank shall be fixed in proportion to its share in the subscribed capital of the ECB.

30.3. Each national central bank shall be credited by the ECB with a claim equivalent to its contribution. The Governing Council shall determine the denomination and remuneration of such claims.

30.4. Further calls of foreign reserve assets beyond the limit set in Article 30.1 may be effected by the ECB, in accordance with Article 30.2, within the limits and under the conditions set by the Council in accordance with the procedure laid down in Article 41.

30.5. The ECB may hold and manage IMF reserve positions and SDRs and provide for the pooling of such assets.

30.6. The Governing Council shall take all other measures necessary for the application of this Article.

Article 31

Foreign reserve assets held by national central banks

31.1. The national central banks shall be allowed to perform transactions in fulfilment of their obligations towards international organisations in accordance with Article 23.

31.2. All other operations in foreign reserve assets remaining with the national central banks after the transfers referred to in Article 30, and Member States' transactions with their foreign exchange working balances shall, above a certain limit to be established within the framework of Article 31.3, be subject to approval by the ECB in order to ensure consistency with the exchange rate and monetary policies of the Union.

31.3. The Governing Council shall issue guidelines with a view to facilitating such operations.

Article 32

Allocation of monetary income of national central banks

32.1. The income accruing to the national central banks in the performance of the ESCB's monetary policy function (hereinafter referred to as "monetary income") shall be allocated at the end of each financial year in accordance with the provisions of this Article.

32.2. The amount of each national central bank's monetary income shall be equal to its annual income derived from its assets held against notes in circulation and deposit liabilities to credit institutions. These assets shall be earmarked by national central banks in accordance with guidelines to be established by the Governing Council.

32.3. If, after the introduction of the euro, the balance sheet structures of the national central banks do not, in the judgment of the Governing Council, permit the application of Article 32.2, the Governing Council, acting by a qualified majority, may decide that, by way of derogation from Article 32.2, monetary income shall be measured according to an alternative method for a period of not more than five years.

32.4. The amount of each national central bank's monetary income shall be reduced by an amount equivalent to any interest paid by that central bank on its deposit liabilities to credit institutions in accordance with Article 19.

The Governing Council may decide that national central banks shall be indemnified against costs incurred in connection with the issue of banknotes or in exceptional circumstances for specific losses arising from monetary policy operations undertaken for the ESCB. Indemnification shall be in a form deemed appropriate in the judgment of the Governing Council; these amounts may be offset against the national central banks' monetary income.

32.5. The sum of the national central banks' monetary income shall be allocated to the national central banks in proportion to their paid up shares in the capital of the ECB, subject to any decision taken by the Governing Council pursuant to Article 33.2.

32.6. The clearing and settlement of the balances arising from the allocation of monetary income shall be carried out by the ECB in accordance with guidelines established by the Governing Council.

32.7. The Governing Council shall take all other measures necessary for the application of this Article.

Article 33

Allocation of net profits and losses of the ECB

33.1. The net profit of the ECB shall be transferred in the following order:

(a) an amount to be determined by the Governing Council, which may not exceed 20 % of the net profit, shall be transferred to the general reserve fund subject to a limit equal to 100 % of the capital;

(b) the remaining net profit shall be distributed to the shareholders of the ECB in proportion to their paid-up shares.

33.2. In the event of a loss incurred by the ECB, the shortfall may be offset against the general reserve fund of the ECB and, if necessary, following a decision by the Governing Council, against the monetary income of the relevant financial year in proportion and up to the amounts allocated to the national central banks in accordance with Article 32.5.

CHAPTER VII

GENERAL PROVISIONS

Article 34

Legal acts

34.1. In accordance with Article 132 of the Treaty on the Functioning of the European Union, the ECB shall:

— make regulations to the extent necessary to implement the tasks defined in Article 3.1, first indent, Articles 19.1, 22 or 25.2 and in cases which shall be laid down in the acts of the Council referred to in Article 41;

— take decisions necessary for carrying out the tasks entrusted to the ESCB under these Treaties and this Statute;

— make recommendations and deliver opinions.

34.2. The ECB may decide to publish its decisions, recommendations and opinions.

34.3. Within the limits and under the conditions adopted by the Council under the procedure laid down in Article 41, the ECB shall be entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions.

Article 35

Judicial control and related matters

35.1. The acts or omissions of the ECB shall be open to review or interpretation by the Court of Justice of the European Union in the cases and under the conditions laid down in the Treaty on the Functioning of the European Union. The ECB may institute proceedings in the cases and under the conditions laid down in the Treaties.

35.2. Disputes between the ECB, on the one hand, and its creditors, debtors or any other person, on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred upon the Court of Justice of the European Union.

35.3. The ECB shall be subject to the liability regime provided for in Article 340 of the Treaty on the Functioning of the European Union. The national central banks shall be liable according to their respective national laws.

35.4. The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law.

35.5. A decision of the ECB to bring an action before the Court of Justice of the European Union shall be taken by the Governing Council.

35.6. The Court of Justice of the European Union shall have jurisdiction in disputes concerning the fulfilment by a national central bank of obligations under the Treaties and this Statute. If the ECB considers that a national central bank has failed to fulfil an obligation under the Treaties and this Statute, it shall deliver a reasoned opinion on the matter after giving the national central bank concerned the opportunity to submit its observations. If the national central bank concerned does not comply with the opinion within the period laid down by the ECB, the latter may bring the matter before the Court of Justice of the European Union.

Article 36

Staff

36.1. The Governing Council, on a proposal from the Executive Board, shall lay down the conditions of employment of the staff of the ECB.

36.2. The Court of Justice of the European Union shall have jurisdiction in any dispute between the ECB and its servants within the limits and under the conditions laid down in the conditions of employment.

Article 37 (ex Article 38)

Professional secrecy

37.1. Members of the governing bodies and the staff of the ECB and the national central banks shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy.

37.2. Persons having access to data covered by Union legislation imposing an obligation of secrecy shall be subject to such legislation.

Article 38 (ex Article 39)

Signatories

The ECB shall be legally committed to third parties by the President or by two members of the Executive Board or by the signatures of two members of the staff of the ECB who have been duly authorised by the President to sign on behalf of the ECB.

Article 39 (ex Article 40)

Privileges and immunities

The ECB shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of its tasks, under the conditions laid down in the Protocol on the privileges and immunities of the European Union.

CHAPTER VIII

AMENDMENT OF THE STATUTE AND COMPLEMENTARY LEGISLATION

Article 40 (ex Article 41)

Simplified amendment procedure

40.1. In accordance with Article 129(3) of the Treaty on the Functioning of the European Union, Articles 5.1, 5.2, 5.3, 17, 18, 19.1, 22, 23, 24, 26, 32.2, 32.3, 32.4, 32.6, 33.1(a) and 36 of this Statute may be amended by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure either on a recommendation from the ECB and after consulting the Commission, or on a proposal from the Commission and after consulting the ECB.

40.2. Article 10.2 may be amended by a decision of the European Council, acting unanimously, either on a recommendation from the European Central Bank and after consulting the European Parliament and the Commission, or on a recommendation from the Commission and after consulting the European Parliament and the European Central Bank. These amendments shall not enter into force until they are approved by the Member States in accordance with their respective constitutional requirements.

40.3. A recommendation made by the ECB under this Article shall require a unanimous decision by the Governing Council.

Article 41 (ex Article 42)

Complementary legislation

In accordance with Article 129(4) of the Treaty on the Functioning of the European Union, the Council, either on a proposal from the Commission and after consulting the European Parliament and the ECB or on a recommendation from the ECB and after consulting the European Parliament and the Commission, shall adopt the provisions referred to in Articles 4, 5.4, 19.2, 20, 28.1, 29.2, 30.4 and 34.3 of this Statute.

CHAPTER IX

TRANSITIONAL AND OTHER PROVISIONS FOR THE ESCB

Article 42 (ex Article 43)

General provisions

42.1. A derogation as referred to in Article 139 of the Treaty on the Functioning of the European Union shall entail that the following Articles of this Statute shall not confer any rights or impose any obligations on the Member State concerned: 3, 6, 9.2, 12.1, 14.3, 16, 18, 19, 20, 22, 23, 26.2, 27, 30, 31, 32, 33, 34, and 49.

42.2. The central banks of Member States with a derogation as specified in Article 139(1) of the Treaty on the Functioning of the European Union shall retain their powers in the field of monetary policy according to national law.

42.3. In accordance with Article 139 of the Treaty on the Functioning of the European Union, "Member States" shall be read as "Member States whose currency is the euro" in the following Articles of this Statute: 3, 11.2 and 19.

42.4. "National central banks" shall be read as "central banks of Member States whose currency is the euro" in the following Articles of this Statute: 9.2, 10.2, 10.3, 12.1, 16, 17, 18, 22, 23, 27, 30, 31, 32, 33.2 and 49.

42.5. "Shareholders" shall be read as "central banks of Member States whose currency is the euro" in Articles 10.3 and 33.1.

42.6. "Subscribed capital of the ECB" shall be read as "capital of the ECB subscribed by the central banks of Member States whose currency is the euro" in Articles 10.3 and 30.2.

Article 43 (ex Article 44)

Transitional tasks of the ECB

The ECB shall take over the former tasks of the EMI referred to in Article 141(2) of the Treaty on the Functioning of the European Union which, because of the derogations of one or more Member States, still have to be performed after the introduction of the euro.

The ECB shall give advice in the preparations for the abrogation of the derogations specified in Article 140 of the Treaty on the Functioning of the European Union.

Article 44 (ex Article 45)

The General Council of the ECB

44.1. Without prejudice to Article 129(1) of the Treaty on the Functioning of the European Union, the General Council shall be constituted as a third decision-making body of the ECB.

44.2. The General Council shall comprise the President and Vice-President of the ECB and the Governors of the national central banks. The other members of the Executive Board may participate, without having the right to vote, in meetings of the General Council.

44.3. The responsibilities of the General Council are listed in full in Article 46 of this Statute.

Article 45 (ex Article 46)

Rules of Procedure of the General Council

45.1. The President or, in his absence, the Vice-President of the ECB shall chair the General Council of the ECB.

45.2. The President of the Council and a Member of the Commission may participate, without having the right to vote, in meetings of the General Council.

45.3. The President shall prepare the meetings of the General Council.

45.4. By way of derogation from Article 12.3, the General Council shall adopt its Rules of Procedure.

45.5. The Secretariat of the General Council shall be provided by the ECB.

Article 46 (ex Article 47)

Responsibilities of the General Council

46.1. The General Council shall:

— perform the tasks referred to in Article 43;

— contribute to the advisory functions referred to in Articles 4 and 25.1.

46.2. The General Council shall contribute to:

— the collection of statistical information as referred to in Article 5;

— the reporting activities of the ECB as referred to in Article 15;

— the establishment of the necessary rules for the application of Article 26 as referred to in Article 26.4;

— the taking of all other measures necessary for the application of Article 29 as referred to in Article 29.4;

— the laying down of the conditions of employment of the staff of the ECB as referred to in Article 36.

46.3. The General Council shall contribute to the necessary preparations for irrevocably fixing the exchange rates of the currencies of Member States with a derogation against the euro as referred to in Article 140(3) of the Treaty on the Functioning of the European Union.

46.4. The General Council shall be informed by the President of the ECB of decisions of the Governing Council.

Article 47 (ex Article 48)

Transitional provisions for the capital of the ECB

In accordance with Article 29.1, each national central bank shall be assigned a weighting in the key for subscription of the ECB's capital. By way of derogation from Article 28.3, central banks of Member States with a derogation shall not pay up their subscribed capital unless the General Council, acting by a majority representing at least two thirds of the subscribed capital of the ECB and at least half of the shareholders, decides that a minimal percentage has to be paid up as a contribution to the operational costs of the ECB.

Article 48 (ex Article 49)

Deferred payment of capital, reserves and provisions of the ECB

48.1. The central bank of a Member State whose derogation has been abrogated shall pay up its subscribed share of the capital of the ECB to the same extent as the central banks of other Member States whose currency is the euro, and shall transfer to the ECB foreign reserve assets in accordance with Article 30.1. The sum to be transferred shall be determined by multiplying the euro value at current exchange rates of the foreign reserve assets which have already been transferred to the ECB in accordance with Article 30.1, by the ratio between the number of shares subscribed by the national central bank concerned and the number of shares already paid up by the other national central banks.

48.2. In addition to the payment to be made in accordance with Article 48.1, the central bank concerned shall contribute to the reserves of the ECB, to those provisions equivalent to reserves, and to the amount still to be appropriated to the reserves and provisions corresponding to the balance of the profit and loss account as at 31 December of the year prior to the abrogation of the derogation.

The sum to be contributed shall be determined by multiplying the amount of the reserves, as defined above and as stated in the approved balance sheet of the ECB, by the ratio between the number of shares subscribed by the central bank concerned and the number of shares already paid up by the other central banks.

48.3. Upon one or more countries becoming Member States and their respective national central banks becoming part of the ESCB, the subscribed capital of the ECB and the limit on the amount of foreign reserve assets that may be transferred to the ECB shall be automatically increased. The increase shall be determined by multiplying the respective amounts then prevailing by the ratio, within the expanded capital key, between the weighting of the entering national central banks concerned and the weighting of the national central banks already members of the ESCB. Each national central bank's weighting in the capital key shall be calculated by analogy with Article 29.1 and in compliance with Article 29.2. The reference periods to be used for the statistical data shall be identical to those applied for the latest quinquennial adjustment of the weightings under Article 29.3.

Article 49 (ex Article 52)

Exchange of banknotes in the currencies of the Member States

Following the irrevocable fixing of exchange rates in accordance with Article 140 of the Treaty on the Functioning of the European Union, the Governing Council shall take the necessary measures to ensure that banknotes denominated in currencies with irrevocably fixed exchange rates are exchanged by the national central banks at their respective par values.

Article 50 (ex Article 53)

Applicability of the transitional provisions

If and as long as there are Member States with a derogation, Articles 42 to 47 shall be applicable.

PROTOCOL (No 5)

ON THE STATUTE OF THE EUROPEAN INVESTMENT BANK

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the Statute of the European Investment Bank provided for in Article 308 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The European Investment Bank established by Article 308 of the Treaty on the Functioning of the European Union (hereinafter called the "Bank") is hereby constituted; it shall perform its functions and carry on its activities in accordance with the provisions of the Treaties and of this Statute.

Article 2

The task of the Bank shall be that defined in Article 309 of the Treaty on the Functioning of the European Union.

Article 3

In accordance with Article 308 of the Treaty on the Functioning of the European Union, the Bank's members shall be the Member States.

Article 4

1. The capital of the Bank shall be EUR 233 247 390 000, subscribed by the Member States as follows:

Germany	37 578 019 000
France	37 578 019 000
Italy	37 578 019 000
United Kingdom	37 578 019 000
Spain	22 546 811 500
Belgium	10 416 365 500
Netherlands	10 416 365 500
Sweden	6 910 226 000
Denmark	5 274 105 000
Austria	5 170 732 500
Poland	4 810 160 500
Finland	2 970 783 000

Greece	2 825 416 500
Portugal	1 820 820 000
Czech Republic	1 774 990 500
Hungary	1 679 222 000
Ireland	1 318 525 000
Romania	1 217 626 000
Croatia	854 400 000
Slovakia	604 206 500
Slovenia	560 951 500
Bulgaria	410 217 500
Lithuania	351 981 000
Luxembourg	263 707 000
Cyprus	258 583 500
Latvia	214 805 000
Estonia	165 882 000
Malta	98 429 500

The Member States shall be liable only up to the amount of their share of the capital subscribed and not paid up.

2. The admission of a new member shall entail an increase in the subscribed capital corresponding to the capital brought in by the new member.

3. The Board of Governors may, acting unanimously, decide to increase the subscribed capital.

4. The share of a member in the subscribed capital may not be transferred, pledged or attached.

Article 5

1. The subscribed capital shall be paid in by Member States to the extent of 5 % on average of the amounts laid down in Article 4(1).

2. In the event of an increase in the subscribed capital, the Board of Governors, acting unanimously, shall fix the percentage to be paid up and the arrangements for payment. Cash payments shall be made exclusively in euro.

3. The Board of Directors may require payment of the balance of the subscribed capital, to such extent as may be required for the Bank to meet its obligations.

Each Member State shall make this payment in proportion to its share of the subscribed capital.

Article 6

(ex Article 8)

The Bank shall be directed and managed by a Board of Governors, a Board of Directors and a Management Committee.

Article 7

(ex Article 9)

1. The Board of Governors shall consist of the ministers designated by the Member States.

2. The Board of Governors shall lay down general directives for the credit policy of the Bank, in accordance with the Union's objectives. The Board of Governors shall ensure that these directives are implemented.

3. The Board of Governors shall in addition:

(a) decide whether to increase the subscribed capital in accordance with Article 4(3) and Article 5(2);

(b) for the purposes of Article 9(1), determine the principles applicable to financing operations undertaken within the framework of the Bank's task;

(c) exercise the powers provided in Articles 9 and 11 in respect of the appointment and the compulsory retirement of the members of the Board of Directors and of the Management Committee, and those powers provided in the second subparagraph of Article 11(1);

(d) take decisions in respect of the granting of finance for investment operations to be carried out, in whole or in part, outside the territories of the Member States in accordance with Article 16(1);

(e) approve the annual report of the Board of Directors;

(f) approve the annual balance sheet and profit and loss account;

(g) exercise the other powers and functions conferred by this Statute;

(h) approve the rules of procedure of the Bank.

4. Within the framework of the Treaties and this Statute, the Board of Governors shall be competent to take, acting unanimously, any decisions concerning the suspension of the operations of the Bank and, should the event arise, its liquidation.

Article 8

(ex Article 10)

Save as otherwise provided in this Statute, decisions of the Board of Governors shall be taken by a majority of its members. This majority must represent at least 50 % of the subscribed capital.

A qualified majority shall require eighteen votes in favour and 68 % of the subscribed capital.

Abstentions by members present in person or represented shall not prevent the adoption of decisions requiring unanimity.

Article 9

(ex Article 11)

1. The Board of Directors shall take decisions in respect of granting finance, in particular in the form of loans and guarantees, and raising loans; it shall fix the interest rates on loans granted and the commission and other charges. It may, on the basis of a decision taken by a qualified majority, delegate some of its functions to the Management Committee. It shall determine the terms and conditions for such delegation and shall supervise its execution.

The Board of Directors shall see that the Bank is properly run; it shall ensure that the Bank is managed in accordance with the provisions of the Treaties and of this Statute and with the general directives laid down by the Board of Governors.

At the end of the financial year the Board of Directors shall submit a report to the Board of Governors and shall publish it when approved.

2. The Board of Directors shall consist of twenty-nine directors and nineteen alternate directors.

The directors shall be appointed by the Board of Governors for five years, one nominated by each Member State, and one nominated by the Commission.

The alternate directors shall be appointed by the Board of Governors for five years as shown below:

— two alternates nominated by the Federal Republic of Germany,

— two alternates nominated by the French Republic,

— two alternates nominated by the Italian Republic,

— two alternates nominated by the United Kingdom of Great Britain and Northern Ireland,

— one alternate nominated by common accord of the Kingdom of Spain and the Portuguese Republic,

— one alternate nominated by common accord of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

— two alternates nominated by common accord of the Kingdom of Denmark, the Hellenic Republic, Ireland and Romania,

— two alternates nominated by common accord of the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden,

— four alternates nominated by common accord of the Republic of Bulgaria, the Czech Republic, the Republic of Croatia, the Republic of Cyprus, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic,

— one alternate nominated by the Commission.

The Board of Directors shall co-opt six non-voting experts: three as members and three as alternates.

The appointments of the directors and the alternates shall be renewable.

The Rules of Procedure shall lay down arrangements for participating in the meetings of the Board of Directors and the provisions applicable to alternates and co-opted experts.

The President of the Management Committee or, in his absence, one of the Vice-Presidents, shall preside over meetings of the Board of Directors but shall not vote.

Members of the Board of Directors shall be chosen from persons whose independence and competence are beyond doubt; they shall be responsible only to the Bank.

3. A director may be compulsorily retired by the Board of Governors only if he no longer fulfils the conditions required for the performance of his duties; the Board must act by a qualified majority.

If the annual report is not approved, the Board of Directors shall resign.

4. Any vacancy arising as a result of death, voluntary resignation, compulsory retirement or collective resignation shall be filled in accordance with paragraph 2. A member shall be replaced for the remainder of his term of office, save where the entire Board of Directors is being replaced.

5. The Board of Governors shall determine the remuneration of members of the Board of Directors. The Board of Governors shall lay down what activities are incompatible with the duties of a director or an alternate.

Article 10

(ex Article 12)

1. Each director shall have one vote on the Board of Directors. He may delegate his vote in all cases, according to procedures to be laid down in the Rules of Procedure of the Bank.

2. Save as otherwise provided in this Statute, decisions of the Board of Directors shall be taken by at least one third of the members entitled to vote representing at least fifty per cent of the subscribed capital. A qualified majority shall require eighteen votes in favour and sixty-eight per cent of the subscribed capital. The rules of procedure of the Bank shall lay down the quorum required for the decisions of the Board of Directors to be valid.

Article 11

(ex Article 13)

1. The Management Committee shall consist of a President and eight Vice-Presidents appointed for a period of six years by the Board of Governors on a proposal from the Board of Directors. Their appointments shall be renewable.

The Board of Governors, acting unanimously, may vary the number of members on the Management Committee.

2. On a proposal from the Board of Directors adopted by a qualified majority, the Board of Governors may, acting in its turn by a qualified majority, compulsorily retire a member of the Management Committee.

3. The Management Committee shall be responsible for the current business of the Bank, under the authority of the President and the supervision of the Board of Directors.

It shall prepare the decisions of the Board of Directors, in particular decisions on the raising of loans and the granting of finance, in particular in the form of loans and guarantees; it shall ensure that these decisions are implemented.

4. The Management Committee shall act by a majority when delivering opinions on proposals for raising loans or granting of finance, in particular in the form of loans and guarantees.

5. The Board of Governors shall determine the remuneration of members of the Management Committee and shall lay down what activities are incompatible with their duties.

6. The President or, if he is prevented, a Vice-President shall represent the Bank in judicial and other matters.

7. The staff of the Bank shall be under the authority of the President. They shall be engaged and discharged by him. In the selection of staff, account shall be taken not only of personal ability and qualifications but also of an equitable representation of nationals of Member States. The Rules of Procedure shall determine which organ is competent to adopt the provisions applicable to staff.

8. The Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties.

Article 12

(ex Article 14)

1. A Committee consisting of six members, appointed on the grounds of their competence by the Board of Governors, shall verify that the activities of the Bank conform to best banking practice and shall be responsible for the auditing of its accounts.

2. The Committee referred to in paragraph 1 shall annually ascertain that the operations of the Bank have been conducted and its books kept in a proper manner. To this end, it shall verify that the Bank's operations have been carried out in compliance with the formalities and procedures laid down by this Statute and the Rules of Procedure.

3. The Committee referred to in paragraph 1 shall confirm that the financial statements, as well as any other financial information contained in the annual accounts drawn up by the Board of Directors, give a true and fair view of the financial position of the Bank in respect of its assets and liabilities, and of the results of its operations and its cash flows for the financial year under review.

4. The Rules of Procedure shall specify the qualifications required of the members of the Committee and lay down the terms and conditions for the Committee's activity.

Article 13

(ex Article 15)

The Bank shall deal with each Member State through the authority designated by that State. In the conduct of financial operations the Bank shall have recourse to the national central bank of the Member State concerned or to other financial institutions approved by that State.

Article 14

(ex Article 16)

1. The Bank shall cooperate with all international organisations active in fields similar to its own.

2. The Bank shall seek to establish all appropriate contacts in the interests of cooperation with banking and financial institutions in the countries to which its operations extend.

Article 15

(ex Article 17)

At the request of a Member State or of the Commission, or on its own initiative, the Board of Governors shall, in accordance with the same provisions as governed their adoption, interpret or supplement the directives laid down by it under Article 7 of this Statute.

Article 16

(ex Article 18)

1. Within the framework of the task set out in Article 309 of the Treaty on the Functioning of the European Union, the Bank shall grant finance, in particular in the form of loans and guarantees to its members or to private or public undertakings for investments to be carried out in the territories of Member States, to the extent that funds are not available from other sources on reasonable terms.

However, by decision of the Board of Governors, acting by a qualified majority on a proposal from the Board of Directors, the Bank may grant financing for investment to be carried out, in whole or in part, outside the territories of Member States.

2. As far as possible, loans shall be granted only on condition that other sources of finance are also used.

3. When granting a loan to an undertaking or to a body other than a Member State, the Bank shall make the loan conditional either on a guarantee from the Member State in whose territory the investment will be carried out or on other adequate guarantees, or on the financial strength of the debtor.

Furthermore, in accordance with the principles established by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of projects provided for in Article 309 of the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions of any financing operation presenting a specific risk profile and thus considered to be a special activity.

4. The Bank may guarantee loans contracted by public or private undertakings or other bodies for the purpose of carrying out projects provided for in Article 309 of the Treaty on the Functioning of the European Union.

5. The aggregate amount outstanding at any time of loans and guarantees granted by the Bank shall not exceed 250 % of its subscribed capital, reserves, non-allocated provisions and profit and loss account surplus. The latter aggregate amount shall be reduced by an amount equal to the amount subscribed (whether or not paid in) for any equity participation of the Bank.

The amount of the Bank's disbursed equity participations shall not exceed at any time an amount corresponding to the total of its paid-in subscribed capital, reserves, non-allocated provisions and profit and loss account surplus.

By way of exception, the special activities of the Bank, as decided by the Board of Governors and the Board of Directors in accordance with paragraph 3, will have a specific allocation of reserve.

This paragraph shall also apply to the consolidated accounts of the Bank.

6. The Bank shall protect itself against exchange risks by including in contracts for loans and guarantees such clauses as it considers appropriate.

Article 17

(ex Article 19)

1. Interest rates on loans to be granted by the Bank and commission and other charges shall be adjusted to conditions prevailing on the capital market and shall be calculated in such a way that the income therefrom shall enable the Bank to meet its obligations, to cover its expenses and risks and to build up a reserve fund as provided for in Article 22.

2. The Bank shall not grant any reduction in interest rates. Where a reduction in the interest rate appears desirable in view of the nature of the investment to be financed, the Member State concerned or some other agency may grant aid towards the payment of interest to the extent that this is compatible with Article 107 of the Treaty on the Functioning of the European Union.

Article 18

(ex Article 20)

In its financing operations, the Bank shall observe the following principles:

1. It shall ensure that its funds are employed as rationally as possible in the interests of the Union.

It may grant loans or guarantees only:

(a) where, in the case of investments by undertakings in the production sector, interest and amortisation payments are covered out of operating profits or, in the case of other investments, either by a commitment entered into by the State in which the investment is made or by some other means; and

(b) where the execution of the investment contributes to an increase in economic productivity in general and promotes the attainment of the internal market.

2. It shall neither acquire any interest in an undertaking nor assume any responsibility in its management unless this is required to safeguard the rights of the Bank in ensuring recovery of funds lent.

However, in accordance with the principles determined by the Board of Governors pursuant to Article 7(3)(b), and where the implementation of operations provided for in Article 309 of the Treaty on the Functioning of the European Union so requires, the Board of Directors shall, acting by a qualified majority, lay down the terms and conditions for taking an equity participation in a commercial undertaking, normally as a complement to a loan or a guarantee, in so far as this is required to finance an investment or programme.

3. It may dispose of its claims on the capital market and may, to this end, require its debtors to issue bonds or other securities.

4. Neither the Bank nor the Member States shall impose conditions requiring funds lent by the Bank to be spent within a specified Member State.

5. The Bank may make its loans conditional on international invitations to tender being arranged.

6. The Bank shall not finance, in whole or in part, any investment opposed by the Member State in whose territory it is to be carried out.

7. As a complement to its lending activity, the Bank may provide technical assistance services in accordance with the terms and conditions laid down by the Board of Governors, acting by a qualified majority, and in compliance with this Statute.

Article 19

(ex Article 21)

1. Any undertaking or public or private entity may apply directly to the Bank for financing. Applications to the Bank may also be made either through the Commission or through the Member State on whose territory the investment will be carried out.

2. Applications made through the Commission shall be submitted for an opinion to the Member State in whose territory the investment will be carried out. Applications made through a Member State shall be submitted to the Commission for an opinion. Applications made direct by an undertaking shall be submitted to the Member State concerned and to the Commission.

The Member State concerned and the Commission shall deliver their opinions within two months. If no reply is received within this period, the Bank may assume that there is no objection to the investment in question.

3. The Board of Directors shall rule on financing operations submitted to it by the Management Committee.

4. The Management Committee shall examine whether financing operations submitted to it comply with the provisions of this Statute, in particular with Articles 16 and 18. Where the Management Committee is in favour of the financing operation, it shall submit the corresponding proposal to the Board of Directors; the Committee may make its favourable opinion subject to such conditions, as it considers essential. Where the Management Committee is against granting the finance, it shall submit the relevant documents together with its opinion to the Board of Directors.

5. Where the Management Committee delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous.

6. Where the Commission delivers an unfavourable opinion, the Board of Directors may not grant the finance concerned unless its decision is unanimous, the director nominated by the Commission abstaining.

7. Where both the Management Committee and the Commission deliver an unfavourable opinion, the Board of Directors may not grant the finance.

8. In the event that a financing operation relating to an approved investment has to be restructured in order to safeguard the Bank's rights and interests, the Management Committee shall take without delay the emergency measures which it deems necessary, subject to immediate reporting thereon to the Board of Directors.

Article 20

(ex Article 22)

1. The Bank shall borrow on the capital markets the funds necessary for the performance of its tasks.

2. The Bank may borrow on the capital markets of the Member States in accordance with the legal provisions applying to those markets.

The competent authorities of a Member State with a derogation within the meaning of Article 139(1) of the Treaty on the Functioning of the European Union may oppose this only if there is reason to fear serious disturbances on the capital market of that State.

Article 21

(ex Article 23)

1. The Bank may employ any available funds which it does not immediately require to meet its obligations in the following ways:

(a) it may invest on the money markets;

(b) it may, subject to the provisions of Article 18(2), buy and sell securities;

(c) it may carry out any other financial operation linked with its objectives.

2. Without prejudice to the provisions of Article 23, the Bank shall not, in managing its investments, engage in any currency arbitrage not directly required to carry out its lending operations or fulfil commitments arising out of loans raised or guarantees granted by it.

3. The Bank shall, in the fields covered by this Article, act in agreement with the competent authorities or with the national central bank of the Member State concerned.

Article 22

(ex Article 24)

1. A reserve fund of up to 10 % of the subscribed capital shall be built up progressively. If the state of the liabilities of the Bank should so justify, the Board of Directors may decide to set aside additional reserves. Until such time as the reserve fund has been fully built up, it shall be fed by:

(a) interest received on loans granted by the Bank out of sums to be paid up by the Member States pursuant to Article 5;

(b) interest received on loans granted by the Bank out of funds derived from repayment of the loans referred to in (a);

to the extent that this income is not required to meet the obligations of the Bank or to cover its expenses.

2. The resources of the reserve fund shall be so invested as to be available at any time to meet the purpose of the fund.

Article 23

(ex Article 25)

1. The Bank shall at all times be entitled to transfer its assets in the currency of a Member State whose currency is not the euro in order to carry out financial operations corresponding to the task set out in Article 309 of the Treaty on the Functioning of the European Union, taking into account the provisions of Article 21 of this Statute. The Bank shall, as far as possible, avoid making such transfers if it has cash or liquid assets in the currency required.

2. The Bank may not convert its assets in the currency of a Member State whose currency is not the euro into the currency of a third country without the agreement of the Member State concerned.

3. The Bank may freely dispose of that part of its capital which is paid up and of any currency borrowed on markets outside the Union.

4. The Member States undertake to make available to the debtors of the Bank the currency needed to repay the capital and pay the interest on loans or commission on guarantees granted by the Bank for investments to be carried out in their territory.

Article 24

(ex Article 26)

If a Member State fails to meet the obligations of membership arising from this Statute, in particular the obligation to pay its share of the subscribed capital or to service its borrowings, the granting of loans or guarantees to that Member State or its nationals may be suspended by a decision of the Board of Governors, acting by a qualified majority.

Such decision shall not release either the State or its nationals from their obligations towards the Bank.

Article 25

(ex Article 27)

1. If the Board of Governors decides to suspend the operations of the Bank, all its activities shall cease forthwith, except those required to ensure the due realisation, protection and preservation of its assets and the settlement of its liabilities.

2. In the event of liquidation, the Board of Governors shall appoint the liquidators and give them instructions for carrying out the liquidation. It shall ensure that the rights of the members of staff are safeguarded.

Article 26

(ex Article 28)

1. In each of the Member States, the Bank shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable or immovable property and may be a party to legal proceedings.

2. The property of the Bank shall be exempt from all forms of requisition or expropriation.

Article 27

(ex Article 29)

Disputes between the Bank on the one hand, and its creditors, debtors or any other person on the other, shall be decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the European Union. The Bank may provide for arbitration in any contract.

The Bank shall have an address for service in each Member State. It may, however, in any contract, specify a particular address for service.

The property and assets of the Bank shall not be liable to attachment or to seizure by way of execution except by decision of a court.

Article 28

(ex Article 30)

1. The Board of Governors may, acting unanimously, decide to establish subsidiaries or other entities, which shall have legal personality and financial autonomy.

2. The Board of Governors shall, acting unanimously, establish the Statutes of the bodies referred to in paragraph 1. The Statutes shall define, in particular, their objectives, structure, capital, membership, the location of their seat, their financial resources, means of intervention and auditing arrangements, as well as their relationship with the organs of the Bank.

3. The Bank shall be entitled to participate in the management of these bodies and contribute to their subscribed capital up to the amount determined by the Board of Governors, acting unanimously.

4. The Protocol on the privileges and immunities of the European Union shall apply to the bodies referred to in paragraph 1 in so far as they are incorporated under the law of the Union, to the members of their organs in the performance of their duties as such and to their staff, under the same terms and conditions as those applicable to the Bank.

Those dividends, capital gains or other forms of revenue stemming from such bodies to which the members, other than the European Union and the Bank, are entitled, shall however remain subject to the fiscal provisions of the applicable legislation.

5. The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning measures adopted by organs of a body incorporated under Union law. Proceedings against such measures may be instituted by any member of such a body in its capacity as such or by Member States under the conditions laid down in Article 263 of the Treaty on the Functioning of the European Union.

6. The Board of Governors may, acting unanimously, decide to admit the staff of bodies incorporated under Union law to joint schemes with the Bank, in compliance with the respective internal procedures.

PROTOCOL (No 6)

ON THE LOCATION OF THE SEATS OF THE INSTITUTIONS AND OF CERTAIN BODIES, OFFICES, AGENCIES AND DEPARTMENTS OF THE EUROPEAN UNION

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES,

HAVING REGARD to Article 341 of the Treaty on the Functioning of the European Union and Article 189 of the Treaty establishing the European Atomic Energy Community,

RECALLING AND CONFIRMING the Decision of 8 April 1965, and without prejudice to the decisions concerning the seat of future institutions, bodies, offices, agencies and departments,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and to the Treaty establishing the European Atomic Energy Community:

Sole Article

(a) The European Parliament shall have its seat in Strasbourg where the 12 periods of monthly plenary sessions, including the budget session, shall be held. The periods of additional plenary sessions shall be held in Brussels. The committees of the European Parliament shall meet in Brussels. The General Secretariat of the European Parliament and its departments shall remain in Luxembourg.

(b) The Council shall have its seat in Brussels. During the months of April, June and October, the Council shall hold its meetings in Luxembourg.

(c) The Commission shall have its seat in Brussels. The departments listed in Articles 7, 8 and 9 of the Decision of 8 April 1965 shall be established in Luxembourg.

(d) The Court of Justice of the European Union shall have its seat in Luxembourg.

(e) The Court of Auditors shall have its seat in Luxembourg.

(f) The Economic and Social Committee shall have its seat in Brussels.

(g) The Committee of the Regions shall have its seat in Brussels.

(h) The European Investment Bank shall have its seat in Luxembourg.

(i) The European Central Bank shall have its seat in Frankfurt.

(j) The European Police Office (Europol) shall have its seat in The Hague.

PROTOCOL (No 7)

ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that, in accordance with Article 343 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty establishing the European Atomic Energy Community ("EAEC"), the European Union and the EAEC shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community:

CHAPTER I

PROPERTY, FUNDS, ASSETS AND OPERATIONS OF THE EUROPEAN UNION

Article 1

The premises and buildings of the Union shall be inviolable. They shall be exempt from search, requisition, confiscation or expropriation. The property and assets of the Union shall not be the subject of any administrative or legal measure of constraint without the authorisation of the Court of Justice.

Article 2

The archives of the Union shall be inviolable.

Article 3

The Union, its assets, revenues and other property shall be exempt from all direct taxes.

The governments of the Member States shall, wherever possible, take the appropriate measures to remit or refund the amount of indirect taxes or sales taxes included in the price of movable or immovable property, where the Union makes, for its official use, substantial purchases the price of which includes taxes of this kind. These provisions shall not be applied, however, so as to have the effect of distorting competition within the Union.

No exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Article 4

The Union shall be exempt from all customs duties, prohibitions and restrictions on imports and exports in respect of articles intended for its official use: articles so imported shall not be disposed of, whether or not in return for payment, in the territory of the country into which they have been imported, except under conditions approved by the government of that country.

The Union shall also be exempt from any customs duties and any prohibitions and restrictions on import and exports in respect of its publications.

CHAPTER II

COMMUNICATIONS AND *LAISSEZ-PASSER*

Article 5

(ex Article 6)

For their official communications and the transmission of all their documents, the institutions of the Union shall enjoy in the territory of each Member State the treatment accorded by that State to diplomatic missions.

Official correspondence and other official communications of the institutions of the Union shall not be subject to censorship.

Article 6

(ex Article 7)

Laissez-passer in a form to be prescribed by the Council, acting by a simple majority, which shall be recognised as valid travel documents by the authorities of the Member States, may be issued to members and servants of the institutions of the Union by the Presidents of these institutions. These *laissez-passer* shall be issued to officials and other servants under conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

The Commission may conclude agreements for these *laissez-passer* to be recognised as valid travel documents within the territory of third countries.

CHAPTER III

MEMBERS OF THE EUROPEAN PARLIAMENT

Article 7

(ex Article 8)

No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.

Members of the European Parliament shall, in respect of customs and exchange control, be accorded:

(a) by their own government, the same facilities as those accorded to senior officials travelling abroad on temporary official missions;

(b) by the government of other Member States, the same facilities as those accorded to representatives of foreign governments on temporary official missions.

Article 8

(ex Article 9)

Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.

Article 9

(ex Article 10)

During the sessions of the European Parliament, its Members shall enjoy:

(a) in the territory of their own State, the immunities accorded to members of their parliament;

(b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.

Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament.

Immunity cannot be claimed when a Member is found in the act of committing an offence and shall not prevent the European Parliament from exercising its right to waive the immunity of one of its Members.

CHAPTER IV

REPRESENTATIVES OF MEMBER STATES TAKING PART IN THE WORK OF THE INSTITUTIONS OF THE EUROPEAN UNION

Article 10

(ex Article 11)

Representatives of Member States taking part in the work of the institutions of the Union, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.

This Article shall also apply to members of the advisory bodies of the Union.

CHAPTER V

OFFICIALS AND OTHER SERVANTS OF THE EUROPEAN UNION

Article 11

(ex Article 12)

In the territory of each Member State and whatever their nationality, officials and other servants of the Union shall:

(a) subject to the provisions of the Treaties relating, on the one hand, to the rules on the liability of officials and other servants towards the Union and, on the other hand, to the jurisdiction of the Court of Justice of the European Union in disputes between the Union and its officials and other servants, be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office;

(b) together with their spouses and dependent members of their families, not be subject to immigration restrictions or to formalities for the registration of aliens;

(c) in respect of currency or exchange regulations, be accorded the same facilities as are customarily accorded to officials of international organisations;

(d) enjoy the right to import free of duty their furniture and effects at the time of first taking up their post in the country concerned, and the right to re-export free of duty their furniture and effects, on termination of their duties in that country, subject in either case to the conditions considered to be necessary by the government of the country in which this right is exercised;

(e) have the right to import free of duty a motor car for their personal use, acquired either in the country of their last residence or in the country of which they are nationals on the terms ruling in the home market in that country, and to re-export it free of duty, subject in either case to the conditions considered to be necessary by the government of the country concerned.

Article 12

(ex Article 13)

Officials and other servants of the Union shall be liable to a tax for the benefit of the Union on salaries, wages and emoluments paid to them by the Union, in accordance with the conditions and procedure laid down by the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned.

They shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.

Article 13

(ex Article 14)

In the application of income tax, wealth tax and death duties and in the application of conventions on the avoidance of double taxation concluded between Member States of the Union, officials and other servants of the Union who, solely by reason of the performance of their duties in the service of the Union, establish their residence in the territory of a Member State other than their country of domicile for tax purposes at the time of entering the service of the Union, shall be considered, both in the country of their actual residence and in the country of domicile for tax purposes, as having maintained their domicile in the latter country provided that it is a member of the Union. This provision shall also apply to a spouse, to the extent that the latter is not separately engaged in a gainful occupation, and to children dependent on and in the care of the persons referred to in this Article.

Movable property belonging to persons referred to in the preceding paragraph and situated in the territory of the country where they are staying shall be exempt from death duties in that country; such property shall, for the assessment of such duty, be considered as being in the country of domicile for tax purposes, subject to the rights of third countries and to the possible application of provisions of international conventions on double taxation.

Any domicile acquired solely by reason of the performance of duties in the service of other international organisations shall not be taken into consideration in applying the provisions of this Article.

Article 14

(ex Article 15)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure and after consultation of the institutions concerned, shall lay down the scheme of social security benefits for officials and other servants of the Union.

Article 15

(ex Article 16)

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, and after consulting the other institutions concerned, shall determine the categories of officials and other servants of the Union to whom the provisions of Article 11, the second paragraph of Article 12, and Article 13 shall apply, in whole or in part.

The names, grades and addresses of officials and other servants included in such categories shall be communicated periodically to the governments of the Member States.

CHAPTER VI

PRIVILEGES AND IMMUNITIES OF MISSIONS OF THIRD COUNTRIES ACCREDITED TO THE EUROPEAN UNION

Article 16

(ex Article 17)

The Member State in whose territory the Union has its seat shall accord the customary diplomatic immunities and privileges to missions of third countries accredited to the Union.

CHAPTER VII

GENERAL PROVISIONS

Article 17

(ex Article 18)

Privileges, immunities and facilities shall be accorded to officials and other servants of the Union solely in the interests of the Union.

Each institution of the Union shall be required to waive the immunity accorded to an official or other servant wherever that institution considers that the waiver of such immunity is not contrary to the interests of the Union.

Article 18

(ex Article 19)

The institutions of the Union shall, for the purpose of applying this Protocol, cooperate with the responsible authorities of the Member States concerned.

Article 19

(ex Article 20)

Articles 11 to 14 and Article 17 shall apply to the President of the European Council.

They shall also apply to Members of the Commission.

Article 20

(ex Article 21)

Articles 11 to 14 and Article 17 shall apply to the Judges, the Advocates-General, the Registrars and the Assistant Rapporteurs of the Court of Justice of the European Union, without prejudice to the provisions of Article 3 of the Protocol on the Statute of the Court of Justice of the European Union relating to immunity from legal proceedings of Judges and Advocates-General.

Article 21

(ex Article 22)

This Protocol shall also apply to the European Investment Bank, to the members of its organs, to its staff and to the representatives of the Member States taking part in its activities, without prejudice to the provisions of the Protocol on the Statute of the Bank.

The European Investment Bank shall in addition be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the Bank has its seat. Similarly, its dissolution or liquidation shall not give rise to any imposition. Finally, the activities of the Bank and of its organs carried on in accordance with its Statute shall not be subject to any turnover tax.

Article 22

(ex Article 23)

This Protocol shall also apply to the European Central Bank, to the members of its organs and to its staff, without prejudice to the provisions of the Protocol on the Statute of the European System of Central Banks and the European Central Bank.

The European Central Bank shall, in addition, be exempt from any form of taxation or imposition of a like nature on the occasion of any increase in its capital and from the various formalities which may be connected therewith in the State where the bank has its seat. The activities of the Bank and of its organs carried on in accordance with the Statute of the European System of Central Banks and of the European Central Bank shall not be subject to any turnover tax.

PROTOCOL (No 8)

RELATING TO ARTICLE 6(2) OF THE TREATY ON EUROPEAN UNION ON THE ACCESSION OF THE UNION TO THE EUROPEAN CONVENTION ON THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The agreement relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the "European Convention") provided for in Article 6(2) of the Treaty on European Union shall make provision for preserving the specific characteristics of the Union and Union law, in particular with regard to:

(a) the specific arrangements for the Union's possible participation in the control bodies of the European Convention;

(b) the mechanisms necessary to ensure that proceedings by non-Member States and individual applications are correctly addressed to Member States and/or the Union as appropriate.

Article 2

The agreement referred to in Article 1 shall ensure that accession of the Union shall not affect the competences of the Union or the powers of its institutions. It shall ensure that nothing therein affects the situation of Member States in relation to the European Convention, in particular in relation to the Protocols thereto, measures taken by Member States derogating from the European Convention in accordance with Article 15 thereof and reservations to the European Convention made by Member States in accordance with Article 57 thereof.

Article 3

Nothing in the agreement referred to in Article 1 shall affect Article 344 of the Treaty on the Functioning of the European Union.

PROTOCOL (No 9)

ON THE DECISION OF THE COUNCIL RELATING TO THE IMPLEMENTATION OF ARTICLE 16(4) OF THE TREATY ON EUROPEAN UNION AND ARTICLE 238(2) OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION BETWEEN 1 NOVEMBER 2014 AND 31 MARCH 2017 ON THE ONE HAND, AND AS FROM 1 APRIL 2017 ON THE OTHER

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the fundamental importance that agreeing on the Decision of the Council relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other (hereinafter "the Decision"), had when approving the Treaty of Lisbon,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Sole Article

Before the examination by the Council of any draft which would aim either at amending or abrogating the Decision or any of its provisions, or at modifying indirectly its scope or its meaning through the modification of another legal act of the Union, the European Council shall hold a preliminary deliberation on the said draft, acting by consensus in accordance with Article 15(4) of the Treaty on European Union.

PROTOCOL (No 10)

ON PERMANENT STRUCTURED COOPERATION ESTABLISHED BY ARTICLE 42 OF THE TREATY ON EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

HAVING REGARD TO Article 42(6) and Article 46 of the Treaty on European Union,

RECALLING that the Union is pursuing a common foreign and security policy based on the achievement of growing convergence of action by Member States,

RECALLING that the common security and defence policy is an integral part of the common foreign and security policy; that it provides the Union with operational capacity drawing on civil and military assets; that the Union may use such assets in the tasks referred to in Article 43 of the Treaty on European Union outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter; that the performance of these tasks is to be undertaken using capabilities provided by the Member States in accordance with the principle of a single set of forces,

RECALLING that the common security and defence policy of the Union does not prejudice the specific character of the security and defence policy of certain Member States,

RECALLING that the common security and defence policy of the Union respects the obligations under the North Atlantic Treaty of those Member States which see their common defence realised in the North Atlantic Treaty Organisation, which remains the foundation of the collective defence of its members, and is compatible with the common security and defence policy established within that framework,

CONVINCED that a more assertive Union role in security and defence matters will contribute to the vitality of a renewed Atlantic Alliance, in accordance with the Berlin Plus arrangements,

DETERMINED to ensure that the Union is capable of fully assuming its responsibilities within the international community,

RECOGNISING that the United Nations Organisation may request the Union's assistance for the urgent implementation of missions undertaken under Chapters VI and VII of the United Nations Charter,

RECOGNISING that the strengthening of the security and defence policy will require efforts by Member States in the area of capabilities,

CONSCIOUS that embarking on a new stage in the development of the European security and defence policy involves a determined effort by the Member States concerned,

RECALLING the importance of the High Representative of the Union for Foreign Affairs and Security Policy being fully involved in proceedings relating to permanent structured cooperation,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The permanent structured cooperation referred to in Article 42(6) of the Treaty on European Union shall be open to any Member State which undertakes, from the date of entry into force of the Treaty of Lisbon, to:

(a) proceed more intensively to develop its defence capacities through the development of its national contributions and participation, where appropriate, in multinational forces, in the main European equipment programmes, and in the activity of the Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency), and

(b) have the capacity to supply by 2010 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned, structured at a tactical level as a battle group, with support elements including transport and logistics, capable of carrying out the tasks referred to in Article 43 of the Treaty on European Union, within a period of five to 30 days, in particular in response to requests from the United Nations Organisation, and which can be sustained for an initial period of 30 days and be extended up to at least 120 days.

Article 2

To achieve the objectives laid down in Article 1, Member States participating in permanent structured cooperation shall undertake to:

(a) cooperate, as from the entry into force of the Treaty of Lisbon, with a view to achieving approved objectives concerning the level of investment expenditure on defence equipment, and regularly review these objectives, in the light of the security environment and of the Union's international responsibilities;

(b) bring their defence apparatus into line with each other as far as possible, particularly by harmonising the identification of their military needs, by pooling and, where appropriate, specialising their defence means and capabilities, and by encouraging cooperation in the fields of training and logistics;

(c) take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces, in particular by identifying common objectives regarding the commitment of forces, including possibly reviewing their national decision-making procedures;

(d) work together to ensure that they take the necessary measures to make good, including through multinational approaches, and without prejudice to undertakings in this regard within the North Atlantic Treaty Organisation, the shortfalls perceived in the framework of the "Capability Development Mechanism";

(e) take part, where appropriate, in the development of major joint or European equipment programmes in the framework of the European Defence Agency.

Article 3

The European Defence Agency shall contribute to the regular assessment of participating Member States' contributions with regard to capabilities, in particular contributions made in accordance with the criteria to be established, *inter alia*, on the basis of Article 2, and shall report thereon at least once a year. The assessment may serve as a basis for Council recommendations and decisions adopted in accordance with Article 46 of the Treaty on European Union.

PROTOCOL (No 11)

ON ARTICLE 42 OF THE TREATY ON EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

BEARING IN MIND the need to implement fully the provisions of Article 42(2) of the Treaty on European Union,

BEARING IN MIND that the policy of the Union in accordance with Article 42 shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in NATO, under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework,

HAVE AGREED UPON the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

The European Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them.

PROTOCOL (No 12)

ON THE EXCESSIVE DEFICIT PROCEDURE

THE HIGH CONTRACTING PARTIES,

DESIRING TO lay down the details of the excessive deficit procedure referred to in Article 126 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The reference values referred to in Article 126(2) of the Treaty on the Functioning of the European Union are:

— 3 % for the ratio of the planned or actual government deficit to gross domestic product at market prices;

— 60 % for the ratio of government debt to gross domestic product at market prices.

Article 2

In Article 126 of the said Treaty and in this Protocol:

— "government" means general government, that is central government, regional or local government and social security funds, to the exclusion of commercial operations, as defined in the European System of Integrated Economic Accounts;

— "deficit" means net borrowing as defined in the European System of Integrated Economic Accounts;

— "investment" means gross fixed capital formation as defined in the European System of Integrated Economic Accounts;

— "debt" means total gross debt at nominal value outstanding at the end of the year and consolidated between and within the sectors of general government as defined in the first indent.

Article 3

In order to ensure the effectiveness of the excessive deficit procedure, the governments of the Member States shall be responsible under this procedure for the deficits of general government as

defined in the first indent of Article 2. The Member States shall ensure that national procedures in the budgetary area enable them to meet their obligations in this area deriving from these Treaties. The Member States shall report their planned and actual deficits and the levels of their debt promptly and regularly to the Commission.

Article 4

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

PROTOCOL (No 13)
ON THE CONVERGENCE CRITERIA

THE HIGH CONTRACTING PARTIES,

DESIRING to lay down the details of the convergence criteria which shall guide the Union in taking decisions to end the derogations of those Member States with a derogation, referred to in Article 140 of the Treaty on the Functioning of the European Union,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The criterion on price stability referred to in the first indent of Article 140(1) of the Treaty on the Functioning of the European Union shall mean that a Member State has a price performance that is sustainable and an average rate of inflation, observed over a period of one year before the examination, that does not exceed by more than 1 ½ percentage points that of, at most, the three best performing Member States in terms of price stability. Inflation shall be measured by means of the consumer price index on a comparable basis taking into account differences in national definitions.

Article 2

The criterion on the government budgetary position referred to in the second indent of Article 140(1) of the said Treaty shall mean that at the time of the examination the Member State is not the subject of a Council decision under Article 126(6) of the said Treaty that an excessive deficit exists.

Article 3

The criterion on participation in the Exchange Rate mechanism of the European Monetary System referred to in the third indent of Article 140(1) of the said Treaty shall mean that a Member State has respected the normal fluctuation margins provided for by the exchange-rate mechanism on the European Monetary System without severe tensions for at least the last two years before the examination. In particular, the Member State shall not have devalued its currency's bilateral central rate against the euro on its own initiative for the same period.

Article 4

The criterion on the convergence of interest rates referred to in the fourth indent of Article 140(1) of the said Treaty shall mean that, observed over a period of one year before the examination, a Member State has had an average nominal long-term interest rate that does not exceed by more

than two percentage points that of, at most, the three best performing Member States in terms of price stability. Interest rates shall be measured on the basis of long-term government bonds or comparable securities, taking into account differences in national definitions.

Article 5

The statistical data to be used for the application of this Protocol shall be provided by the Commission.

Article 6

The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the ECB and the Economic and Financial Committee, adopt appropriate provisions to lay down the details of the convergence criteria referred to in Article 140(1) of the said Treaty, which shall then replace this Protocol.

PROTOCOL (No 14)
ON THE EURO GROUP

THE HIGH CONTRACTING PARTIES,

DESIRING to promote conditions for stronger economic growth in the European Union and, to that end, to develop ever-closer coordination of economic policies within the euro area,

CONSCIOUS of the need to lay down special provisions for enhanced dialogue between the Member States whose currency is the euro, pending the euro becoming the currency of all Member States of the Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Ministers of the Member States whose currency is the euro shall meet informally. Such meetings shall take place, when necessary, to discuss questions related to the specific responsibilities they share with regard to the single currency. The Commission shall take part in the meetings. The European Central Bank shall be invited to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for finance of the Member States whose currency is the euro and of the Commission.

Article 2

The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years, by a majority of those Member States.

PROTOCOL (No 15)

ON CERTAIN PROVISIONS RELATING TO THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

THE HIGH CONTRACTING PARTIES,

RECOGNISING that the United Kingdom shall not be obliged or committed to adopt the euro without a separate decision to do so by its government and parliament,

GIVEN that on 16 October 1996 and 30 October 1997 the United Kingdom government notified the Council of its intention not to participate in the third stage of economic and monetary union,

NOTING the practice of the government of the United Kingdom to fund its borrowing requirement by the sale of debt to the private sector,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

1. Unless the United Kingdom notifies the Council that it intends to adopt the euro, it shall be under no obligation to do so.

2. In view of the notice given to the Council by the United Kingdom government on 16 October 1996 and 30 October 1997, paragraphs 3 to 8 and 10 shall apply to the United Kingdom.

3. The United Kingdom shall retain its powers in the field of monetary policy according to national law.

4. Articles 119, second paragraph, 126(1), (9) and (11), 127(1) to (5), 128, 130, 131, 132, 133, 138, 140(3), 219, 282(2), with the exception of the first and last sentences thereof, 282(5), and 283 of the Treaty on the Functioning of the European Union shall not apply to the United Kingdom. The same applies to Article 121(2) of this Treaty as regards the adoption of the parts of the broad economic policy guidelines which concern the euro area generally. In these provisions references to the Union or the Member States shall not include the United Kingdom and references to national central banks shall not include the Bank of England.

5. The United Kingdom shall endeavour to avoid an excessive government deficit.

Articles 143 and 144 of the Treaty on the Functioning of the European Union shall continue to apply to the United Kingdom. Articles 134(4) and 142 shall apply to the United Kingdom as if it had a derogation.

6. The voting rights of the United Kingdom shall be suspended in respect of acts of the Council referred to in the Articles listed in paragraph 4 and in the instances referred to in the first subparagraph of Article 139(4) of the Treaty on the Functioning of the European Union. For this purpose the second subparagraph of Article 139(4) of the Treaty shall apply.

The United Kingdom shall also have no right to participate in the appointment of the President, the Vice-President and the other members of the Executive Board of the ECB under the second subparagraph of Article 283(2) of the said Treaty.

7. Articles 3, 4, 6, 7, 9.2, 10.1, 10.3, 11.2, 12.1, 14, 16, 18 to 20, 22, 23, 26, 27, 30 to 34 and 49 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank ("the Statute") shall not apply to the United Kingdom.

In those Articles, references to the Union or the Member States shall not include the United Kingdom and references to national central banks or shareholders shall not include the Bank of England.

References in Articles 10.3 and 30.2 of the Statute to "subscribed capital of the ECB" shall not include capital subscribed by the Bank of England.

8. Article 141(1) of the Treaty on the Functioning of the European Union and Articles 43 to 47 of the Statute shall have effect, whether or not there is any Member State with a derogation, subject to the following amendments:

(a) References in Article 43 to the tasks of the ECB and the EMI shall include those tasks that still need to be performed in the third stage owing to any decision of the United Kingdom not to adopt the euro.

(b) In addition to the tasks referred to in Article 46, the ECB shall also give advice in relation to and contribute to the preparation of any decision of the Council with regard to the United Kingdom taken in accordance with paragraphs 9(a) and 9(c).

(c) The Bank of England shall pay up its subscription to the capital of the ECB as a contribution to its operational costs on the same basis as national central banks of Member States with a derogation.

9. The United Kingdom may notify the Council at any time of its intention to adopt the euro. In that event:

(a) The United Kingdom shall have the right to adopt the euro provided only that it satisfies the necessary conditions. The Council, acting at the request of the United Kingdom and under the conditions and in accordance with the procedure laid down in Article 140(1) and (2) of the Treaty on the Functioning of the European Union, shall decide whether it fulfils the necessary conditions.

(b) The Bank of England shall pay up its subscribed capital, transfer to the ECB foreign reserve assets and contribute to its reserves on the same basis as the national central bank of a Member State whose derogation has been abrogated.

(c) The Council, acting under the conditions and in accordance with the procedure laid down in Article 140(3) of the said Treaty, shall take all other necessary decisions to enable the United Kingdom to adopt the euro.

If the United Kingdom adopts the euro pursuant to the provisions of this Protocol, paragraphs 3 to 8 shall cease to have effect.

10. Notwithstanding Article 123 of the Treaty on the Functioning of the European Union and Article 21.1 of the Statute, the Government of the United Kingdom may maintain its "ways and means" facility with the Bank of England if and so long as the United Kingdom does not adopt the euro.

PROTOCOL (No 16)

ON CERTAIN PROVISIONS RELATING TO DENMARK

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT that the Danish Constitution contains provisions which may imply a referendum in Denmark prior to Denmark renouncing its exemption,

GIVEN THAT, on 3 November 1993, the Danish Government notified the Council of its intention not to participate in the third stage of economic and monetary union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

1. In view of the notice given to the Council by the Danish Government on 3 November 1993, Denmark shall have an exemption. The effect of the exemption shall be that all Articles and provisions of the Treaties and the Statute of the ESCB referring to a derogation shall be applicable to Denmark.

2. As for the abrogation of the exemption, the procedure referred to in Article 140 shall only be initiated at the request of Denmark.

3. In the event of abrogation of the exemption status, the provisions of this Protocol shall cease to apply.

PROTOCOL (No 17)
ON DENMARK

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED upon the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

The provisions of Article 14 of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank shall not affect the right of the National Bank of Denmark to carry out its existing tasks concerning those parts of the Kingdom of Denmark which are not part of the Union.

PROTOCOL (No 18)
ON FRANCE

THE HIGH CONTRACTING PARTIES,

DESIRING to take into account a particular point relating to France,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

France will keep the privilege of monetary emission in New Caledonia, French Polynesia and Wallis and Futuna under the terms established by its national laws, and will be solely entitled to determine the parity of the CFP franc.

PROTOCOL (No 19)

ON THE SCHENGEN *ACQUIS* INTEGRATED INTO THE FRAMEWORK OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

NOTING that the Agreements on the gradual abolition of checks at common borders signed by some Member States of the European Union in Schengen on 14 June 1985 and on 19 June 1990, as well as related agreements and the rules adopted on the basis of these agreements, have been integrated into the framework of the European Union by the Treaty of Amsterdam of 2 October 1997,

DESIRING to preserve the Schengen *acquis*, as developed since the entry into force of the Treaty of Amsterdam, and to develop this *acquis* in order to contribute towards achieving the objective of offering citizens of the Union an area of freedom, security and justice without internal borders,

TAKING INTO ACCOUNT the special position of Denmark,

TAKING INTO ACCOUNT the fact that Ireland and the United Kingdom of Great Britain and Northern Ireland do not participate in all the provisions of the Schengen *acquis*; that provision should, however, be made to allow those Member States to accept other provisions of this *acquis* in full or in part,

RECOGNISING that, as a consequence, it is necessary to make use of the provisions of the Treaties concerning closer cooperation between some Member States,

TAKING INTO ACCOUNT the need to maintain a special relationship with the Republic of Iceland and the Kingdom of Norway, both States being bound by the provisions of the Nordic passport union, together with the Nordic States which are members of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden shall be authorised to establish closer cooperation among themselves in areas covered by provisions defined by the Council which constitute the Schengen *acquis* [1]. This cooperation shall be conducted within the institutional and legal framework of the European Union and with respect for the relevant provisions of the Treaties.

[1] In accordance with the Act of Accession of 9 December 2011, the Republic of Croatia has since become a member of the European Union.

Article 2

The Schengen *acquis* shall apply to the Member States referred to in Article 1, without prejudice to Article 3 of the Act of Accession of 16 April 2003 or to Article 4 of the Act of Accession of 25 April 2005 ([1]). The Council will substitute itself for the Executive Committee established by the Schengen agreements.

Article 3

The participation of Denmark in the adoption of measures constituting a development of the Schengen *acquis*, as well as the implementation of these measures and their application to Denmark, shall be governed by the relevant provisions of the Protocol on the position of Denmark.

Article 4

Ireland and the United Kingdom of Great Britain and Northern Ireland may at any time request to take part in some or all of the provisions of the Schengen *acquis*.

The Council shall decide on the request with the unanimity of its members referred to in Article 1 and of the representative of the Government of the State concerned.

Article 5

1. Proposals and initiatives to build upon the Schengen *acquis* shall be subject to the relevant provisions of the Treaties.

In this context, where either Ireland or the United Kingdom has not notified the Council in writing within a reasonable period that it wishes to take part, the authorisation referred to in Article 329 of the Treaty on the Functioning of the European Union shall be deemed to have been granted to the Member States referred to in Article 1 and to Ireland or the United Kingdom where either of them wishes to take part in the areas of cooperation in question.

2. Where either Ireland or the United Kingdom is deemed to have given notification pursuant to a decision under Article 4, it may nevertheless notify the Council in writing, within three months, that it does not wish to take part in such a proposal or initiative. In that case, Ireland or the United Kingdom shall not take part in its adoption. As from the latter notification, the procedure for adopting the measure building upon the Schengen *acquis* shall be suspended until the end of the procedure set out in paragraphs 3 or 4 or until the notification is withdrawn at any moment during that procedure.

3. For the Member State having made the notification referred to in paragraph 2, any decision taken by the Council pursuant to Article 4 shall, as from the date of entry into force of the proposed measure, cease to apply to the extent considered necessary by the Council and under the conditions to be determined in a decision of the Council acting by a qualified majority on a proposal from the Commission. That decision shall be taken in accordance with the following criteria: the Council

([1]) This provision shall also apply without prejudice to Article 4 of the Act of Accessio of 9 December 2011.

shall seek to retain the widest possible measure of participation of the Member State concerned without seriously affecting the practical operability of the various parts of the Schengen *acquis*, while respecting their coherence. The Commission shall submit its proposal as soon as possible after the notification referred to in paragraph 2. The Council shall, if needed after convening two successive meetings, act within four months of the Commission proposal.

4. If, by the end of the period of four months, the Council has not adopted a decision, a Member State may, without delay, request that the matter be referred to the European Council. In that case, the European Council shall, at its next meeting, acting by a qualified majority on a proposal from the Commission, take a decision in accordance with the criteria referred to in paragraph 3.

5. If, by the end of the procedure set out in paragraphs 3 or 4, the Council or, as the case may be, the European Council has not adopted its decision, the suspension of the procedure for adopting the measure building upon the Schengen *acquis* shall be terminated. If the said measure is subsequently adopted any decision taken by the Council pursuant to Article 4 shall, as from the date of entry into force of that measure, cease to apply for the Member State concerned to the extent and under the conditions decided by the Commission, unless the said Member State has withdrawn its notification referred to in paragraph 2 before the adoption of the measure. The Commission shall act by the date of this adoption. When taking its decision, the Commission shall respect the criteria referred to in paragraph 3.

Article 6

The Republic of Iceland and the Kingdom of Norway shall be associated with the implementation of the Schengen *acquis* and its further development. Appropriate procedures shall be agreed to that effect in an Agreement to be concluded with those States by the Council, acting by the unanimity of its Members mentioned in Article 1. Such Agreement shall include provisions on the contribution of Iceland and Norway to any financial consequences resulting from the implementation of this Protocol.

A separate Agreement shall be concluded with Iceland and Norway by the Council, acting unanimously, for the establishment of rights and obligations between Ireland and the United Kingdom of Great Britain and Northern Ireland on the one hand, and Iceland and Norway on the other, in domains of the Schengen *acquis* which apply to these States.

Article 7

For the purposes of the negotiations for the admission of new Member States into the European Union, the Schengen *acquis* and further measures taken by the institutions within its scope shall be regarded as an *acquis* which must be accepted in full by all States candidates for admission.

PROTOCOL (No 20)

ON THE APPLICATION OF CERTAIN ASPECTS OF ARTICLE 26 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION TO THE UNITED KINGDOM AND TO IRELAND

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the existence for many years of special travel arrangements between the United Kingdom and Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

Article 1

The United Kingdom shall be entitled, notwithstanding Articles 26 and 77 of the Treaty on the Functioning of the European Union, any other provision of that Treaty or of the Treaty on European Union, any measure adopted under those Treaties, or any international agreement concluded by the Union or by the Union and its Member States with one or more third States, to exercise at its frontiers with other Member States such controls on persons seeking to enter the United Kingdom as it may consider necessary for the purpose:

(a) of verifying the right to enter the United Kingdom of citizens of Member States and of their dependants exercising rights conferred by Union law, as well as citizens of other States on whom such rights have been conferred by an agreement by which the United Kingdom is bound; and

(b) of determining whether or not to grant other persons permission to enter the United Kingdom.

Nothing in Articles 26 and 77 of the Treaty on the Functioning of the European Union or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the United Kingdom to adopt or exercise any such controls. References to the United Kingdom in this Article shall include territories for whose external relations the United Kingdom is responsible.

Article 2

The United Kingdom and Ireland may continue to make arrangements between themselves relating to the movement of persons between their territories ("the Common Travel Area"), while fully respecting the rights of persons referred to in Article 1, first paragraph, point (a) of this Protocol.

Accordingly, as long as they maintain such arrangements, the provisions of Article 1 of this Protocol shall apply to Ireland under the same terms and conditions as for the United Kingdom. Nothing in Articles 26 and 77 of the Treaty on the Functioning of the European Union, in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them, shall affect any such arrangements.

Article 3

The other Member States shall be entitled to exercise at their frontiers or at any point of entry into their territory such controls on persons seeking to enter their territory from the United Kingdom or any territories whose external relations are under its responsibility for the same purposes stated in Article 1 of this Protocol, or from Ireland as long as the provisions of Article 1 of this Protocol apply to Ireland.

Nothing in Articles 26 and 77 of the Treaty on the Functioning of the European Union or in any other provision of that Treaty or of the Treaty on European Union or in any measure adopted under them shall prejudice the right of the other Member States to adopt or exercise any such controls.

PROTOCOL (No 21)

ON THE POSITION OF THE UNITED KINGDOM AND IRELAND IN RESPECT OF THE AREA OF FREEDOM, SECURITY AND JUSTICE

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain questions relating to the United Kingdom and Ireland,

HAVING REGARD to the Protocol on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

Article 1

Subject to Article 3, the United Kingdom and Ireland shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representatives of the governments of the United Kingdom and Ireland, shall be necessary for decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

In consequence of Article 1 and subject to Articles 3, 4 and 6, none of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice interpreting any such provision or measure shall be binding upon or applicable in the United Kingdom or Ireland; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of those States; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to the United Kingdom or Ireland.

Article 3

1. The United Kingdom or Ireland may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon that State shall be entitled to do so.

The unanimity of the members of the Council, with the exception of a member which has not made such a notification, shall be necessary for decisions of the Council which must be adopted unanimously. A measure adopted under this paragraph shall be binding upon all Member States which took part in its adoption.

Measures adopted pursuant to Article 70 of the Treaty on the Functioning of the European Union shall lay down the conditions for the participation of the United Kingdom and Ireland in the evaluations concerning the areas covered by Title V of Part Three of that Treaty.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with the United Kingdom or Ireland taking part, the Council may adopt such measure in accordance with Article 1 without the participation of the United Kingdom or Ireland. In that case Article 2 applies.

Article 4

The United Kingdom or Ireland may at any time after the adoption of a measure by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and to the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 331(1) of the Treaty on the Functioning of the European Union shall apply *mutatis mutandis*.

Article 4a

1. The provisions of this Protocol apply for the United Kingdom and Ireland also to measures proposed or adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which they are bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of the United Kingdom or Ireland in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge them to make a notification under Article 3 or 4. For the purposes of Article 3, a further period of two months starts to run as from the date of such determination by the Council.

If at the expiry of that period of two months from the Council's determination the United Kingdom or Ireland has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless the Member State concerned has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that the United Kingdom or Ireland shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 5

A Member State which is not bound by a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union shall bear no financial consequences of that measure other than administrative costs entailed for the institutions, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

Article 6

Where, in cases referred to in this Protocol, the United Kingdom or Ireland is bound by a measure adopted by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to that State in relation to that measure.

Article 6a

The United Kingdom and Ireland shall not be bound by the rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty where the United Kingdom and Ireland are not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

Article 7

Articles 3, 4 and 4*a* shall be without prejudice to the Protocol on the Schengen *acquis* integrated into the framework of the European Union.

Article 8

Ireland may notify the Council in writing that it no longer wishes to be covered by the terms of this Protocol. In that case, the normal treaty provisions will apply to Ireland.

Article 9

With regard to Ireland, this Protocol shall not apply to Article 75 of the Treaty on the Functioning of the European Union.

PROTOCOL (No 22)
ON THE POSITION OF DENMARK

THE HIGH CONTRACTING PARTIES,

RECALLING the Decision of the Heads of State or Government, meeting within the European Council at Edinburgh on 12 December 1992, concerning certain problems raised by Denmark on the Treaty on European Union,

HAVING NOTED the position of Denmark with regard to Citizenship, Economic and Monetary Union, Defence Policy and Justice and Home Affairs as laid down in the Edinburgh Decision,

CONSCIOUS of the fact that a continuation under the Treaties of the legal regime originating in the Edinburgh decision will significantly limit Denmark's participation in important areas of cooperation of the Union, and that it would be in the best interest of the Union to ensure the integrity of the *acquis* in the area of freedom, security and justice,

WISHING therefore to establish a legal framework that will provide an option for Denmark to participate in the adoption of measures proposed on the basis of Title V of Part Three of the Treaty on the Functioning of the European Union and welcoming the intention of Denmark to avail itself of this option when possible in accordance with its constitutional requirements,

NOTING that Denmark will not prevent the other Member States from further developing their cooperation with respect to measures not binding on Denmark,

BEARING IN MIND Article 3 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union:

PART I

Article 1

Denmark shall not take part in the adoption by the Council of proposed measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the decisions of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

None of the provisions of Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreement concluded by the Union pursuant to that Title, and no decision of the Court of Justice of the European Union interpreting any such provision or measure or any measure amended or amendable pursuant to that Title shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark. In particular, acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon which are amended shall continue to be binding upon and applicable to Denmark unchanged.

Article 2a

Article 2 of this Protocol shall also apply in respect of those rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty.

Article 3

Denmark shall bear no financial consequences of measures referred to in Article 1, other than administrative costs entailed for the institutions.

Article 4

1. Denmark shall decide within a period of six months after the Council has decided on a proposal or initiative to build upon the Schengen *acquis* covered by this Part, whether it will implement this measure in its national law. If it decides to do so, this measure will create an obligation under international law between Denmark and the other Member States bound by the measure.

2. If Denmark decides not to implement a measure of the Council as referred to in paragraph 1, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

PART II

Article 5

With regard to measures adopted by the Council pursuant to Article 26(1), Article 42 and Articles 43 to 46 of the Treaty on European Union, Denmark does not participate in the elaboration and the implementation of decisions and actions of the Union which have defence implications.

Therefore Denmark shall not participate in their adoption. Denmark will not prevent the other Member States from further developing their cooperation in this area. Denmark shall not be obliged to contribute to the financing of operational expenditure arising from such measures, nor to make military capabilities available to the Union.

The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

PART III

Article 6

Articles 1, 2 and 3 shall not apply to measures determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States, or measures relating to a uniform format for visas.

PART IV

Article 7

At any time Denmark may, in accordance with its constitutional requirements, inform the other Member States that it no longer wishes to avail itself of all or part of this Protocol. In that event, Denmark will apply in full all relevant measures then in force taken within the framework of the European Union.

Article 8

1. At any time and without prejudice to Article 7, Denmark may, in accordance with its constitutional requirements, notify the other Member States that, with effect from the first day of the month following the notification, Part I shall consist of the provisions in the Annex. In that case Articles 5 to 8 shall be renumbered in consequence.

2. Six months after the date on which the notification referred to in paragraph 1 takes effect all Schengen *acquis* and measures adopted to build upon this *acquis*, which until then have been binding on Denmark as obligations under international law, shall be binding upon Denmark as Union law.

ANNEX

Article 1

Subject to Article 3, Denmark shall not take part in the adoption by the Council of measures proposed pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union. The unanimity of the members of the Council, with the exception of the representative of the government of Denmark, shall be necessary for the acts of the Council which must be adopted unanimously.

For the purposes of this Article, a qualified majority shall be defined in accordance with Article 238(3) of the Treaty on the Functioning of the European Union.

Article 2

Pursuant to Article 1 and subject to Articles 3, 4 and 8, none of the provisions in Title V of Part Three of the Treaty on the Functioning of the European Union, no measure adopted pursuant to that Title, no provision of any international agreements concluded by the Union pursuant to that Title, no decision of the Court of Justice of the European Union interpreting any such provision or measure shall be binding upon or applicable in Denmark; and no such provision, measure or decision shall in any way affect the competences, rights and obligations of Denmark; and no such provision, measure or decision shall in any way affect the Community or Union *acquis* nor form part of Union law as they apply to Denmark.

Article 3

1. Denmark may notify the President of the Council in writing, within three months after a proposal or initiative has been presented to the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, that it wishes to take part in the adoption and application of any such proposed measure, whereupon Denmark shall be entitled to do so.

2. If after a reasonable period of time a measure referred to in paragraph 1 cannot be adopted with Denmark taking part, the Council may adopt that measure referred to in paragraph 1 in accordance with Article 1 without the participation of Denmark. In that case Article 2 applies.

Article 4

Denmark may at any time after the adoption of a measure pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union notify its intention to the Council and the Commission that it wishes to accept that measure. In that case, the procedure provided for in Article 331(1) of that Treaty shall apply *mutatis mutandis*.

Article 5

1. The provisions of this Protocol apply for Denmark also to measures proposed or adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union amending an existing measure by which it is bound.

2. However, in cases where the Council, acting on a proposal from the Commission, determines that the non-participation of Denmark in the amended version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge it to make a notification under Article 3 or 4. For the purposes of Article 3 a further period of two months starts to run as from the date of such determination by the Council.

If, at the expiry of that period of two months from the Council's determination, Denmark has not made a notification under Article 3 or Article 4, the existing measure shall no longer be binding upon or applicable to it, unless it has made a notification under Article 4 before the entry into force of the amending measure. This shall take effect from the date of entry into force of the amending measure or of expiry of the period of two months, whichever is the later.

For the purpose of this paragraph, the Council shall, after a full discussion of the matter, act by a qualified majority of its members representing the Member States participating or having participated in the adoption of the amending measure. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

3. The Council, acting by a qualified majority on a proposal from the Commission, may determine that Denmark shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the existing measure.

4. This Article shall be without prejudice to Article 4.

Article 6

1. Notification pursuant to Article 4 shall be submitted no later than six months after the final adoption of a measure if this measure builds upon the Schengen *acquis*.

If Denmark does not submit a notification in accordance with Articles 3 or 4 regarding a measure building upon the Schengen *acquis*, the Member States bound by that measure and Denmark will consider appropriate measures to be taken.

2. A notification pursuant to Article 3 with respect to a measure building upon the Schengen *acquis* shall be deemed irrevocably to be a notification pursuant to Article 3 with respect to any further proposal or initiative aiming to build upon that measure to the extent that such proposal or initiative builds upon the Schengen *acquis*.

Article 7

Denmark shall not be bound by the rules laid down on the basis of Article 16 of the Treaty on the Functioning of the European Union which relate to the processing of personal data by the Member States when carrying out activities which fall within the scope of Chapter 4 or Chapter 5 of Title V of Part Three of that Treaty where Denmark is not bound by the rules governing the forms of judicial cooperation in criminal matters or police cooperation which require compliance with the provisions laid down on the basis of Article 16.

Article 8

Where, in cases referred to in this Part, Denmark is bound by a measure adopted by the Council pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, the relevant provisions of the Treaties shall apply to Denmark in relation to that measure.

Article 9

Where Denmark is not bound by a measure adopted pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union, it shall bear no financial consequences of that measure other than administrative costs entailed for the institutions unless the Council, with all its Members acting unanimously after consulting the European Parliament, decides otherwise.

PROTOCOL (No 23)

ON EXTERNAL RELATIONS OF THE MEMBER STATES WITH REGARD TO THE CROSSING OF EXTERNAL BORDERS

THE HIGH CONTRACTING PARTIES,

TAKING INTO ACCOUNT the need of the Member States to ensure effective controls at their external borders, in cooperation with third countries where appropriate,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

The provisions on the measures on the crossing of external borders included in Article 77(2)(b) of the Treaty on the Functioning of the European Union shall be without prejudice to the competence of Member States to negotiate or conclude agreements with third countries as long as they respect Union law and other relevant international agreements.

PROTOCOL (No 24)

ON ASYLUM FOR NATIONALS OF MEMBER STATES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

WHEREAS, in accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights,

WHEREAS pursuant to Article 6(3) of the Treaty on European Union, fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, constitute part of the Union's law as general principles,

WHEREAS the Court of Justice of the European Union has jurisdiction to ensure that in the interpretation and application of Article 6, paragraphs (1) and (3) of the Treaty on European Union the law is observed by the European Union,

WHEREAS pursuant to Article 49 of the Treaty on European Union any European State, when applying to become a Member of the Union, must respect the values set out in Article 2 of the Treaty on European Union,

BEARING IN MIND that Article 7 of the Treaty on European Union establishes a mechanism for the suspension of certain rights in the event of a serious and persistent breach by a Member State of those values,

RECALLING that each national of a Member State, as a citizen of the Union, enjoys a special status and protection which shall be guaranteed by the Member States in accordance with the provisions of Part Two of the Treaty on the Functioning of the European Union,

BEARING IN MIND that the Treaties establish an area without internal frontiers and grant every citizen of the Union the right to move and reside freely within the territory of the Member States,

WISHING to prevent the institution of asylum being resorted to for purposes alien to those for which it is intended,

WHEREAS this Protocol respects the finality and the objectives of the Geneva Convention of 28 July 1951 relating to the status of refugees,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Sole Article

Given the level of protection of fundamental rights and freedoms by the Member States of the European Union, Member States shall be regarded as constituting safe countries of origin in respect of each other for all legal and practical purposes in relation to asylum matters. Accordingly, any application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State only in the following cases:

(a) if the Member State of which the applicant is a national proceeds after the entry into force of the Treaty of Amsterdam, availing itself of the provisions of Article 15 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, to take measures derogating in its territory from its obligations under that Convention;

(b) if the procedure referred to Article 7(1) of the Treaty on European Union has been initiated and until the Council, or, where appropriate, the European Council, takes a decision in respect thereof with regard to the Member State of which the applicant is a national;

(c) if the Council has adopted a decision in accordance with Article 7(1) of the Treaty on European Union in respect of the Member State of which the applicant is a national or if the European Council has adopted a decision in accordance with Article 7(2) of that Treaty in respect of the Member State of which the applicant is a national;

(d) if a Member State should so decide unilaterally in respect of the application of a national of another Member State; in that case the Council shall be immediately informed; the application shall be dealt with on the basis of the presumption that it is manifestly unfounded without affecting in any way, whatever the cases may be, the decision-making power of the Member State.

PROTOCOL (No 25)

ON THE EXERCISE OF SHARED COMPETENCE

THE HIGH CONTRACTING PARTIES,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Sole Article

With reference to Article 2(2) of the Treaty on the Functioning of the European Union on shared competence, when the Union has taken action in a certain area, the scope of this exercise of competence only covers those elements governed by the Union act in question and therefore does not cover the whole area.

PROTOCOL (No 26)

ON SERVICES OF GENERAL INTEREST

THE HIGH CONTRACTING PARTIES,

WISHING to emphasise the importance of services of general interest,

HAVE AGREED UPON the following interpretative provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

The shared values of the Union in respect of services of general economic interest within the meaning of Article 14 of the Treaty on the Functioning of the European Union include in particular:

— the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;

— the diversity between various services of general economic interest and the differences in the needs and preferences of users that may result from different geographical, social or cultural situations;

— a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Article 2

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

PROTOCOL (No 27)

ON THE INTERNAL MARKET AND COMPETITION

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the internal market as set out in Article 3 of the Treaty on European Union includes a system ensuring that competition is not distorted,

HAVE AGREED that:

To this end, the Union shall, if necessary, take action under the provisions of the Treaties, including under Article 352 of the Treaty on the Functioning of the European Union.

This protocol shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.

PROTOCOL (No 28)

ON ECONOMIC, SOCIAL AND TERRITORIAL COHESION

THE HIGH CONTRACTING PARTIES,

RECALLING that Article 3 of the Treaty on European Union includes the objective of promoting economic, social and territorial cohesion and solidarity between Member States and that the said cohesion figures among the areas of shared competence of the Union listed in Article 4(2)(c) of the Treaty on the Functioning of the European Union,

RECALLING that the provisions of Part Three, Title XVIII, on economic, social and territorial cohesion as a whole provide the legal basis for consolidating and further developing the Union's action in the field of economic, social and territorial cohesion, including the creation of a new fund,

RECALLING that the provisions of Article 177 of the Treaty on the Functioning of the European Union envisage setting up a Cohesion Fund,

NOTING that the European Investment Bank is lending large and increasing amounts for the benefit of the poorer regions,

NOTING the desire for greater flexibility in the arrangements for allocations from the Structural Funds,

NOTING the desire for modulation of the levels of Union participation in programmes and projects in certain countries,

NOTING the proposal to take greater account of the relative prosperity of Member States in the system of own resources,

REAFFIRM that the promotion of economic, social and territorial cohesion is vital to the full development and enduring success of the Union,

REAFFIRM their conviction that the Structural Funds should continue to play a considerable part in the achievement of Union objectives in the field of cohesion,

REAFFIRM their conviction that the European Investment Bank should continue to devote the majority of its resources to the promotion of economic, social and territorial cohesion, and declare their willingness to review the capital needs of the European Investment Bank as soon as this is necessary for that purpose,

AGREE that the Cohesion Fund will provide Union financial contributions to projects in the fields of environment and trans-European networks in Member States with a per capita GNP of less than 90 % of the Union average which have a programme leading to the fulfilment of the conditions of economic convergence as set out in Article 126,

DECLARE their intention of allowing a greater margin of flexibility in allocating financing from the Structural Funds to specific needs not covered under the present Structural Funds regulations,

DECLARE their willingness to modulate the levels of Union participation in the context of programmes and projects of the Structural Funds, with a view to avoiding excessive increases in budgetary expenditure in the less prosperous Member States,

RECOGNISE the need to monitor regularly the progress made towards achieving economic, social and territorial cohesion and state their willingness to study all necessary measures in this respect,

DECLARE their intention of taking greater account of the contributive capacity of individual Member States in the system of own resources, and of examining means of correcting, for the less prosperous Member States, regressive elements existing in the present own resources system,

AGREE to annex this Protocol to the Treaty on European Union and the Treaty on the Functioning of the European Union.

PROTOCOL (No 29)

ON THE SYSTEM OF PUBLIC BROADCASTING IN THE MEMBER STATES

THE HIGH CONTRACTING PARTIES,

CONSIDERING that the system of public broadcasting in the Member States is directly related to the democratic, social and cultural needs of each society and to the need to preserve media pluralism,

HAVE AGREED UPON the following interpretive provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

The provisions of the Treaties shall be without prejudice to the competence of Member States to provide for the funding of public service broadcasting and in so far as such funding is granted to broadcasting organisations for the fulfilment of the public service remit as conferred, defined and organised by each Member State, and in so far as such funding does not affect trading conditions and competition in the Union to an extent which would be contrary to the common interest, while the realisation of the remit of that public service shall be taken into account.

PROTOCOL (No 30)

ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION TO POLAND AND TO THE UNITED KINGDOM

THE HIGH CONTRACTING PARTIES,

WHEREAS in Article 6 of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union,

WHEREAS the Charter is to be applied in strict accordance with the provisions of the aforementioned Article 6 and Title VII of the Charter itself,

WHEREAS the aforementioned Article 6 requires the Charter to be applied and interpreted by the courts of Poland and of the United Kingdom strictly in accordance with the explanations referred to in that Article,

WHEREAS the Charter contains both rights and principles,

WHEREAS the Charter contains both provisions which are civil and political in character and those which are economic and social in character,

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

RECALLING the obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

NOTING the wish of Poland and the United Kingdom to clarify certain aspects of the application of the Charter,

DESIROUS therefore of clarifying the application of the Charter in relation to the laws and administrative action of Poland and of the United Kingdom and of its justiciability within Poland and within the United Kingdom,

REAFFIRMING that references in this Protocol to the operation of specific provisions of the Charter are strictly without prejudice to the operation of other provisions of the Charter,

REAFFIRMING that this Protocol is without prejudice to the application of the Charter to other Member States,

REAFFIRMING that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

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

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

Article 2

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

PROTOCOL (No 31)

CONCERNING IMPORTS INTO THE EUROPEAN UNION OF PETROLEUM PRODUCTS REFINED IN THE NETHERLANDS ANTILLES

THE HIGH CONTRACTING PARTIES,

BEING DESIROUS of giving fuller details about the system of trade applicable to imports into the European Union of petroleum products refined in the Netherlands Antilles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

This Protocol is applicable to petroleum products coming under the Brussels Nomenclature numbers 27.10, 27.11, 27.12, ex 27.13 (paraffin wax, petroleum or shale wax and paraffin residues) and 27.14, imported for use in Member States.

Article 2

Member States shall undertake to grant to petroleum products refined in the Netherlands Antilles the tariff preferences resulting from the association of the latter with the Union, under the conditions provided for in this Protocol. These provisions shall hold good whatever may be the rules of origin applied by the Member States.

Article 3

1. When the Commission, at the request of a Member State or on its own initiative, establishes that imports into the Union of petroleum products refined in the Netherlands Antilles under the system provided for in Article 2 above are giving rise to real difficulties on the market of one or more Member States, it shall decide that customs duties on the said imports shall be introduced, increased or re-introduced by the Member States in question, to such an extent and for such a period as may be necessary to meet that situation. The rates of the customs duties thus introduced, increased or re-introduced may not exceed the customs duties applicable to third countries for these same products.

2. The provisions of paragraph 1 can in any case be applied when imports into the Union of petroleum products refined in the Netherlands Antilles reach two million metric tons a year.

3. The Council shall be informed of decisions taken by the Commission in pursuance of paragraphs 1 and 2, including those directed at rejecting the request of a Member State. The Council shall, at the request of any Member State, assume responsibility for the matter and may at any time amend or revoke them.

Article 4

1. If a Member State considers that imports of petroleum products refined in the Netherlands Antilles, made either directly or through another Member State under the system provided for in Article 2 above, are giving rise to real difficulties on its market and that immediate action is necessary to meet them, it may on its own initiative decide to apply customs duties to such imports, the rate of which may not exceed those of the customs duties applicable to third countries in respect of the same products. It shall notify its decision to the Commission which shall decide within one month whether the measures taken by the State should be maintained or must be amended or cancelled. The provisions of Article 3(3) shall be applicable to such decision of the Commission.

2. When the quantities of petroleum products refined in the Netherlands Antilles imported either directly or through another Member State, under the system provided for in Article 2 above, into a Member State or States of the European Union exceed during a calendar year the tonnage shown in the Annex to this Protocol, the measures taken in pursuance of paragraph 1 by that or those Member States for the current year shall be considered to be justified; the Commission shall, after assuring itself that the tonnage fixed has been reached, formally record the measures taken. In such a case the other Member States shall abstain from formally placing the matter before the Council.

Article 5

If the Union decides to apply quantitative restrictions to petroleum products, no matter whence they are imported, these restrictions may also be applied to imports of such products from the Netherlands Antilles. In such a case preferential treatment shall be granted to the Netherlands Antilles as compared with third countries.

Article 6

1. The provisions of Articles 2 to 5 shall be reviewed by the Council, by unanimous decision, after consulting the European Parliament and the Commission, when a common definition of origin for petroleum products from third countries and associated countries is adopted, or when decisions are taken within the framework of a common commercial policy for the products in question or when a common energy policy is established.

2. When such revision is made, however, equivalent preferences must in any case be maintained in favour of the Netherlands Antilles in a suitable form and for a minimum quantity of 21½ million metric tons of petroleum products.

3. The Union's commitments in regard to equivalent preferences as mentioned in paragraph 2 of this Article may, if necessary, be broken down country by country taking into account the tonnage indicated in the Annex to this Protocol.

Article 7

For the implementation of this Protocol, the Commission is responsible for following the pattern of imports into the Member States of petroleum products refined in the Netherlands Antilles. Member States shall communicate to the Commission, which shall see that it is circulated, all useful information to that end in accordance with the administrative conditions recommended by it.

ANNEX TO THE PROTOCOL

For the implementation of Article 4(2) of the Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles, the High Contracting Parties have decided that the quantity of 2 million metric tons of petroleum products from the Antilles shall be allocated among the Member States as follows:

Germany	625 000 metric tons
Belgo-Luxembourg Economic Union	200 000 metric tons
France	75 000 metric tons
Italy	100 000 metric tons
Netherlands	1 000 000 metric tons

PROTOCOL (No 32)

ON THE ACQUISITION OF PROPERTY IN DENMARK

THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Denmark,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Notwithstanding the provisions of the Treaties, Denmark may maintain the existing legislation on the acquisition of second homes.

PROTOCOL (No 33)

CONCERNING ARTICLE 157 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

For the purposes of Article 157 of the Treaty on the Functioning of the European Union, benefits under occupational social security schemes shall not be considered as remuneration if and in so far as they are attributable to periods of employment prior to 17 May 1990, except in the case of workers or those claiming under them who have before that date initiated legal proceedings or introduced an equivalent claim under the applicable national law.

PROTOCOL (No 34)

ON SPECIAL ARRANGEMENTS FOR GREENLAND

Sole Article

1. The treatment on import into the Union of products subject to the common organisation of the market in fishery products, originating in Greenland, shall, while complying with the mechanisms of the internal market organisation, involve exemption from customs duties and charges having equivalent effect and the absence of quantitative restrictions or measures having equivalent effect if the possibilities for access to Greenland fishing zones granted to the Union pursuant to an agreement between the Union and the authority responsible for Greenland are satisfactory to the Union.

2. All measures relating to the import arrangements for such products, including those relating to the adoption of such measures, shall be adopted in accordance with the procedure laid down in Article 43 of the Treaty establishing the European Union.

PROTOCOL (No 35)

ON ARTICLE 40.3.3 OF THE CONSTITUTION OF IRELAND

THE HIGH CONTRACTING PARTIES,

HAVE AGREED upon the following provision, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

Nothing in the Treaties, or in the Treaty establishing the European Atomic Energy Community, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

PROTOCOL (No 36)

ON TRANSITIONAL PROVISIONS

THE HIGH CONTRACTING PARTIES,

WHEREAS, in order to organise the transition from the institutional provisions of the Treaties applicable prior to the entry into force of the Treaty of Lisbon to the provisions contained in that Treaty, it is necessary to lay down transitional provisions,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

Article 1

In this Protocol, the words "the Treaties" shall mean the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

TITLE I

PROVISIONS CONCERNING THE EUROPEAN PARLIAMENT

Article 2

1. For the period of the 2009-2014 parliamentary term remaining at the date of entry into force of this Article, and by way of derogation from Articles 189, second paragraph, and 190(2) of the Treaty establishing the European Community and Articles 107, second paragraph, and 108(2) of the Treaty establishing the European Atomic Energy Community, which were in force at the time of the European Parliament elections in June 2009, and by way of derogation from the number of seats provided for in the first subparagraph of Article 14(2) of the Treaty on European Union, the following 18 seats shall be added to the existing 736 seats, thus provisionally bringing the total number of members of the European Parliament to 754 until the end of the 2009-2014 parliamentary term:

Bulgaria	1	Netherlands	1
Spain	4	Austria	2
France	2	Poland	1
Italy	1	Slovenia	1
Latvia	1	Sweden	2
Malta	1	United Kingdom	1

2. By way of derogation from Article 14(3) of the Treaty on European Union, the Member States concerned shall designate the persons who will fill the additional seats referred to in paragraph 1, in accordance with the legislation of the Member States concerned and provided that the persons in question have been elected by direct universal suffrage:

(a) in *ad hoc* elections by direct universal suffrage in the Member State concerned, in accordance with the provisions applicable for elections to the European Parliament;

(b) by reference to the results of the European Parliament elections from 4 to 7 June 2009; or

(c) by designation, by the national parliament of the Member State concerned from among its members, of the requisite number of members, according to the procedure determined by each of those Member States.

3. In accordance with the second subparagraph of Article 14(2) of the Treaty on European Union, the European Council shall adopt a decision determining the composition of the European Parliament in good time before the 2014 European Parliament elections.

TITLE II

PROVISIONS CONCERNING THE QUALIFIED MAJORITY

Article 3

1. In accordance with Article 16(4) of the Treaty on European Union, the provisions of that paragraph and of Article 238(2) of the Treaty on the Functioning of the European Union relating to the definition of the qualified majority in the European Council and the Council shall take effect on1 November 2014.

2. Between 1 November 2014 and 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that it be adopted in accordance with the qualified majority as defined in paragraph 3. In that case, paragraphs 3 and 4 shall apply.

3. Until 31 October 2014, the following provisions shall remain in force, without prejudice to the second subparagraph of Article 235(1) of the Treaty on the Functioning of the European Union.

For acts of the European Council and of the Council requiring a qualified majority, members' votes shall be weighted as follows:

Belgium	12	Lithuania	7
Bulgaria	10	Luxembourg	4
Czech Republic	12	Hungary	12
Denmark	7	Malta	3
Germany	29	Netherlands	13
Estonia	4	Austria	10
Ireland	7	Poland	27
Greece	12	Portugal	12
Spain	27	Romania	14
France	29	Slovenia	4
Croatia	7	Slovakia	7
Italy	29	Finland	7
Cyprus	4	Sweden	10
Latvia	4	United Kingdom	29

Acts shall be adopted if there are at least 260 votes in favour representing a majority of the members where, under the Treaties, they must be adopted on a proposal from the Commission. In other cases decisions shall be adopted if there are at least 260 votes in favour representing at least two thirds of the members.

A member of the European Council or the Council may request that, where an act is adopted by the European Council or the Council by a qualified majority, a check is made to ensure that the Member States comprising the qualified majority represent at least 62 % of the total population of the Union. If that proves not to be the case, the act shall not be adopted.

4. Until 31 October 2014, the qualified majority shall, in cases where, under the Treaties, not all the members of the Council participate in voting, namely in the cases where reference is made to the qualified majority as defined in Article 238(3) of the Treaty on the Functioning of the European Union, be defined as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned as laid down in paragraph 3 of this Article.

TITLE III

PROVISIONS CONCERNING THE CONFIGURATIONS OF THE COUNCIL

Article 4

Until the entry into force of the decision referred to in the first subparagraph of Article 16(6) of the Treaty on European Union, the Council may meet in the configurations laid down in the second and third subparagraphs of that paragraph and in the other configurations on the list established by a decision of the General Affairs Council, acting by a simple majority.

TITLE IV

PROVISIONS CONCERNING THE COMMISSION, INCLUDING THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY

Article 5

The members of the Commission in office on the date of entry into force of the Treaty of Lisbon shall remain in office until the end of their term of office. However, on the day of the appointment of the High Representative of the Union for Foreign Affairs and Security Policy, the term of office of the member having the same nationality as the High Representative shall end.

TITLE V

PROVISIONS CONCERNING THE SECRETARY-GENERAL OF THE COUNCIL, HIGH REPRESENTATIVE FOR THE COMMON FOREIGN AND SECURITY POLICY, AND THE DEPUTY SECRETARY-GENERAL OF THE COUNCIL

Article 6

The terms of office of the Secretary-General of the Council, High Representative for the common foreign and security policy, and the Deputy Secretary-General of the Council shall end on the date of entry into force of the Treaty of Lisbon. The Council shall appoint a Secretary-General in conformity with Article 240(2) of the Treaty on the Functioning of the European Union.

TITLE VI

PROVISIONS CONCERNING ADVISORY BODIES

Article 7

Until the entry into force of the decision referred to in Article 301 of the Treaty on the Functioning of the European Union, the allocation of members of the Economic and Social Committee shall be as follows:

Belgium	12	Lithuania	9
Bulgaria	12	Luxembourg	6
Czech Republic	12	Hungary	12
Denmark	9	Malta	5
Germany	24	Netherlands	12
Estonia	7	Austria	12
Ireland	9	Poland	21
Greece	12	Portugal	12
Spain	21	Romania	15
France	24	Slovenia	7
Croatia	9	Slovakia	9
Italy	24	Finland	9
Cyprus	6	Sweden	12
Latvia	7	United Kingdom	24

Article 8

Until the entry into force of the decision referred to in Article 305 of the Treaty on the Functioning of the European Union, the allocation of members of the Committee of the Regions shall be as follows:

Belgium	12	Lithuania	9
Bulgaria	12	Luxembourg	6
Czech Republic	12	Hungary	12
Denmark	9	Malta	5
Germany	24	Netherlands	12
Estonia	7	Austria	12
Ireland	9	Poland	21
Greece	12	Portugal	12
Spain	21	Romania	15
France	24	Slovenia	7
Croatia	9	Slovakia	9
Italy	24	Finland	9
Cyprus	6	Sweden	12
Latvia	7	United Kingdom	24

TITLE VII

TRANSITIONAL PROVISIONS CONCERNING ACTS ADOPTED ON THE BASIS OF TITLES V AND VI OF THE TREATY ON EUROPEAN UNION PRIOR TO THE ENTRY INTO FORCE OF THE TREATY OF LISBON

Article 9

The legal effects of the acts of the institutions, bodies, offices and agencies of the Union adopted on the basis of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon shall be preserved until those acts are repealed, annulled or amended in implementation of the Treaties. The same shall apply to agreements concluded between Member States on the basis of the Treaty on European Union.

Article 10

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.

2. The amendment of an act referred to in paragraph 1 shall entail the applicability of the powers of the institutions referred to in that paragraph as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply.

3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.

5. The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph. In that case, the relevant provisions of the Protocol on the Schengen *acquis* integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply. The powers of the institutions with regard to those acts shall be those set out in the Treaties. When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

PROTOCOL (No 37)

ON THE FINANCIAL CONSEQUENCES OF THE EXPIRY OF THE ECSC TREATY AND ON THE RESEARCH FUND FOR COAL AND STEEL

THE HIGH CONTRACTING PARTIES,

RECALLING that all assets and liabilities of the European Coal and Steel Community, as they existed on 23 July 2002, were transferred to the European Community on 24 July 2002,

TAKING ACCOUNT of the desire to use these funds for research in sectors related to the coal and steel industry and therefore the necessity to provide for certain special rules in this regard,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

Article 1

1. The net worth of these assets and liabilities, as they appear in the balance sheet of the ECSC of 23 July 2002, subject to any increase or decrease which may occur as a result of the liquidation operations, shall be considered as assets intended for research in the sectors related to the coal and steel industry, referred to as the "ECSC in liquidation". On completion of the liquidation they shall be referred to as the "assets of the Research Fund for Coal and Steel".

2. The revenue from these assets, referred to as the "Research Fund for Coal and Steel", shall be used exclusively for research, outside the research framework programme, in the sectors related to the coal and steel industry in accordance with the provisions of this Protocol and of acts adopted on the basis hereof.

Article 2

The Council, acting in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, shall adopt all the necessary provisions for the implementation of this Protocol, including essential principles.

The Council shall adopt, on a proposal from the Commission and after consulting the European Parliament, measures establishing multiannual financial guidelines for managing the assets of the Research Fund for Coal and Steel and technical guidelines for the research programme of the Research Fund for Coal and Steel.

Article 3

Except as otherwise provided in this Protocol and in the acts adopted on the basis hereof, the provisions of the Treaties shall apply.

ANNEXES TO THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

ANNEX I

LIST REFERRED TO IN ARTICLE 38 OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION

(1) No in the Brussels nomenclature	(2) Description of products
Chapter 1	Live animals
Chapter 2	Meat and edible meat offal
Chapter 3	Fish, crustaceans and molluscs
Chapter 4	Dairy produce; birds' eggs; natural honey
Chapter 5	
05.04	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof
05.15	Animal products not elsewhere specified or included; dead animals of Chapter 1 or Chapter 3, unfit for human consumption
Chapter 6	Live trees and other plants; bulbs, roots and the like; cut flowers and ornamental foliage
Chapter 7	Edible vegetables and certain roots and tubers
Chapter 8	Edible fruit and nuts; peel of melons or citrus fruit
Chapter 9	Coffee, tea and spices, excluding maté (heading No 09.03)
Chapter 10	Cereals
Chapter 11	Products of the milling industry; malt and starches; gluten; inulin
Chapter 12	Oil seeds and oleaginous fruit; miscellaneous grains, seeds and fruit; industrial and medical plants; straw and fodder
Chapter 13	
ex 13.03	Pectin
Chapter 15	
15.01	Lard and other rendered pig fat; rendered poultry fat
15.02	Unrendered fats of bovine cattle, sheep or goats; tallow (including "premier jus") produced from those fats
15.03	Lard stearin, oleostearin and tallow stearin; lard oil, oleo-oil and tallow oil, not emulsified or mixed or prepared in any way
15.04	Fats and oil, of fish and marine mammals, whether or not refined
15.07	Fixed vegetable oils, fluid or solid, crude, refined or purified

(1) No in the Brussels nomenclature	(2) Description of products
15.12	Animal or vegetable fats and oils, hydrogenated, whether or not refined, but not further prepared
15.13	Margarine, imitation lard and other prepared edible fats
15.17	Residues resulting from the treatment of fatty substances or animal or vegetable waxes
Chapter 16	Preparations of meat, of fish, of crustaceans or molluscs
Chapter 17	
17.01	Beet sugar and cane sugar, solid
17.02	Other sugars; sugar syrups; artificial honey (whether or not mixed with natural honey); caramel
17.03	Molasses, whether or not decolourised
17.05 (*)	Flavoured or coloured sugars, syrups and molasses (including vanilla sugar or vanillin), with the exception of fruit juice containing added sugar in any proportion
Chapter 18	
18.01	Cocoa beans, whole or broken, raw or roasted
18.02	Cocoa shells, husks, skins and waste
Chapter 20	Preparations of vegetables, fruit or other parts of plants
Chapter 22	
22.04	Grape must, in fermentation or with fermentation arrested otherwise than by the addition of alcohol
22.05	Wine of fresh grapes; grape must with fermentation arrested by the addition of alcohol
22.07	Other fermented beverages (for example, cider, perry and mead)
ex 22.08 (*) ex 22.09 (*)	Ethyl alcohol or neutral spirits, whether or not denatured, of any strength, obtained from agricultural products listed in Annex I, excluding liqueurs and other spirituous beverages and compound alcoholic preparations (known as "concentrated extracts") for the manufacture of beverages
22.10 (*)	Vinegar and substitutes for vinegar
Chapter 23	Residues and waste from the food industries; prepared animal fodder
Chapter 24	
24.01	Unmanufactured tobacco, tobacco refuse

(1) No in the Brussels nomenclature	(2) Description of products
Chapter 45	
45.01	Natural cork, unworked, crushed, granulated or ground; waste cork
Chapter 54	
54.01	Flax, raw or processed but not spun; flax tow and waste (including pulled or garnetted rags)
Chapter 57	
57.01	True hemp (Cannabis sativa), raw or processed but not spun; tow and waste of true hemp (including pulled or garnetted rags or ropes)

(*) Entry added by Article 1 of Regulation No 7a of the Council of the European Economic Community of 18 December 1959 (OJ No 7, 30.1.1961, p. 71/61).

ANNEX II

OVERSEAS COUNTRIES AND TERRITORIES TO WHICH THE PROVISIONS OF PART FOUR OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION APPLY

— Greenland,

— New Caledonia and Dependencies,

— French Polynesia,

— French Southern and Antarctic Territories,

— Wallis and Futuna Islands,

— Saint Pierre and Miquelon,

— Saint-Barthélemy,

— Aruba,

— Netherlands Antilles:

  — Bonaire,

  — Curaçao,

  — Saba,

  — Sint Eustatius,

  — Sint Maarten,

— Anguilla,

— Cayman Islands,

— Falkland Islands,

— South Georgia and the South Sandwich Islands,

— Montserrat,

— Pitcairn,

— Saint Helena and Dependencies,

— British Antarctic Territory,

— British Indian Ocean Territory,

— Turks and Caicos Islands,

— British Virgin Islands,

— Bermuda.

DECLARATIONS

ANNEXED TO THE FINAL ACT OF THE INTERGOVERNMENTAL CONFERENCE WHICH ADOPTED THE TREATY OF LISBON,

signed on 13 December 2007

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration concerning the Charter of Fundamental Rights of the European Union

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

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

2. Declaration on Article 6(2) of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

3. Declaration on Article 8 of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

4. Declaration on the composition of the European Parliament

The additional seat in the European Parliament will be attributed to Italy.

5. Declaration on the political agreement by the European Council concerning the draft Decision on the composition of the European Parliament

The European Council will give its political agreement on the revised draft Decision on the composition of the European Parliament for the legislative period 2009-2014, based on the proposal from the European Parliament.

6. **Declaration on Article 15(5) and (6), Article 17(6) and (7) and Article 18 of the Treaty on European Union**

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and High Representative of the Union for Foreign Affairs and Security Policy, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

7. **Declaration on Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union**

The Conference declares that the decision relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union will be adopted by the Council on the date of the signature of the Treaty of Lisbon and will enter into force on the day that Treaty enters into force. The draft decision is set out below:

Draft Decision of the Council

relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

(1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in Article 3(3) of the Protocol on the transitional provisions, which will continue to apply until 31 October 2014, to the voting system provided for in Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union, which will apply with effect from 1 November 2014, including, during a transitional period until 31 March 2017, specific provisions laid down in Article 3(2) of that Protocol.

(2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority,

HAS DECIDED AS FOLLOWS:

Section 1

Provisions to be applied from 1 November 2014 to 31 March 2017

Article 1

From 1 November 2014 to 31 March 2017, if members of the Council, representing:

(a) at least three quarters of the population, or

(b) at least three quarters of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article 16(4), first subparagraph, of the Treaty on European Union or Article 238(2) of the Treaty on the Functioning of the European Union, indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

Article 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 2

Provisions to be applied as from 1 April 2017

Article 4

As from 1 April 2017, if members of the Council, representing:

(a) at least 55 % of the population, or

(b) at least 55 % of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article 16(4), first subparagraph, of the Treaty on European Union or Article 238(2) of the Treaty on the Functioning of the European Union, indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 5

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 4.

Article 6

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 3

Entry into force

Article 7

This Decision shall enter into force on the date of the entry into force of the Treaty of Lisbon.

8. **Declaration on practical measures to be taken upon the entry into force of the Treaty of Lisbon as regards the Presidency of the European Council and of the Foreign Affairs Council**

In the event that the Treaty of Lisbon enters into force later than 1 January 2009, the Conference requests the competent authorities of the Member State holding the six-monthly Presidency of the Council at that time, on the one hand, and the person elected President of the European Council and the person appointed High Representative of the Union for Foreign Affairs and Security Policy, on the other hand, to take the necessary specific measures, in consultation with the following six-monthly Presidency, to allow an efficient handover of the material and organisational aspects of the Presidency of the European Council and of the Foreign Affairs Council.

9. **Declaration on Article 16(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council**

The Conference declares that the Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty of Lisbon is signed, and should give its political approval within six months. A draft decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft decision of the European Council

on the exercise of the Presidency of the Council

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

10. **Declaration on Article 17 of the Treaty on European Union**

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

11. **Declaration on Article 17(6) and (7) of the Treaty on European Union**

The Conference considers that, in accordance with the provisions of the Treaties, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with the first subparagraph of Article 17(7). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

12. **Declaration on Article 18 of the Treaty on European Union**

1. The Conference declares that, in the course of the preparatory work preceding the appointment of the High Representative of the Union for Foreign Affairs and Security Policy which is due to take place on the date of entry into force of the Treaty of Lisbon in accordance with Article 18 of the Treaty on European Union and Article 5 of the Protocol on transitional provisions and whose term of office will be from that date until the end of the term of office of the Commission in office on that date, appropriate contacts will be made with the European Parliament.

2. Furthermore, the Conference recalls that, as regards the High Representative of the Union for Foreign Affairs and Security Policy whose term of office will start in November 2009 at the same time and for the same duration as the next Commission, he or she will be appointed in accordance with the provisions of Articles 17 and 18 of the Treaty on European Union.

13. **Declaration concerning the common foreign and security policy**

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

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

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

14. **Declaration concerning the common foreign and security policy**

In addition to the specific rules and procedures referred to in paragraph 1 of Article 24 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the United Nations.

The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament.

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

15. **Declaration on Article 27 of the Treaty on European Union**

The Conference declares that, as soon as the Treaty of Lisbon is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

16. **Declaration on Article 55(2) of the Treaty on European Union**

The Conference considers that the possibility of producing translations of the Treaties in the languages mentioned in Article 55(2) contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in the fourth subparagraph of Article 3(3). In this context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages.

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in Article 55(2) communicate to the Council, within six months from the date of the signature of the Treaty of Lisbon, the language or languages into which translations of the Treaties will be made.

17. **Declaration concerning primacy**

The Conference recalls that, in accordance with well settled case law of the Court of Justice of the European Union, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

"*Opinion of the Council Legal Service*

of 22 June 2007

It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (Costa/ENEL,15 July 1964, Case 6/641 ([1])*) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice.*

([1]) "*It follows (…) that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.*" "

18. **Declaration in relation to the delimitation of competences**

The Conference underlines that, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union and the Treaty on the Functioning of the European Union, competences not conferred upon the Union in the Treaties remain with the Member States.

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular better to ensure constant respect for the principles of subsidiarity and proportionality. The Council may, at the initiative of one or several of its members (representatives of Member States) and in accordance with Article 241 of the Treaty on the Functioning of the European Union, request the Commission to submit proposals for repealing a legislative act. The Conference welcomes the Commission's declaration that it will devote particular attention to these requests.

Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article 48(2) to (5) of the Treaty on European Union, may decide to amend the Treaties upon which the Union is founded, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

19. **Declaration on Article 8 of the Treaty on the Functioning of the European Union**

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

20. **Declaration on Article 16 of the Treaty on the Functioning of the European Union**

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article 16 could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

21. **Declaration on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation**

The Conference acknowledges that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 16 of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

22. **Declaration on Articles 48 and 79 of the Treaty on the Functioning of the European Union**

The Conference considers that in the event that a draft legislative act based on Article 79(2) would affect important aspects of the social security system of a Member State, including its scope, cost or financial structure, or would affect the financial balance of that system as set out in the second paragraph of Article 48, the interests of that Member State will be duly taken into account.

23. **Declaration on the second paragraph of Article 48 of the Treaty on the Functioning of the European Union**

The Conference recalls that in that case, in accordance with Article 15(4) of the Treaty on European Union, the European Council acts by consensus.

24. **Declaration concerning the legal personality of the European Union**

The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.

25. **Declaration on Articles 75 and 215 of the Treaty on the Functioning of the European Union**

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

26. **Declaration on non-participation by a Member State in a measure based on Title V of Part Three of the Treaty on the Functioning of the European Union**

The Conference declares that, where a Member State opts not to participate in a measure based on Title V of Part Three of the Treaty on the Functioning of the European Union, the Council will hold a full discussion on the possible implications and effects of that Member State's non-participation in the measure.

In addition, any Member State may ask the Commission to examine the situation on the basis of Article 116 of the Treaty on the Functioning of the European Union.

The above paragraphs are without prejudice to the entitlement of a Member State to refer the matter to the European Council.

27. **Declaration on Article 85(1), second subparagraph, of the Treaty on the Functioning of the European Union**

The Conference considers that the regulations referred to in the second subparagraph of Article 85(1) of the Treaty on the Functioning of the European Union should take into account national rules and practices relating to the initiation of criminal investigations.

28. **Declaration on Article 98 of the Treaty on the Functioning of the European Union**

The Conference notes that the provisions of Article 98 shall be applied in accordance with the current practice. The terms "such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division" shall be interpreted in accordance with the existing case law of the Court of Justice of the European Union.

29. **Declaration on Article 107(2)(c) of the Treaty on the Functioning of the European Union**

The Conference notes that Article 107(2)(c) shall be interpreted in accordance with the existing case law of the Court of Justice of the European Union regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

30. **Declaration on Article 126 of the Treaty on the Functioning of the European Union**

With regard to Article 126, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in

particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Treaties and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudge the future debate on the Stability and Growth Pact.

31. **Declaration on Article 156 of the Treaty on the Functioning of the European Union**

The Conference confirms that the policies described in Article 156 fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

This Declaration is without prejudice to the provisions of the Treaties conferring competence on the Union, including in social matters.

32. **Declaration on Article 168(4)(c) of the Treaty on the Functioning of the European Union**

The Conference declares that the measures to be adopted pursuant to Article 168(4)(c) must meet common safety concerns and aim to set high standards of quality and safety where national standards affecting the internal market would otherwise prevent a high level of human health protection being achieved.

33. **Declaration on Article 174 of the Treaty on the Functioning of the European Union**

The Conference considers that the reference in Article 174 to island regions can include island States in their entirety, subject to the necessary criteria being met.

34. **Declaration on Article 179 of the Treaty on the Functioning of the European Union**

The Conference agrees that the Union's action in the area of research and technological development will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

35. **Declaration on Article 194 of the Treaty on the Functioning of the European Union**

The Conference believes that Article 194 does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article 347.

36. **Declaration on Article 218 of the Treaty on the Functioning of the European Union concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice**

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Chapters 3, 4 and 5 of Title V of Part Three in so far as such agreements comply with Union law.

37. **Declaration on Article 222 of the Treaty on the Functioning of the European Union**

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Article 222 is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

38. **Declaration on Article 252 of the Treaty on the Functioning of the European Union regarding the number of Advocates-General in the Court of Justice**

The Conference declares that if, in accordance with Article 252, first paragraph, of the Treaty on the Functioning of the European Union, the Court of Justice requests that the number of Advocates-General be increased by three (eleven instead of eight), the Council will, acting unanimously, agree on such an increase.

In that case, the Conference agrees that Poland will, as is already the case for Germany, France, Italy, Spain and the United Kingdom, have a permanent Advocate-General and no longer take part in the rotation system, while the existing rotation system will involve the rotation of five Advocates-General instead of three.

39. **Declaration on Article 290 of the Treaty on the Functioning of the European Union**

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.

40. **Declaration on Article 329 of the Treaty on the Functioning of the European Union**

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article 333 providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

41. **Declaration on Article 352 of the Treaty on the Functioning of the European Union**

The Conference declares that the reference in Article 352(1) of the Treaty on the Functioning of the European Union to objectives of the Union refers to the objectives as set out in Article 3(2) and (3) of the Treaty on European Union and to the objectives of Article 3(5) of the said Treaty with respect to external action under Part Five of the Treaty on the Functioning of the European Union. It is therefore excluded that an action based on Article 352 of the Treaty on the Functioning of the European Union would only pursue objectives set out in Article 3(1) of the Treaty on European Union. In this connection, the Conference notes that in accordance with Article 31(1) of the Treaty on European Union, legislative acts may not be adopted in the area of the Common Foreign and Security Policy.

42. **Declaration on Article 352 of the Treaty on the Functioning of the European Union**

The Conference underlines that, in accordance with the settled case law of the Court of Justice of the European Union, Article 352 of the Treaty on the Functioning of the European Union, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, this Article cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose.

43. **Declaration on Article 355(6) of the Treaty on the Functioning of the European Union**

The High Contracting Parties agree that the European Council, pursuant to Article 355(6), will take a decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article 355(1) and Article 349, when the French authorities notify the European Council and the Commission that the evolution currently under way in the internal status of the island so allows.

B. DECLARATIONS CONCERNING PROTOCOLS ANNEXED TO THE TREATIES

44. Declaration on Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference notes that where a Member State has made a notification under Article 5(2) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union that it does not wish to take part in a proposal or initiative, that notification may be withdrawn at any moment before the adoption of the measure building upon the Schengen *acquis*.

45. Declaration on Article 5(2) of the Protocol on the Schengen acquis integrated into the framework of the European Union

The Conference declares that whenever the United Kingdom or Ireland indicates to the Council its intention not to participate in a measure building upon a part of the Schengen *acquis* in which it participates, the Council will have a full discussion on the possible implications of the non-participation of that Member State in that measure. The discussion within the Council should be conducted in the light of the indications given by the Commission concerning the relationship between the proposal and the Schengen *acquis*.

46. Declaration on Article 5(3) of the Protocol on the Schengen acquis integrated into the framework of the European Union

The Conference recalls that if the Council does not take a decision after a first substantive discussion of the matter, the Commission may present an amended proposal for a further substantive re-examination by the Council within the deadline of 4 months.

47. Declaration on Article 5(3), (4) and (5) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference notes that the conditions to be determined in the decision referred to in paragraphs 3, 4 or 5 of Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union may determine that the Member State concerned shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in some or all of the *acquis* referred to in any decision taken by the Council pursuant to Article 4 of the said Protocol.

48. **Declaration concerning the Protocol on the position of Denmark**

The Conference notes that with respect to legal acts to be adopted by the Council acting alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on the position of Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference notes that on the basis of the Declaration by the Conference on Article 222, Denmark declares that Danish participation in actions or legal acts pursuant to Article 222 will take place in accordance with Part I and Part II of the Protocol on the position of Denmark.

49. **Declaration concerning Italy**

The Conference notes that the Protocol on Italy annexed in 1957 to the Treaty establishing the European Economic Community, as amended upon adoption of the Treaty on European Union, stated that:

"THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Italy,

HAVE AGREED UPON the following provisions, which shall be annexed to this Treaty:

THE MEMBER STATES OF THE COMMUNITY

TAKE NOTE of the fact that the Italian Government is carrying out a ten-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in Southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;

RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;

RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;

AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;

ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;

RECOGNISE that in the event of Articles 109 H and 109 I being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population.".

50. **Declaration concerning Article 10 of the Protocol on transitional provisions**

The Conference invites the European Parliament, the Council and the Commission, within their respective powers, to seek to adopt, in appropriate cases and as far as possible within the five-year period referred to in Article 10(3) of the Protocol on transitional provisions, legal acts amending or replacing the acts referred to in Article 10(1) of that Protocol.

C. DECLARATIONS BY MEMBER STATES

51. Declaration by the Kingdom of Belgium on national Parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

52. Declaration by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Cyprus, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia and the Slovak Republic on the symbols of the European Union

Belgium, Bulgaria, Germany, Greece, Spain, Italy, Cyprus, Lithuania, Luxemburg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and the Slovak Republic declare that the flag with a circle of twelve golden stars on a blue background, the anthem based on the "Ode to Joy" from the Ninth Symphony by Ludwig van Beethoven, the motto "United in diversity", the euro as the currency of the European Union and Europe Day on 9 May will for them continue as symbols to express the sense of community of the people in the European Union and their allegiance to it.

53. Declaration by the Czech Republic on the Charter of Fundamental Rights of the European Union

1. The Czech Republic recalls that the provisions of the Charter of Fundamental Rights of the European Union are addressed to the institutions and bodies of the European Union with due regard for the principle of subsidiarity and division of competences between the European Union and its Member States, as reaffirmed in Declaration (No 18) in relation to the delimitation of competences. The Czech Republic stresses that its provisions are addressed to the Member States only when they are implementing Union law, and not when they are adopting and implementing national law independently from Union law.

2. The Czech Republic also emphasises that the Charter does not extend the field of application of Union law and does not establish any new power for the Union. It does not diminish the field of application of national law and does not restrain any current powers of the national authorities in this field.

3. The Czech Republic stresses that, in so far as the Charter recognises fundamental rights and principles as they result from constitutional traditions common to the Member States, those rights and principles are to be interpreted in harmony with those traditions.

4. The Czech Republic further stresses that nothing in the Charter may be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective field of application, by Union law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' Constitutions.

54. **Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden**

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

55. **Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland**

The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

56. **Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice**

Ireland affirms its commitment to the Union as an area of freedom, security and justice respecting fundamental rights and the different legal systems and traditions of the Member States within which citizens are provided with a high level of safety.

Accordingly, Ireland declares its firm intention to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of measures pursuant to Title V of Part Three of the Treaty on the Functioning of the European Union to the maximum extent it deems possible.

Ireland will, in particular, participate to the maximum possible extent in measures in the field of police cooperation.

Furthermore, Ireland recalls that in accordance with Article 8 of the Protocol it may notify the Council in writing that it no longer wishes to be covered by the terms of the Protocol. Ireland intends to review the operation of these arrangements within three years of the entry into force of the Treaty of Lisbon.

57. **Declaration by the Italian Republic on the composition of the European Parliament**

Italy notes that, pursuant to Articles 10 and 14 of the Treaty on European Union, the European Parliament is to be composed of representatives of the Union's citizens; this representation is to be degressively proportional.

Italy likewise notes that on the basis of Article 9 of the Treaty on European Union and Article 20 of the Treaty on the Functioning of the European Union, every national of a Member State is a citizen of the Union.

Italy therefore considers that, without prejudice to the decision on the 2009-2014 legislative period, any decision adopted by the European Council, at the initiative of the European Parliament and with its consent, establishing the composition of the European Parliament, must abide by the principles laid down out in the first subparagraph of Article 14.

58. **Declaration by the Republic of Latvia, the Republic of Hungary and the Republic of Malta on the spelling of the name of the single currency in the Treaties**

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaties as displayed on the banknotes and on the coins, Latvia, Hungary and Malta declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian, Hungarian and Maltese text of the Treaties, has no effect on the existing rules of the Latvian, Hungarian or Maltese languages.

59. **Declaration by the Kingdom of the Netherlands on Article 312 of the Treaty on the Functioning of the European Union**

The Kingdom of the Netherlands will agree to a decision as referred to in the second subparagraph of Article 312(2) of the Treaty on the Functioning of the European Union once a revision of the decision referred to in the third paragraph of Article 311 of that Treaty has provided the Netherlands with a satisfactory solution for its excessive negative net payment position *vis-à-vis* the Union budget.

60. **Declaration by the Kingdom of the Netherlands on Article 355 of the Treaty on the Functioning of the European Union**

The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article 355(6) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

61. **Declaration by the Republic of Poland on the Charter of Fundamental Rights of the European Union**

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

62. **Declaration by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights of the European Union in relation to Poland and the United Kingdom**

Poland declares that, having regard to the tradition of social movement of "Solidarity" and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.

63. **Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"**

In respect of the Treaties and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term "nationals" with the exception that the reference to "British Dependent Territories Citizens" shall be read as meaning "British overseas territories citizens".

64. **Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament**

The United Kingdom notes that Article 14 of the Treaty on European Union and other provisions of the Treaties are not intended to change the basis for the franchise for elections to the European Parliament.

65. **Declaration by the United Kingdom of Great Britain and Northern Ireland on Article 75 of the Treaty on the Functioning of the European Union**

The United Kingdom fully supports robust action with regard to adopting financial sanctions designed to prevent and combat terrorism and related activities. Therefore, the United Kingdom declares that it intends to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of all proposals made under Article 75 of the Treaty on the Functioning of the European Union.

TABLES OF EQUIVALENCES (*)

Treaty on European Union

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
TITLE I – COMMON PROVISIONS	TITLE I – COMMON PROVISIONS
Article 1	Article 1
	Article 2
Article 2	Article 3
Article 3 (repealed) (1)	
	Article 4
	Article 5 (2)
Article 4 (repealed) (3)	
Article 5 (repealed) (4)	
Article 6	Article 6
Article 7	Article 7
	Article 8
TITLE II – PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY WITH A VIEW TO ESTABLISHING THE EUROPEAN COMMUNITY	TITLE II – PROVISIONS ON DEMOCRATIC PRINCIPLES
Article 8 (repealed) (5)	Article 9
	Article 10 (6)

(1) Replaced, in substance, by Article 7 of the Treaty on the Functioning of the European Union ("TFEU") and by Articles 13(1) and 21, paragraph 3, second subparagraph of the Treaty on European Union ("TEU").

(2) Replaces Article 5 of the Treaty establishing the European Community ("TEC").

(3) Replaced, in substance, by Article 15.

(4) Replaced, in substance, by Article 13, paragraph 2.

(5) Article 8 TEU, which was in force until the entry into force of the Treaty of Lisbon (hereinafter "current"), amended the TEC. Those amendments are incorporated into the latter Treaty and Article 8 is repealed. Its number is used to insert a new provision.

(6) Paragraph 4 replaces, in substance, the first subparagraph of Article 191 TEC.

(*) Tables of equivalences as referred to in Article 5 of the Treaty of Lisbon. The original centre column, which set out the intermediate numbering as used in that Treaty, has been omitted.

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
	Article 11
	Article 12
TITLE III – PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY	TITLE III – PROVISIONS ON THE INSTITUTIONS
Article 9 (repealed) ([7])	Article 13
	Article 14 ([8])
	Article 15 ([9])
	Article 16 ([10])
	Article 17 ([11])
	Article 18
	Article 19 ([12])
TITLE IV – PROVISIONS AMENDING THE TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY	TITLE IV – PROVISIONS ON ENHANCED COOPERATION
Article 10 (repealed) ([13]) Articles 27a to 27e (replaced) Articles 40 to 40b (replaced) Articles 43 to 45 (replaced)	Article 20 ([14])

([7]) The current Article 9 TEU amended the Treaty establishing the European Coal and Steel Community. This latter expired on 23 July 2002. Article 9 is repealed and the number thereof is used to insert another provision.

([8]) — Paragraphs 1 and 2 replace, in substance, Article 189 TEC;
— paragraphs 1 to 3 replace, in substance, paragraphs 1 to 3 of Article 190 TEC;
— paragraph 1 replaces, in substance, the first subparagraph of Article 192 TEC;
— paragraph 4 replaces, in substance, the first subparagraph of Article 197 TEC.

([9]) Replaces, in substance, Article 4.

([10]) — Paragraph 1 replaces, in substance, the first and second indents of Article 202 TEC;
— paragraphs 2 and 9 replace, in substance, Article 203 TEC;
— paragraphs 4 and 5 replace, in substance, paragraphs 2 and 4 of Article 205 TEC.

([11]) — Paragraph 1 replaces, in substance, Article 211 TEC;
— paragraphs 3 and 7 replace, in substance, Article 214 TEC.
— paragraph 6 replaces, in substance, paragraphs 1, 3 and 4 of Article 217 TEC.

([12]) — Replaces, in substance, Article 220 TEC.
— the first subparagraph of paragraph 2 replaces, in substance, the first subparagraph of Article 221 TEC.

([13]) The current Article 10 TEU amended the Treaty establishing the European Atomic Energy Community. Those amendments are incorporated into the Treaty of Lisbon. Article 10 is repealed and the number thereof is used to insert another provision.

([14]) Also replaces Articles 11 and 11a TEC.

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
TITLE V – PROVISIONS ON A COMMON FOREIGN AND SECURITY POLICY	TITLE V – GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY
	Chapter 1 – General provisions on the Union's external action
	Article 21
	Article 22
	Chapter 2 – Specific provisions on the common foreign and security policy
	Section 1 – Common provisions
	Article 23
Article 11	Article 24
Article 12	Article 25
Article 13	Article 26
	Article 27
Article 14	Article 28
Article 15	Article 29
Article 22 (moved)	Article 30
Article 23 (moved)	Article 31
Article 16	Article 32
Article 17 (moved)	Article 42
Article 18	Article 33
Article 19	Article 34
Article 20	Article 35
Article 21	Article 36
Article 22 (moved)	Article 30
Article 23 (moved)	Article 31
Article 24	Article 37

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
Article 25	Article 38
	Article 39
Article 47 (moved)	Article 40
Article 26 (repealed)	
Article 27 (repealed)	
Article 27a (replaced) ([15])	Article 20
Article 27b (replaced) ([15])	Article 20
Article 27c (replaced) ([15])	Article 20
Article 27d (replaced) ([15])	Article 20
Article 27e (replaced) ([15])	Article 20
Article 28	Article 41
	Section 2 – Provisions on the common security and defence policy
Article 17 (moved)	Article 42
	Article 43
	Article 44
	Article 45
	Article 46
TITLE VI – PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (repealed) ([16])	
Article 29 (replaced) ([17])	
Article 30 (replaced) ([18])	
Article 31 (replaced) ([19])	

([15]) The current Articles 27a to 27e, on enhanced cooperation, are also replaced by Articles 326 to 334 TFEU.

([16]) The current provisions of Title VI of the TEU, on police and judicial cooperation in criminal matters, are replaced by the provisions of Chapters 1, 4 and 5 of Title IV (renumbered V) of Part Three of the TFEU.

([17]) Replaced by Article 67 TFEU.

([18]) Replaced by Articles 87 and 88 TFEU.

([19]) Replaced by Articles 82, 83 and 85 TFEU.

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
Article 32 (replaced) ([20])	
Article 33 (replaced) ([21])	
Article 34 (repealed)	
Article 35 (repealed)	
Article 36 (replaced) ([22])	
Article 37 (repealed)	
Article 38 (repealed)	
Article 39 (repealed)	
Article 40 (replaced) ([23])	Article 20
Article 40 A (replaced) ([23])	Article 20
Article 40 B (replaced) ([23])	Article 20
Article 41 (repealed)	
Article 42 (repealed)	
TITLE VII – PROVISIONS ON ENHANCED COOPERATION (replaced) ([24])	TITLE IV – PROVISIONS ON ENHANCED COOPERATION
Article 43 (replaced) ([24])	Article 20
Article 43 A (replaced) ([24])	Article 20
Article 43 B (replaced) ([24])	Article 20
Article 44 (replaced) ([24])	Article 20
Article 44 A (replaced) ([24])	Article 20
Article 45 (replaced) ([24])	Article 20
TITRE VIII – FINAL PROVISIONS	TITLE VI – FINAL PROVISIONS
Article 46 (repealed)	
	Article 47

([20]) Replaced by Article 89 TFEU.
([21]) Replaced by Article 72 TFEU.
([22]) Replaced by Article 71 TFEU.
([23]) The current Articles 40 to 40 B TEU, on enhanced cooperation, are also replaced by Articles 326 to 334 TFEU.
([24]) The current Articles 43 to 45 and Title VII of the TEU, on enhanced cooperation, are also replaced by Articles 326 to 334 TFEU.

Old numbering of the Treaty on European Union	New numbering of the Treaty on European Union
Article 47 (replaced)	Article 40
Article 48	Article 48
Article 49	Article 49
	Article 50
	Article 51
	Article 52
Article 50 (repealed)	
Article 51	Article 53
Article 52	Article 54
Article 53	Article 55

Treaty on the Functioning of the European Union

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
PART ONE – PRINCIPLES	PART ONE – PRINCIPLES
Article 1 (repealed)	
	Article 1
Article 2 (repealed) ([25])	
	Title I – Categories and areas of union competence
	Article 2
	Article 3
	Article 4
	Article 5
	Article 6
	Title II – Provisions having general application

([25]) Replaced, in substance, by Article 3 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
	Article 7
Article 3, paragraph 1 (repealed) ([26])	
Article 3, paragraph 2	Article 8
Article 4 (moved)	Article 119
Article 5 (replaced) ([27])	
	Article 9
	Article 10
Article 6	Article 11
Article 153, paragraph 2 (moved)	Article 12
	Article 13 ([28])
Article 7 (repealed) ([29])	
Article 8 (repealed) ([30])	
Article 9 (repealed)	
Article 10 (repealed) ([31])	
Article 11 (replaced) ([32])	Articles 326 to 334
Article 11a (replaced) ([32])	Articles 326 to 334
Article 12 (moved)	Article 18
Article 13 (moved)	Article 19
Article 14 (moved)	Article 26
Article 15 (moved)	Article 27
Article 16	Article 14
Article 255 (moved)	Article 15
Article 286 (moved)	Article 16

([26]) Replaced, in substance, by Articles 3 to 6 TFEU.
([27]) Replaced by Article 5 TEU.
([28]) Insertion of the operative part of the protocol on protection and welfare of animals.
([29]) Replaced, in substance, by Article 13 TEU.
([30]) Replaced, in substance, by Article 13 TEU and Article 282, paragraph 1, TFEU.
([31]) Replaced, in substance, by Article 4, paragraph 3, TEU.
([32]) Also replaced by Article 20 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
	Article 17
PART TWO – CITIZENSHIP OF THE UNION	PART TWO – NON-DISCRIMINATION AND CITIZENSHIP OF THE UNION
Article 12 (moved)	Article 18
Article 13 (moved)	Article 19
Article 17	Article 20
Article 18	Article 21
Article 19	Article 22
Article 20	Article 23
Article 21	Article 24
Article 22	Article 25
PART THREE – COMMUNITY POLICIES	PART THREE – POLICIES AND INTERNAL ACTIONS OF THE UNION
	Title I – The internal market
Article 14 (moved)	Article 26
Article 15 (moved)	Article 27
Title I – Free movement of goods	Title II – Free movement of goods
Article 23	Article 28
Article 24	Article 29
Chapter 1 – The customs union	Chapter 1 – The customs union
Article 25	Article 30
Article 26	Article 31
Article 27	Article 32
Part Three, Title X, Customs cooperation (moved)	Chapter 2 – Customs cooperation
Article 135 (moved)	Article 33
Chapter 2 – Prohibition of quantitative restrictions between Member States	Chapter 3 – Prohibition of quantitative restrictions between Member States
Article 28	Article 34

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 29	Article 35
Article 30	Article 36
Article 31	Article 37
Title II – Agriculture	Title III – Agriculture and fisheries
Article 32	Article 38
Article 33	Article 39
Article 34	Article 40
Article 35	Article 41
Article 36	Article 42
Article 37	Article 43
Article 38	Article 44
Title III – Free movement of persons, services and capital	Title IV – Free movement of persons, services and capital
Chapter 1 – Workers	Chapter 1 – Workers
Article 39	Article 45
Article 40	Article 46
Article 41	Article 47
Article 42	Article 48
Chapter 2 – Right of establishment	Chapter 2 – Right of establishment
Article 43	Article 49
Article 44	Article 50
Article 45	Article 51
Article 46	Article 52
Article 47	Article 53
Article 48	Article 54
Article 294 (moved)	Article 55
Chapter 3 – Services	Chapter 3 – Services
Article 49	Article 56

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 50	Article 57
Article 51	Article 58
Article 52	Article 59
Article 53	Article 60
Article 54	Article 61
Article 55	Article 62
Chapter 4 – Capital and payments	Chapter 4 – Capital and payments
Article 56	Article 63
Article 57	Article 64
Article 58	Article 65
Article 59	Article 66
Article 60 (moved)	Article 75
Title IV – Visas, asylum, immigration and other policies related to free movement of persons	Title V – Area of freedom, security and justice
	Chapter 1 – General provisions
Article 61	Article 67 ([33])
	Article 68
	Article 69
	Article 70
	Article 71 ([34])
Article 64, paragraph 1 (replaced)	Article 72 ([35])
	Article 73
Article 66 (replaced)	Article 74
Article 60 (moved)	Article 75
	Article 76

([33]) Also replaces the current Article 29 TEU.
([34]) Replaces the current Article 36 TEU.
([35]) Also replaces the current Article 33 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
	Chapter 2 – Policies on border checks, asylum and immigration
Article 62	Article 77
Article 63, points 1 et 2, and Article 64, paragraph 2 ([36])	Article 78
Article 63, points 3 and 4	Article 79
	Article 80
Article 64, paragraph 1 (replaced)	Article 72
	Chapter 3 – Judicial cooperation in civil matters
Article 65	Article 81
Article 66 (replaced)	Article 74
Article 67 (repealed)	
Article 68 (repealed)	
Article 69 (repealed)	
	Chapter 4 – Judicial cooperation in criminal matters
	Article 82 ([37])
	Article 83 ([37])
	Article 84
	Article 85 ([37])
	Article 86
	Chapter 5 – Police cooperation
	Article 87 ([38])
	Article 88 ([38])
	Article 89 ([39])

([36]) Points 1 and 2 of Article 63 EC are replaced by paragraphs 1 and 2 of Article 78 TFEU, and paragraph 2 of Article 64 is replaced by paragraph 3 of Article 78 TFEU.
([37]) Replaces the current Article 31 TEU.
([38]) Replaces the current Article 30 TEU.
([39]) Replaces the current Article 32 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Title V – Transport	Title VI – Transport
Article 70	Article 90
Article 71	Article 91
Article 72	Article 92
Article 73	Article 93
Article 74	Article 94
Article 75	Article 95
Article 76	Article 96
Article 77	Article 97
Article 78	Article 98
Article 79	Article 99
Article 80	Article 100
Title VI – Common rules on competition, taxation and approximation of laws	Title VII – Common rules on competition, taxation and approximation of laws
Chapter 1 – Rules on competition	Chapter 1 – Rules on competition
Section 1 – Rules applying to undertakings	Section 1 – Rules applying to undertakings
Article 81	Article 101
Article 82	Article 102
Article 83	Article 103
Article 84	Article 104
Article 85	Article 105
Article 86	Article 106
Section 2 – Aids granted by States	Section 2 – Aids granted by States
Article 87	Article 107
Article 88	Article 108
Article 89	Article 109
Chapter 2 – Tax provisions	Chapter 2 – Tax provisions

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 90	Article 110
Article 91	Article 111
Article 92	Article 112
Article 93	Article 113
Chapter 3 – Approximation of laws	Chapter 3 – Approximation of laws
Article 95 (moved)	Article 114
Article 94 (moved)	Article 115
Article 96	Article 116
Article 97	Article 117
	Article 118
Title VII – Economic and monetary policy	Title VIII – Economic and monetary policy
Article 4 (moved)	Article 119
Chapter 1 – Economic policy	Chapter 1 – Economic policy
Article 98	Article 120
Article 99	Article 121
Article 100	Article 122
Article 101	Article 123
Article 102	Article 124
Article 103	Article 125
Article 104	Article 126
Chapter 2 – monetary policy	Chapter 2 – monetary policy
Article 105	Article 127
Article 106	Article 128
Article 107	Article 129
Article 108	Article 130
Article 109	Article 131
Article 110	Article 132

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 111, paragraphs 1 to 3 and 5 (moved)	Article 219
Article 111, paragraph 4 (moved)	Article 138
	Article 133
Chapter 3 – Institutional provisions	Chapter 3 – Institutional provisions
Article 112 (moved)	Article 283
Article 113 (moved)	Article 284
Article 114	Article 134
Article 115	Article 135
	Chapter 4 – Provisions specific to Member States whose currency is the euro
	Article 136
	Article 137
Article 111, paragraph 4 (moved)	Article 138
Chapter 4 – Transitional provisions	Chapter 5 – Transitional provisions
Article 116 (repealed)	
	Article 139
Article 117, paragraphs 1, 2, sixth indent, and 3 to 9 (repealed)	
Article 117, paragraph 2, first five indents (moved)	Article 141, paragraph 2
Article 121, paragraph 1 (moved) Article 122, paragraph 2, second sentence (moved) Article 123, paragraph 5 (moved)	Article 140 ([40])
Article 118 (repealed)	
Article 123, paragraph 3 (moved) Article 117, paragraph 2, first five indents (moved)	Article 141 ([41])

([40]) — Article 140, paragraph 1 takes over the wording of paragraph 1 of Article 121.
— Article 140, paragraph 2 takes over the second sentence of paragraph 2 of Article 122.
— Article 140, paragraph 3 takes over paragraph 5 of Article 123.

([41]) — Article 141, paragraph 1 takes over paragraph 3 of Article 123.
— Article 141, paragraph 2 takes over the first five indents of paragraph 2 of Article 117.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 124, paragraph 1 (moved)	Article 142
Article 119	Article 143
Article 120	Article 144
Article 121, paragraph 1 (moved)	Article 140, paragraph 1
Article 121, paragraphs 2 to 4 (repealed)	
Article 122, paragraphs 1, 2, first sentence, 3, 4, 5 and 6 (repealed)	
Article 122, paragraph 2, second sentence (moved)	Article 140, paragraph 2, first subparagraph
Article 123, paragraphs 1, 2 and 4 (repealed)	
Article 123, paragraph 3 (moved)	Article 141, paragraph 1
Article 123, paragraph 5 (moved)	Article 140, paragraph 3
Article 124, paragraph 1 (moved)	Article 142
Article 124, paragraph 2 (repealed)	
Title VIII – Employment	Title IX – Employment
Article 125	Article 145
Article 126	Article 146
Article 127	Article 147
Article 128	Article 148
Article 129	Article 149
Article 130	Article 150
Title IX – Common commercial policy (moved)	Part Five, Title II, common commercial policy
Article 131 (moved)	Article 206
Article 132 (repealed)	
Article 133 (moved)	Article 207
Article 134 (repealed)	
Title X – Customs cooperation (moved)	Part Three, Title II, Chapter 2, Customs cooperation

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 135 (moved)	Article 33
Title XI – Social policy, education, vocational training and youth	Title X – Social policy
Chapter 1 – social provisions (repealed)	
Article 136	Article 151
	Article 152
Article 137	Article 153
Article 138	Article 154
Article 139	Article 155
Article 140	Article 156
Article 141	Article 157
Article 142	Article 158
Article 143	Article 159
Article 144	Article 160
Article 145	Article 161
Chapter 2 – The European Social Fund	Title XI – The European Social Fund
Article 146	Article 162
Article 147	Article 163
Article 148	Article 164
Chapter 3 – Education, vocational training and youth	Title XII – Education, vocational training, youth and sport
Article 149	Article 165
Article 150	Article 166
Title XII – Culture	Title XIII – Culture
Article 151	Article 167
Title XIII – Public health	Title XIV – Public health
Article 152	Article 168
Title XIV – Consumer protection	Title XV – Consumer protection

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 153, paragraphs 1, 3, 4 and 5	Article 169
Article 153, paragraph 2 (moved)	Article 12
Title XV – Trans–European networks	Title XVI – Trans–European networks
Article 154	Article 170
Article 155	Article 171
Article 156	Article 172
Title XVI – Industry	Title XVII – Industry
Article 157	Article 173
Title XVII – Economic and social cohesion	Title XVIII – Economic, social and territorial cohesion
Article 158	Article 174
Article 159	Article 175
Article 160	Article 176
Article 161	Article 177
Article 162	Article 178
Title XVIII – Research and technological development	Title XIX – Research and technological development and space
Article 163	Article 179
Article 164	Article 180
Article 165	Article 181
Article 166	Article 182
Article 167	Article 183
Article 168	Article 184
Article 169	Article 185
Article 170	Article 186
Article 171	Article 187
Article 172	Article 188
	Article 189

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 173	Article 190
Title XIX – Environment	Title XX – Environment
Article 174	Article 191
Article 175	Article 192
Article 176	Article 193
	Titre XXI – Energy
	Article 194
	Title XXII – Tourism
	Article 195
	Title XXIII – Civil protection
	Article 196
	Title XXIV – Administrative cooperation
	Article 197
Title XX – Development cooperation (moved)	Part Five, Title III, Chapter 1, Development cooperation
Article 177 (moved)	Article 208
Article 178 (repealed) ([42])	
Article 179 (moved)	Article 209
Article 180 (moved)	Article 210
Article 181 (moved)	Article 211
Title XXI – Economic, financial and technical cooperation with third countries (moved)	Part Five, Title III, Chapter 2, Economic, financial and technical cooperation with third countries
Article 181a (moved)	Article 212
PART FOUR – ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES	PART FOUR – ASSOCIATION OF THE OVERSEAS COUNTRIES AND TERRITORIES
Article 182	Article 198
Article 183	Article 199

([42]) Replaced, in substance, by the second sentence of the second subparagraph of paragraph 1 of Article 208 TFEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 184	Article 200
Article 185	Article 201
Article 186	Article 202
Article 187	Article 203
Article 188	Article 204
	PART FIVE – THE UNION'S EXTERNAL ACTION
	Title I – General provisions on the Union's external action
	Article 205
Part Three, Title IX, Common commercial policy (moved)	Title II – Common commercial policy
Article 131 (moved)	Article 206
Article 133 (moved)	Article 207
	Title III – Cooperation with third countries and humanitarian aid
Part Three, Title XX, Development cooperation (moved)	Chapter 1 – development cooperation
Article 177 (moved)	Article 208 ([43])
Article 179 (moved)	Article 209
Article 180 (moved)	Article 210
Article 181 (moved)	Article 211
Part Three, Title XXI, Economic, financial and technical cooperation with third countries (moved)	Chapter 2 – Economic, financial and technical cooperation with third countries
Article 181a (moved)	Article 212
	Article 213
	Chapter 3 – Humanitarian aid
	Article 214
	Title IV – Restrictive measures

([43]) The second sentence of the second subparagraph of paragraph 1 replaces, in substance, Article 178 TEC.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 301 (replaced)	Article 215
	Title V – International agreements
	Article 216
Article 310 (moved)	Article 217
Article 300 (replaced)	Article 218
Article 111, paragraphs 1 to 3 and 5 (moved)	Article 219
	Title VI – The Union's relations with international organisations and third countries and the Union delegations
Articles 302 to 304 (replaced)	Article 220
	Article 221
	Title VII – Solidarity clause
	Article 222
PART FIVE – INSTITUTIONS OF THE COMMUNITY	PART SIX – INSTITUTIONAL AND FINANCIAL PROVISIONS
Title I – Institutional provisions	Title I – Institutional provisions
Chapter 1 – The institutions	Chapter 1 – The institutions
Section 1 – The European Parliament	Section 1 – The European Parliament
Article 189 (repealed) ([44])	
Article 190, paragraphs 1 to 3 (repealed) ([45])	
Article 190, paragraphs 4 and 5	Article 223
Article 191, first paragraph (repealed) ([46])	
Article 191, second paragraph	Article 224
Article 192, first paragraph (repealed) ([47])	
Article 192, second paragraph	Article 225
Article 193	Article 226

([44]) Replaced, in substance, by Article 14, paragraphs 1 and 2, TEU.
([45]) Replaced, in substance, by Article 14, paragraphs 1 to 3, TEU.
([46]) Replaced, in substance, by Article 11, paragraph 4, TEU.
([47]) Replaced, in substance, by Article 14, paragraph 1, TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 194	Article 227
Article 195	Article 228
Article 196	Article 229
Article 197, first paragraph (repealed) ([48])	
Article 197, second, third and fourth paragraphs	Article 230
Article 198	Article 231
Article 199	Article 232
Article 200	Article 233
Article 201	Article 234
	Section 2 – The European Council
	Article 235
	Article 236
Section 2 – The Council	Section 3 – The Council
Article 202 (repealed) ([49])	
Article 203 (repealed) ([50])	
Article 204	Article 237
Article 205, paragraphs 2 and 4 (repealed) ([51])	
Article 205, paragraphs 1 and 3	Article 238
Article 206	Article 239
Article 207	Article 240
Article 208	Article 241
Article 209	Article 242
Article 210	Article 243
Section 3 – The Commission	Section 4 – The Commission

([48]) Replaced, in substance, by Article 14, paragraph 4, TEU.
([49]) Replaced, in substance, by Article 16, paragraph 1, TEU and by Articles 290 and 291 TFEU.
([50]) Replaced, in substance, by Article 16, paragraphs 2 and 9 TEU.
([51]) Replaced, in substance, by Article 16, paragraphs 4 and 5 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 211 (repealed) ([52])	
	Article 244
Article 212 (moved)	Article 249, paragraph 2
Article 213	Article 245
Article 214 (repealed) ([53])	
Article 215	Article 246
Article 216	Article 247
Article 217, paragraphs 1, 3 and 4 (repealed) ([54])	
Article 217, paragraph 2	Article 248
Article 218, paragraph 1 (repealed) ([55])	
Article 218, paragraph 2	Article 249
Article 219	Article 250
Section 4 – The Court of Justice	Section 5 – The Court of Justice of the European Union
Article 220 (repealed) ([56])	
Article 221, first paragraph (repealed) ([57])	
Article 221, second and third paragraphs	Article 251
Article 222	Article 252
Article 223	Article 253
Article 224 ([58])	Article 254
	Article 255
Article 225	Article 256
Article 225a	Article 257

([52]) Replaced, in substance, by Article 17, paragraph 1 TEU.
([53]) Replaced, in substance, by Article 17, paragraphs 3 and 7 TEU.
([54]) Replaced, in substance, by Article 17, paragraph 6, TEU.
([55]) Replaced, in substance, by Article 295 TFEU.
([56]) Replaced, in substance, by Article 19 TEU.
([57]) Replaced, in substance, by Article 19, paragraph 2, first subparagraph, of the TEU.
([58]) The first sentence of the first subparagraph is replaced, in substance, by Article 19, paragraph 2, second subparagraph of the TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 226	Article 258
Article 227	Article 259
Article 228	Article 260
Article 229	Article 261
Article 229a	Article 262
Article 230	Article 263
Article 231	Article 264
Article 232	Article 265
Article 233	Article 266
Article 234	Article 267
Article 235	Article 268
	Article 269
Article 236	Article 270
Article 237	Article 271
Article 238	Article 272
Article 239	Article 273
Article 240	Article 274
	Article 275
	Article 276
Article 241	Article 277
Article 242	Article 278
Article 243	Article 279
Article 244	Article 280
Article 245	Article 281
	Section 6 – The European Central Bank
	Article 282
Article 112 (moved)	Article 283

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 113 (moved)	Article 284
Section 5 – The Court of Auditors	Section 7 – The Court of Auditors
Article 246	Article 285
Article 247	Article 286
Article 248	Article 287
Chapter 2 – Provisions common to several institutions	Chapter 2 – Legal acts of the Union, adoption procedures and other provisions
	Section 1 – The legal acts of the Union
Article 249	Article 288
	Article 289
	Article 290 ([59])
	Article 291 ([59])
	Article 292
	Section 2 – Procedures for the adoption of acts and other provisions
Article 250	Article 293
Article 251	Article 294
Article 252 (repealed)	
	Article 295
Article 253	Article 296
Article 254	Article 297
	Article 298
Article 255 (moved)	Article 15
Article 256	Article 299
	Chapter 3 – The Union's advisory bodies
	Article 300
Chapter 3 – The Economic and Social Committee	Section 1 – The Economic and Social Committee

([59]) Replaces, in substance, the third indent of Article 202 TEC.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 257 (repealed) ([60])	
Article 258, first, second and fourth paragraphs	Article 301
Article 258, third paragraph (repealed) ([61])	
Article 259	Article 302
Article 260	Article 303
Article 261 (repealed)	
Article 262	Article 304
Chapter 4 – The Committee of the Regions	Section 2 – The Committee of the Regions
Article 263, first and fifth paragraphs (repealed) ([62])	
Article 263, second to fourth paragraphs	Article 305
Article 264	Article 306
Article 265	Article 307
Chapter 5 – The European Investment Bank	Chapter 4 – The European Investment Bank
Article 266	Article 308
Article 267	Article 309
Title II – Financial provisions	Title II – Financial provisions
Article 268	Article 310
	Chapter 1 – The Union's own resources
Article 269	Article 311
Article 270 (repealed) ([63])	
	Chapter 2 – The multiannual financial framework
	Article 312
	Chapter 3 – The Union's annual budget

([60]) Replaced, in substance, by Article 300, paragraph 2 of the TFEU.
([61]) Replaced, in substance, by Article 300, paragraph 4 of the TFEU.
([62]) Replaced, in substance, by Article 300, paragraphs 3 and 4, TFEU.
([63]) Replaced, in substance, by Article 310, paragraph 4, TFEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 272, paragraph 1 (moved)	Article 313
Article 271 (moved)	Article 316
Article 272, paragraph 1 (moved)	Article 313
Article 272, paragraphs 2 to 10	Article 314
Article 273	Article 315
Article 271 (moved)	Article 316
	Chapter 4 – Implementation of the budget and discharge
Article 274	Article 317
Article 275	Article 318
Article 276	Article 319
	Chapter 5 – Common provisions
Article 277	Article 320
Article 278	Article 321
Article 279	Article 322
	Article 323
	Article 324
	Chapter 6 – Combating fraud
Article 280	Article 325
	Title III – Enhanced cooperation
Articles 11 and 11a (replaced)	Article 326 ([64])
Articles 11 and 11a (replaced)	Article 327 ([64])
Articles 11 and 11a (replaced)	Article 328 ([64])
Articles 11 and 11a (replaced)	Article 329 ([64])
Articles 11 and 11a (replaced)	Article 330 ([64])
Articles 11 and 11a (replaced)	Article 331 ([64])
Articles 11 and 11a (replaced)	Article 332 ([64])

([64]) Also replaces the current Articles 27a to 27e, 40 to 40b, and 43 to 45 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Articles 11 and 11a (replaced)	Article 333 ([64])
Articles 11 and 11a (replaced)	Article 334 ([64])
PART SIX – GENERAL AND FINAL PROVISIONS	PART SEVEN – GENERAL AND FINAL PROVISIONS
Article 281 (repealed) ([65])	
Article 282	Article 335
Article 283	Article 336
Article 284	Article 337
Article 285	Article 338
Article 286 (replaced)	Article 16
Article 287	Article 339
Article 288	Article 340
Article 289	Article 341
Article 290	Article 342
Article 291	Article 343
Article 292	Article 344
Article 293 (repealed)	
Article 294 (moved)	Article 55
Article 295	Article 345
Article 296	Article 346
Article 297	Article 347
Article 298	Article 348
Article 299, paragraph 1 (repealed) ([66])	
Article 299, paragraph 2, second, third and fourth subparagraphs	Article 349
Article 299, paragraph 2, first subparagraph, and paragraphs 3 to 6 (moved)	Article 355

([64]) Also replaces the current Articles 27a to 27e, 40 to 40b, and 43 to 45 TEU.
([65]) Replaced, in substance, by Article 47 TEU.
([66]) Replaced, in substance by Article 52 TEU.

Old numbering of the Treaty establishing the European Community	New numbering of the Treaty on the Functioning of the European Union
Article 300 (replaced)	Article 218
Article 301 (replaced)	Article 215
Article 302 (replaced)	Article 220
Article 303 (replaced)	Article 220
Article 304 (replaced)	Article 220
Article 305 (repealed)	
Article 306	Article 350
Article 307	Article 351
Article 308	Article 352
	Article 353
Article 309	Article 354
Article 310 (moved)	Article 217
Article 311 (repealed) ([67])	
Article 299, paragraph 2,first subparagraph, and paragraphs 3 to 6 (moved)	Article 355
Article 312	Article 356
Final Provisions	
Article 313	Article 357
	Article 358
Article 314 (repealed) ([68])	

([67]) Replaced, in substance by Article 51 TEU.
([68]) Replaced, in substance by Article 55 TEU.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

(2016/C 202/02)

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CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

The European Parliament, the Council and the Commission solemnly proclaim the following text as the Charter of Fundamental Rights of the European Union.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION

Preamble

The peoples of Europe, in creating an ever closer union among them, are resolved to share a peaceful future based on common values.

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

The Union contributes to the preservation and to the development of these common values while respecting the diversity of the cultures and traditions of the peoples of Europe as well as the national identities of the Member States and the organisation of their public authorities at national, regional and local levels; it seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment.

To this end, it is necessary to strengthen the protection of fundamental rights in the light of changes in society, social progress and scientific and technological developments by making those rights more visible in a Charter.

This Charter reaffirms, with due regard for the powers and tasks of the Union and for the principle of subsidiarity, the rights as they result, in particular, from the constitutional traditions and international obligations common to the Member States, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Social Charters adopted by the Union and by the Council of Europe and the case-law of the Court of Justice of the European Union and of the European Court of Human Rights. In this context the Charter will be interpreted by the courts of the Union and the Member States with due regard to the explanations prepared under the authority of the Praesidium of the Convention which drafted the Charter and updated under the responsibility of the Praesidium of the European Convention.

Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations.

The Union therefore recognises the rights, freedoms and principles set out hereafter.

TITLE I

DIGNITY

Article 1

Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2

Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Article 3

Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.

2. In the fields of medicine and biology, the following must be respected in particular:

(a) the free and informed consent of the person concerned, according to the procedures laid down by law;

(b) the prohibition of eugenic practices, in particular those aiming at the selection of persons;

(c) the prohibition on making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Article 4

Prohibition of torture and inhuman or degrading treatment or punishment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited.

TITLE II

FREEDOMS

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8

Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.

2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.

3. Compliance with these rules shall be subject to control by an independent authority.

Article 9

Right to marry and right to found a family

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10

Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11

Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The freedom and pluralism of the media shall be respected.

Article 12

Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13

Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

Article 15

Freedom to choose an occupation and right to engage in work

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16

Freedom to conduct a business

The freedom to conduct a business in accordance with Union law and national laws and practices is recognised.

Article 17

Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.

2. Intellectual property shall be protected.

Article 18

Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Article 19

Protection in the event of removal, expulsion or extradition

1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

TITLE III

EQUALITY

Article 20

Equality before the law

Everyone is equal before the law.

Article 21

Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.

2. Within the scope of application of the Treaties and without prejudice to any of their specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 22

Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23

Equality between women and men

Equality between women and men must be ensured in all areas, including employment, work and pay.

The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24

The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25

The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26

Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

TITLE IV

SOLIDARITY

Article 27

Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Union law and national laws and practices.

Article 28

Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29

Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30

Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Union law and national laws and practices.

Article 31

Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Article 32

Prohibition of child labour and protection of young people at work

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations.

Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33

Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34

Social security and social assistance

1. The Union recognises and respects the 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, in accordance with the rules laid down by Union law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

Article 35

Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Article 36

Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Article 37

Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38

Consumer protection

Union policies shall ensure a high level of consumer protection.

TITLE V

CITIZENS' RIGHTS

Article 39

Right to vote and to stand as a candidate at elections to the European Parliament

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

Article 40

Right to vote and to stand as a candidate at municipal elections

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41

Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

2. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Union make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42

Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium.

Article 43

European Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the European Ombudsman cases of maladministration in the activities of the institutions, bodies, offices or agencies of the Union, with the exception of the Court of Justice of the European Union acting in its judicial role.

Article 44

Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaties, to nationals of third countries legally resident in the territory of a Member State.

Article 46

Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

TITLE VI

JUSTICE

Article 47

Right to an effective remedy and to a fair trial

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48

Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

Article 49

Principles of legality and proportionality of criminal offences and penalties

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

Article 50

Right not to be tried or punished twice in criminal proceedings for the same criminal offence

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

TITLE VII

GENERAL PROVISIONS GOVERNING THE INTERPRETATION AND APPLICATION OF THE CHARTER

Article 51

Field of application

1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

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

Article 52

Scope and interpretation of rights and principles

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

4. In so far as this Charter recognises fundamental rights as they result from the constitutional traditions common to the Member States, those rights shall be interpreted in harmony with those traditions.

5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.

6. Full account shall be taken of national laws and practices as specified in this Charter.

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

Article 53

Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54

Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.

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The above text adapts the wording of the Charter proclaimed on 7 December 2000, and will replace it as from the date of entry into force of the Treaty of Lisbon.

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EN

How the EU works: leaving the EU

Last updated: 20 Jul 2016

TWEET SHARE

The government has accepted that it is under a "democratic duty to give effect to the electorate's decision" in the EU referendum on 23 June.

The prime minister told parliament in February that "if the British people vote to leave there is only one way to bring that about—namely to trigger Article 50 of the treaties and begin the process of exit—and the British people would rightly expect that to start straight away."

How exactly would that work?

Constitutional requirements

Article 50(1) of the Treaty on the European Union says that any member country may decide to withdraw from the EU "in accordance with its own constitutional requirements".

As a matter of law, the result of the referendum is not binding. As a matter of politics, though, it would be difficult to disregard the referendum result.

David Cameron told parliament: "for a prime minister to ignore the express will of the British people to leave the EU would be not just wrong, but undemocratic".

Some lawyers argue that the prime minister doesn't have the power to make the official

decision to leave the EU without parliament first approving it. The courts are going to decide this in late 2016.

A second referendum?

Some Leave campaigners have said a Leave vote might instead trigger a further renegotiation of the UK's EU membership terms, followed by a second referendum on those terms. However, other EU countries would have to be willing to discuss this.

Also, such a further renegotiation (to curtail the free movement of EU citizens to the UK, for instance) would likely need amendments to the EU treaties, which could prove difficult to negotiate and ratify.

Notification and negotiation

Article 50(2) says that a member state that decides to withdraw from the EU must "notify the European Council of its intention". The European Council includes the 28 EU heads of state or government together with the European Council's president (Donald Tusk) and the president of the European Commission (Jean-Claude Juncker).

Article 50(2) continues: "in the light of the guidelines provided by the European Council, the [EU] shall negotiate and conclude an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the union."

The process has several stages.

First, the European Council—without the UK—would agree guidelines for negotiations.

Using those guidelines, the European Commission would negotiate an agreement on behalf of the EU.

The agreement would need to be approved by the UK and 20 of the 27 remaining member states, representing 65% of those states' population.

The European Parliament would also need to approve the deal by a simple majority. British Members of the European Parliament could vote.

Timing

Article 50(3) says that the leaving state ceases to be an EU member two years after a notification unless an extension of negotiations has been agreed unanimously by the European Council and by the leaving state, or the withdrawal agreement sets an earlier or later date.

Return

Article 50(5) says a state that has left the EU can ask to rejoin. This would be on the same basis as a country joining for the first time.

Is there any other way of leaving?

As a matter of national law, it would be possible for the UK to ignore the Article 50 process. Parliament could simply repeal the European Communities Act 1972.

However, this would be a breach of the UK's treaty obligations under international law. And it would presumably make it more difficult for the UK to strike a preferential trade agreement with the EU after withdrawal.

How long would this take in practice?

The clock would not begin to run until the UK had notified the European Council of its intention to withdraw from the EU. That could be at any time after a "leave" vote.

The UK would then cease to be a member of the EU two years after that notification

unless an earlier or later date was agreed.

The government says it would probably take “up to a decade or more” to negotiate the UK’s exit from the EU, its future arrangements with the EU and its trade deals with countries outside the EU. However, those on the Leave side argue that this process could be quicker.

It’s not clear whether a country could stop the process by withdrawing its notification. As the Treaty doesn’t discuss this, the point is arguable either way.

What would the deal cover?

Article 50 does not say that the withdrawal treaty will also regulate the UK’s *future* relationship with the EU. In fact, it seems to suggest that there would have to be separate treaties: one on the details of withdrawal, and one on the future relationship.

The wording of Article 50(2) refers only to ‘*taking account of*’ that ‘future relationship’ in the withdrawal deal.

In practice, the withdrawal deal and the treaty on that future relationship would be closely linked. Probably the withdrawal treaty would, among other things, aim to regulate a transition period before the treaty on the future relationship entered into force.

Article 50 does not legally oblige the remaining EU to sign a free trade agreement with the UK. The words ‘future relationship’ assume that there would be some treaties between the UK and the EU post-Brexit, but do not specify what their content would be.

Equally, while Article 8 of the same Treaty requires the EU to have good relations with neighbouring countries, it does not require it to sign a free trade deal with them, or go into other specific details on what the relationship should be.

Most of the EU’s free trade agreements require a unanimous vote of all EU governments

and ratification by all member countries. The practical implication of this is that if the UK's future relationship with the EU takes the form of a free trade agreement, it may be harder to negotiate.

By Steve Peers, Professor of EU Law and Human Rights Law, University of Essex

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CO/3809/2016; CO/3281/2016

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

BETWEEN:

THE QUEEN
on the application of
(1) GINA MILLER
(2) DIER TOZETTI DOS SANTOS

Claimants

-and-

SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION

Defendant

-and-

(1) GRAHAME PIGNEY AND OTHERS
(2) AB, KK, PR AND CHILDREN

Interested Parties

-and-

GEORGE BIRNIE AND OTHERS

Intervener

DETAILED GROUNDS OF RESISTANCE
ON BEHALF OF THE SECRETARY OF STATE

Introduction

1. On 23 June 2016, in the European Union ("**EU**") Referendum ("**the referendum**"), the electorate of the United Kingdom voted by a clear majority to leave the EU. Prior to the referendum, the Government's policy was unequivocal that the outcome of the referendum would be respected. Parliament passed the EU Referendum Act 2015 ("**the 2015 Act**") on this clear understanding. The current Prime Minister has confirmed that the Government intends to give effect to the outcome of the referendum by bringing about the exit of the UK from the EU. That is a proper, constitutional and lawful step to take in the light of the referendum result.

2. Article 50 of the Treaty on European Union ("**TEU**") sets out the procedure by which a Member State which has decided to withdraw from the EU may achieve that result. That decision having

been taken (Article 50(1)), the next stage in the process is for the state to notify the European Council of its intention to withdraw. The Government has stated that it does not intend to notify the European Council pursuant to Article 50(2) before the end of 2016. It is open to the Government to give notification, and to conduct the subsequent negotiations, in exercise of prerogative powers to conclude and withdraw from international treaties, against the backdrop of the referendum.

3. The Defendant ("**the Secretary of State**") therefore resists the central contention of the Claimants, Interested Parties, and Interveners that it would be unlawful for the Government to give notification under Article 50(2) without an Act of Parliament specifically authorising such notification (Grounds of Claim of Ms Miller ("**the Lead Claimant**"), §1).

4. The principal argument relied upon by the Lead Claimant is that a notification given without prior authorisation of an Act of Parliament would not be in accordance with the constitutional requirements of the UK, under Article 50(1), because it "*would frustrate .. the rights and duties enacted by Parliament in the European Communities Act 1972*" ("**ECA**") and "*would be inconsistent with the object and purpose of that Act, namely to give effect to the rights and duties consequent on membership of the [EU]*". In those circumstances, it is said, "*an Article 50 notification could only lawfully be given if expressly authorised by an Act of Parliament*" (Grounds, §2).

5. The Secretary of State submits that that argument is wrong for the following reasons. In summary:

   (1) So far as it is claimed that a notification under Article 50(2) pursuant to the prerogative would contravene Article 50 itself, contrary to EU law, that is unfounded. Such a notification would be an administrative act on the international law plane about which complaint cannot be made by any individual claimant in the domestic courts.

   (2) The claim conflates the process of notification (Article 50(2)) with the decision to be notified (Article 50(1)), namely the UK's decision to leave the EU, as articulated in the referendum result. In the circumstances of the present case, it would be constitutionally proper to give effect to the referendum result by the use of prerogative powers. It was clearly understood that the Government would give effect to the result of the referendum for which the 2015 Act provided, and that was the basis on which the electorate voted in the referendum.

(3) The decision to withdraw from the EU is not justiciable. Like the decision to join the EEC (as it then was), it is a matter of the highest policy reserved to the Crown. Equally, the appropriate point at which the UK should begin the procedure required by Article 50(2) to give effect to that decision (that is, the notification) is a matter of high, if not the highest, policy; a polycentric decision based upon a multitude of domestic and foreign policy and political concerns for which the expertise of Ministers and their officials are particularly well suited and the Courts ill-suited.

(4) The relief sought in the claim - the effect of which would be to compel the Secretary of State to introduce legislation into Parliament to give effect to the outcome of the referendum - is constitutionally impermissible. The Court would be trespassing on proceedings in Parliament.

(5) To the extent that the claim is justiciable and within the proper bounds of the Court's role, the exercise by the Crown of its prerogative power in the circumstances of the present case is consistent with domestic constitutional law. It is not precluded by or inconsistent with the ECA or any other statute. Nor would the commencement of the process of withdrawal from the EU itself change any common law or statute or any customs of the realm. Any such changes are a matter for future negotiations, Parliamentary scrutiny, and implementation by legislation.

(6) The lawfulness of the use of the prerogative is not impacted by the devolution legislation. The conduct of foreign affairs is a reserved matter such that the devolved legislatures do not have competence over it. Whilst there are provisions in the devolution legislation which envisage the application of EU law, they add nothing to the Lead Claimant's case.

I. The relevance of Article 50

6. Article 50 TEU provides, materially:

"1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period."

7. The Lead Claimant's Grounds are ambiguous as to whether it is maintained that a notification given pursuant to Article 50(2) in exercise of the royal prerogative, rather than pursuant to Parliamentary authorisation, would be contrary to Article 50 itself. It is stated in the summary of the Lead Claimant's position (Grounds, §2(2)-(3)) that "*[a] notification is valid under Article 50(1) only if it is "in accordance with the Member State's "own constitutional requirements""*" and "*[a]n Article 50(2) notification would not be in accordance with the constitutional requirements of the United Kingdom if given under royal prerogative powers*". But it is nowhere repeated in the detailed arguments which follow that notification pursuant to the prerogative would not be in accordance with the UK's constitutional requirements and would therefore not conform to Article 50. The remainder of the Grounds relies only upon a purely common law argument that the prerogative cannot be exercised in this way as a result of material inconsistency with statute, an argument which is not dependent upon the terms (or even the existence) of Article 50. By contrast, AB, KK and PR (**"the AB Parties"**) do assert that EU law requires Parliamentary approval, albeit without providing any authority for that proposition.

8. Any contention that an Article 50(2) notification pursuant to the prerogative would contravene Article 50 itself would be unfounded. It is submitted that the correct position under Article 50 is as follows:

   (1) The stipulation as to a Member State's "*own constitutional requirements*" applies to the state's decision to withdraw from the EU: see Article 50(1). The giving of notification under Article 50(2) is the procedural means which is stipulated by the TEU for commencing the process of withdrawal upon which the Member State has decided. A Member State which has

decided to withdraw notifies the European Council of its intention under Article 50(2) (the timing of that notification being a matter for the state concerned).

(2) The giving of notification is an administrative step on the international law plane which, in accordance with the usual principles of international law, will be valid so far as other states are concerned notwithstanding any argument about compliance with requirements of the UK's internal legal order.

(3) Article 50(1) does not provide a basis for challenge under EU law of the process by which a Member State has arrived at a decision to withdraw from the EU. Rather, Article 50(1) – reflecting the pre-existing position under international law – recognises that this is an area in which a Member State may determine its own requirements, free from interference by EU law. That was the conclusion of the Court of Appeal in *R (Shindler) v Chancellor of the Duchy of Lancaster* [2016] EWCA Civ 469, §§7-14, which is fatal to the reliance on EU law by the AB Parties.

(4) In any event, Article 50 regulates relations between states on the international plane and plainly does not confer directly effective rights upon individuals which could be relied upon in the domestic courts. Absent such rights, it would not be open to any individual claimant to complain of a failure by the UK to comply with the requirements of Article 50.

9. The point that notification under Article 50(2) is the procedural implementation of the decision to withdraw from the EU which is referred to in Article 50(1) serves to highlight the conflation in the Claim of the proposed notification process with the decision which is to be notified. The key decision is not the procedural step of notification under Article 50(2) but the decision contemplated by Article 50(1) that the UK should withdraw from the EU, as articulated in the outcome of the referendum.

10. It is open to the Lead Claimant to contend (subject to the arguments below) that the Government cannot validly decide that the UK should leave the EU, and thereby withdraw from the EU Treaties, without the processes of an Act of Parliament. That is in substance what is argued in the Grounds (albeit couched in terms of the Article 50(2) notification). However, the Government has made it clear that it respects the outcome of the statutory referendum and sees no legal basis to prevent it from giving effect to this by taking the procedural step under Article 50(2) to start the process of withdrawal.

II. It is not constitutionally improper or objectionable to rely upon prerogative powers to give effect to the outcome of the referendum

11. The key question raised by the Claim can be summarised as whether, in the very particular and unprecedented circumstances of the present case, it would be constitutionally improper for the Government to implement the outcome of the referendum by giving notification to the European Council under Article 50(2) without first being authorised to do so by Parliament in primary legislation.

12. The Secretary of State submits that it is clear that the UK's constitutional settlement does permit notification under Article 50(2) by the Government, without the need for Parliamentary authorisation. In summary:

    (1) The referendum was set up and provided for by Parliament in the 2015 Act. There is nothing in the 2015 Act to suggest that Parliament intended that the Government should only take the step of giving notification under Article 50, in faithful implementation of the result of the referendum, if given further primary legislative authority to do so. On the contrary, the clear understanding was that the Government would give effect to its outcome.[1] That was also the basis on which the electorate voted. The Lead Claimant's case involves the proposition that it would be constitutionally appropriate for the British people to vote to leave, and for the Government and/or Parliament then to decline to give effect to that vote.

    (2) The 2015 Act did not prescribe steps which the Government was required to take in the event of a leave vote (cf Grounds, §9). That was not because Parliament or the electorate believed that the outcome of the referendum would not be given effect to: the Government had been very clear in this respect. The characterisation of the referendum as merely "*advisory*" is incomplete and inappropriate when using that term (as the Claimant does) to imply lack of Parliamentary permission to give effect to the result or some Parliamentary requirement to return by primary legislation before beginning that process in the event of a vote to leave.

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[1] That was the obvious premise on which the referendum was undertaken. And, if there was any doubt about that, it was expressly and plainly stated - for example: "*As the Prime Minister has made very clear, if the British people vote to leave, then we will leave. Should that happen, the Government would need to enter into the processes provided for under our international obligations, including those under Article 50 of the Treaty on European Union.*" (HL Hansard, 23 November 2015, Minister of State, Foreign and Commonwealth Office, Baroness Anelay of St Johns).

(3) In those circumstances, the Government is at least entitled to decide that the UK should withdraw from the EU, in accordance with the outcome of the referendum, and to give effect to that decision in the manner prescribed by Article 50 itself, by giving notification under Article 50(2). Having validly decided that the UK should withdraw from the EU, the Government will give effect to that decision by giving notification to the European Council pursuant to Article 50(2). It cannot be prevented from doing so by the absence of primary legislation authorising that step.

(4) That analysis does not prejudice Parliament's central role in the process of the UK withdrawing from the EU. Parliament will have a role in ensuring that the Government achieves the best outcome for the UK through negotiations pursuant to Article 50(2). Parliament will implement the terms of any withdrawal agreement in domestic law through primary legislation as necessary.

(5) That analysis is entirely consistent with standard constitutional practice when it comes to entering into, and withdrawing from, Treaties. This is a matter for the Government, rather than for Parliament, and is not justiciable in the courts.

(6) That standard constitutional practice plainly holds good for the EU Treaties. The ECA itself did not restrict the executive's power to withdraw from what was then the EEC. Parliament made no provision to control the use of Article 50 when giving effect to the Treaty of Lisbon, which introduced Article 50, in the European Union (Amendment) Act 2008 ("**the 2008 Act**"). That Act, and the European Union Act 2011 (**"the EUA 2011"**), have constrained various aspects of the executive's prerogative powers to act under the EU Treaties but have not constrained the executive's power to decide to withdraw from the EU Treaties altogether or to give effect to such a decision by giving notification under Article 50.

III. *In limine* obstacles to the claim and the relief sought

a. The decision to withdraw from the EU is not justiciable

13. The making of and withdrawal from treaties are matters exclusively for the Crown in the exercise of its prerogative powers, and are not justiciable in the Courts: *Rustomjee v R* (1876) 2 QBD 69, 74 *per* Lord Coleridge CJ; *CCSU v Minister for the Civil Service* [1985] AC 374, 398 and 418 *per*

Lord Roskill; also *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513, 553D *per* Lord Browne-Wilkinson. These are areas in which there are no judicial or manageable standards against which to judge the Crown: *Buttes Gas and Oil Co v Hammer* [1982] AC 888, 938 *per* Lord Wilberforce.

14. The decision to join the EEC (as it then was) was a non-justiciable act of the prerogative. Hence, in *Blackburn v Attorney General* [1971] 1 WLR 1037, Lord Denning MR stated (at 1040):

> *"The treaty-making power of this country rests not in the courts, but in the Crown; that is, Her Majesty acting upon the advice of her Ministers. When her Ministers negotiate and sign a treaty, even a treaty of such paramount importance as this proposed one, they act on behalf of the country as a whole. They exercise the prerogative of the Crown. Their action in so doing cannot be challenged or questioned in these courts."*

See also *McWhirter v Attorney General* [1972] CMLR 882. The decision to withdraw from the EU Treaties can be no different: it is a matter of high policy reserved to the Crown.

15. Equally, the giving of notification under Article 50(2) of the UK's decision to withdraw from the EU is an act within the treaty prerogative of the Crown which takes place and has effect only on the international law plane. The appropriate point at which to issue the notification under Article 50 is a matter of high, if not the highest, policy; a polycentric decision based upon a multitude of domestic and foreign policy and political concerns for which the expertise of Ministers and their officials are particularly well suited and the Courts ill-suited.

16. There are cases in which a specific impact upon a specific individual may require the Court to examine more closely an area which would ordinarily be non-justiciable, but those situations cannot be "*abstract*": *Shergill v Khaira* [2014] UKSC 33; [2015] AC 359 at §43. Yet this challenge could hardly be more abstract. It is asserted that individual rights will be infringed or undermined by notification under Article 50 but no particular rights are relied upon by the Lead Claimant and there is presently no way of knowing precisely which, if any, rights or obligations will be removed, varied or added to by the process of withdrawing from the EU. The notification has not been issued; the eventual outcome will be dependent upon the effect of the negotiations in which the Government will engage. As a result, this case is one which falls squarely within the "*forbidden area*" explained in *Shergill* at §42 and exemplified by *CCSU*.

17. Contrary to §13(2) of the Grounds, *R v Secretary of State for Foreign and Commonwealth Affairs ex parte Rees-Mogg* [1994] QB 552 does not establish that the issues raised in the present case are justiciable. The principal argument in *Rees-Mogg* was that the ratification of a Protocol to the Maastricht Treaty would contravene statutory restrictions which Parliament had expressly imposed upon the power of ratification of EEC treaties which enhanced the powers of the European Parliament (see the Court's conclusions on p. 565). The interpretation of the relevant statute was plainly a matter for the courts. No such statutory constraints are relied upon by the Lead Claimant in the present case (and indeed all relevant statutory provisions point in the other direction: see below). When considering a further submission, to the effect that ratification of the Maastricht Treaty would impermissibly alienate prerogative powers, the Court acknowledged that it was open to it to reject that submission on grounds of non-justiciability but it proceeded in the event to assume justiciability and reject the submission on its merits (570D-571A).

18. Nor does *Shindler* assist the Lead Claimant in this context (cf Grounds, §13(2)). The issue in that case was whether the franchise for the referendum, as laid down in the 2015 Act, contravened EU law. No issue of justiciability arose and no submission to that effect was made by the Defendant.

b. The relief sought is constitutionally impermissible

19. As set out in the Claim Form, the Lead Claimant seeks a "*declaration that it would be unlawful for the Defendant or the Prime Minister on behalf of Her Majesty's Government to issue a notification under Article 50 [TEU] to withdraw the United Kingdom from the European Union without an Act of Parliament authorising such notification.*" Mr Pigney seeks the same relief and Mr Dos Santos claims relief in materially the same terms.

20. Focus on the relief sought serves to highlight the territory into which these abstract claims have strayed. If relief were granted it would impermissibly impinge upon the territory of Parliament by compelling the Secretary of State to introduce legislation into Parliament, failing which he would be prevented from giving effect to the outcome of the statutory referendum.

21. It is well-established that the Court may not grant relief which trespasses on proceedings in Parliament. In litigation not dissimilar to the present claims, it was asserted in *R (Wheeler) v Office of the Prime Minister* [2008] EWHC 1409 (Admin) that the Government was obliged, because of a failure to comply with a legitimate expectation, to legislate to provide for a

referendum on the Lisbon Treaty. The Divisional Court held, at §49, that no such relief could be sought, in terms which squarely apply to these proceedings:

"In our judgment, it is clear that the introduction of a Bill into Parliament forms part of the proceedings within Parliament. It is governed by the Standing Orders of the House of Commons (see, in particular, standing order 57(1)). It is done by a Member of Parliament in his capacity as such, not in any capacity he may have as a Secretary of State or other member of the government. Prebble (cited above) supports the view that the introduction of legislation into Parliament forms part of the legislative process protected by Parliamentary privilege. To order the defendants to introduce a Bill into Parliament would therefore be to order them to do an act within Parliament in their capacity as Members of Parliament and would plainly be to trespass impermissibly on the province of Parliament. Nor can the point be met by the grant of a declaration, as sought by the claimant, instead of a mandatory order. A declaration tailored to give effect to the claimant's case would necessarily involve some indication by the court that the defendants were under a public law duty to introduce a Bill into Parliament to provide for a referendum. The practical effect of a declaration would be the same as a mandatory order even if, in accordance with long-standing convention, it relied on the executive to respect and give effect to the decision of the court without the need for compulsion."

22. The same conclusion was reached in *R (UNISON) v Secretary of State for Health* [2010] EWHC 2655 (Admin) at §§8-11 *per* Mitting J. In *R (Wheeler) v Office of the Prime Minister* [2014] EWHC 3815 (Admin); [2015] 1 CMLR 46, the claimant argued that the Government was compelled by primary legislation and by legitimate expectation to hold a vote in the House of Commons before notifying the European Council of its intention to opt in to the European Arrest Warrant Framework Decision. The Divisional Court again held, at §46, that such relief was impermissible:

"It is said that to provide relief on this basis is not an interference with the work of Parliament; it merely proscribes executive action in the absence of Parliamentary approval. In substance, however, the claim is that, unless the House of Commons organises its business in a particular way, and arranges for a vote in a particular form, the courts must intervene and either grant a declaration or issue an order prohibiting the government from taking certain steps unless and until there is such a vote. In my judgment, that would involve the courts impermissibly straying from the legal into the political realm."

23. It is submitted that the Court must also be mindful of avoiding any outcome which would prevent the Government from implementing the result of the referendum, which was provided for by an Act of Parliament.

IV. Use of the prerogative power is not precluded by, or inconsistent with the purposes of, statute

24. To the extent that the claim is justiciable and within the proper bounds of the Court's role, the Secretary of State submits that the exercise by the Crown of its prerogative power in the circumstances of the present case is consistent with domestic constitutional law.

a. No express restriction on use of prerogative powers

25. This is not a situation where Parliament has "occupied the field" such that the prerogative power to decide to withdraw from the EU Treaties, or to give notification pursuant to Article 50(2), has been abrogated or placed in abeyance. The Lead Claimant rightly does not suggest otherwise, although Mr Pigney appears to do so (without citing any provision of any Act of Parliament which is said to achieve that result).

26. It is, in fact, crystal clear that Parliament has not legislated so as to constrain the exercise of the prerogative in the current circumstances (and it has long been established that an express restriction would be required to remove the possibility of exercise of prerogative powers: *The Master and Fellows of Magdalen College* (1615) 11 Co Rep 66). The Secretary of State relies in particular upon the following:

(1) The absence of any express provision in the ECA itself to regulate any future decision to withdraw from the EEC Treaties.

(2) Section 12 of the European Parliamentary Elections Act 2002 required primary legislation to be passed before any treaty increasing the powers of the European Parliament could be ratified. (The same provision was made in section 6 of the European Parliamentary Elections Act 1978).

(3) The 2008 Act, which paved the way for UK ratification of the Lisbon Treaty, which introduced Article 50, imposed a number of Parliamentary controls over certain decisions made under the Treaties (see s. 6) but no Parliamentary control was imposed in relation to Article 50.

(4) The EUA 2011 contains a number of procedural requirements which apply in particular circumstances where prerogative powers might otherwise have been exercised to ratify amendments of the EU Treaties or to take steps under them. These requirements, *inter alia*, replaced s. 6 of the 2008 Act. For example, under s. 2, a treaty which amends the TEU or TFEU to confer a new competence on the EU may not be ratified unless the treaty is approved by an Act of Parliament and a referendum. Under s. 8, a Minister of the Crown may not vote in favour of or otherwise support a decision under Article 352 TFEU unless one of subsections (3) to (5) is complied with in relation to the draft decision. Under s. 9, certain notifications – under Article 3 of Protocol No. 21 to the TFEU and TEU on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice – cannot be given without Parliamentary approval. The EUA 2011 does not seek to regulate a decision to withdraw from the EU Treaties or to give notification under Article 50(2).

(5) In Part II of Constitutional Reform and Governance Act 2010, Parliament made provision for it to exercise influence over ratification of a treaty by the Crown (subject to certain exceptions). It did not seek to take over any prerogative power to withdraw from a treaty, still less to start a process of withdrawal.

(6) The 2015 Act, in which Parliament fully anticipated (and the electorate expected) that the Government would proceed to implement the outcome of the referendum, whatever that was.

27. In the absence of an express restriction on the Crown's powers to take action under the EU Treaties, the Courts will not imply any such restriction. That was the decision of the Divisional Court in the *Rees-Mogg* case. In an argument which is closely analogous to that pursued in the present case, the claimant in *Rees-Mogg* submitted that the Government was not entitled to ratify the Protocol on Social Policy annexed to the Maastricht Treaty using prerogative powers because s. 2(1) ECA would give the Protocol effect in domestic law, and only Parliament had the power to change domestic law.

28. The argument was rejected for a number of reasons, the first of which was that neither the ECA nor any other statute was capable of imposing an implied restriction upon the Crown's treaty-making power in relation to Community law. Lloyd LJ, giving the judgment of the Court, stated:

"We find ourselves unable to accept this far-reaching argument. When Parliament wishes to fetter the Crown's treaty-making power in relation to Community law, it does so in express terms, such as one finds in section 6 of the Act of 1978. Indeed, as was pointed out, if the Crown's treaty-making power were impliedly excluded by section 2(1) of the Act of 1972, section 6 of the Act of 1978 would not have been necessary. There is in any event insufficient ground to hold that Parliament has by implication curtailed or fettered the Crown's prerogative to alter or add to the E.E.C. Treaty."

b. *Shindler*

29. Contrary to §§50-54 of the Grounds, the Court of Appeal in *Shindler* did not decide that a decision to withdraw from the EU must be taken by Parliament, nor even anticipate that such a decision would be taken by Parliament. The passage relied upon by the Lead Claimant in §51 of the Grounds (in §19 of the judgment of Lord Dyson MR), which refers to a decision by Parliament to withdraw from the EU, was in response to a submission of the claimant in that case, recorded in §18, which included the proposition that "*Parliament does not need the mandate of a specific referendum to give it the power to pass legislation mandating the withdrawal of the UK from the EU*". There is no dispute that Parliament could pass legislation mandating, or simply authorising, the withdrawal of the UK from the EU. The issue in the present case is whether Parliament must do so in order for the outcome of the referendum to be given effect, or whether it is open to the executive to decide to do so. That issue did not arise and was not debated in *Shindler*.

c. No inconsistency with the ECA

30. Nor is it correct that a decision to withdraw from the EU, or implementing such a decision by commencing the process of withdrawal from the EU under Article 50 TEU, would be inconsistent with the terms or the object and purpose of the 1972 Act.

31. The purpose of the 1972 Act was to give effect to the accession of the UK to the European Communities, and to implement the UK's obligations under the Treaties as they have arisen from time to time. This was a standard incident of the UK's dualist system, which requires steps to be taken in domestic law in order to give domestic legal effect to international treaties. Accession was agreed by the then Government, exercising prerogative powers to conduct foreign relations. But the UK's obligations under the EEC Treaties, which included, critically, the application of EEC law in its domestic legal system, could only be achieved by the passage of domestic

legislation. Similarly, when new treaties have been adopted over the years (Single European Act, Maastricht, Nice, Lisbon etc.), the Government has agreed to the new treaties using prerogative powers and the ECA has subsequently been amended so as to the include the new treaties.[2]

32. But whilst that legislation, the ECA, might be said to assume that the UK remains a member of what is now the EU, there is no provision of the ECA which requires the UK to remain a member of the EU or indeed which purports to regulate in any way the exercise of the prerogative to agree to, or withdraw from, EU-related treaties. Restrictions on the prerogative were only enacted in later, separate legislation, and to limited effect (see above). As Elias LJ put it, in the rather different context of *Shindler*: "*The effect of section 2(1) [ECA] is to bind the UK to the rules of the club whilst it remains a member*" (§58).

33. A decision to withdraw from the EU or to commence the process of withdrawal does not conflict with s. 2(1) ECA, which gives effect to the UK's obligations under EU law, whatever they may happen to be at any particular point in time:

> *"2. General implementation of Treaties.*
>
> *(1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression "enforceable EU right" and similar expressions shall be read as referring to one to which this subsection applies."*

34. The Lead Claimant submits that s. 2(1) ECA does not contemplate a situation in which there are no continuing EU rights at all because the UK has withdrawn from the EU (Grounds, §47). That situation would not conflict with the terms of s. 2(1); there would simply be no rights etc. on which s. 2(1) would bite. But in any event, a decision to withdraw from the EU or to commence the process of withdrawal does not bring about a situation in which the UK has no obligation to comply with EU law: only the actual withdrawal does so. It remains a matter for negotiation with the EU and other Member States what the terms of the withdrawal will be, what the relationship

[2] A few examples are s. 1 of the European Communities (Amendment) Act 1993; s. 1 of the European Economic Area Act 1993; s. 1 of the European Union (Accessions) Act 1994; s. 1 of the European Communities (Amendment) Act 1998.

with the EU will be following withdrawal, and what rights and obligations will flow from that relationship, the outcome of which negotiation cannot be known at this stage. Any amendments to the ECA which are subsequently required would be effected by an Act of Parliament. The rights relied upon by the AB Parties are an example of those which will require consideration in the light of the negotiation. (For the same reason, the present case does not fall within the statement in *The Case of Proclamations* (1610) 12 Co Rep 74 that "*the King by his proclamation or other ways cannot change any part of the common law, or statute law, or the customs of the realm*" (cf Grounds, 17(2)). The commencement of the process of withdrawal from the EU does not itself change any common law or statute or any customs of the realm. Any such changes are a matter for future negotiations, Parliamentary scrutiny, and implementation by legislation.)

35. The legal process of withdrawal from the EU will follow a similar pattern as accession to the EEC. Negotiations will take place in exercise of the prerogative, and primary legislation will be passed in domestic law to give effect to their outcome as appropriate. Again, this is a standard incident of the UK's dualist approach to international law and of the way in which international legal obligations within the province of the Crown, and domestic statutory obligations within the province of Parliament, are reconciled.

36. Treaty-making and withdrawal from treaties is not generally subject to Parliamentary control. The Crown does withdraw from international treaties, which it has implemented through or under primary legislation to give effect to rights and obligations in domestic law, without any suggestion that Parliament was first required to approve the renunciation of the treaty under prerogative powers. An example is double taxation treaties, which must be domestically implemented through secondary legislation to have effect upon the rights and liabilities of taxpayers, and which are periodically renegotiated by the Crown. Such renegotiations require termination of the existing treaty and the enactment of replacement secondary legislation.[3] Parliament does not authorise the termination of an existing treaty, notwithstanding the effect that a change in the international rules is intended to produce on the rights and liabilities of taxpayers. Still less does it authorise the Crown to commence negotiations on changes to existing treaties.

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[3] See, for example, the termination and replacement of the Arrangement between the UK and Malta for the Avoidance of Double Taxation 1974 (implemented by the Double Taxation Relief (Taxes on Income) (Malta) Order 1975 (SI 1975/426)) with the 1995 Agreement scheduled to the Double Taxation Relief (Taxes on Income) (Malta) Order 1995 (SI 1995/763); and the termination and replacement of the Convention between the UK and South Africa for the Avoidance of Double Taxation 1969 (implemented by the Double Taxation Relief (Taxes on Income) (South Africa) Order 1969 (SI 1969/864)) with 2002 Convention scheduled to Double Taxation Relief (Taxes on Income) (South Africa) Order 2002 (SI 2002/3138).

Its role is to scrutinise the secondary legislation implementing a new treaty once it has been agreed by the Crown.

37. Further, the Crown has repeatedly acted on the international plane, pursuant to the EU Treaties, to agree to new EU legislation which will have the effect of altering rights and obligations in our domestic legal system. Those actions are now subject to limited statutory restrictions, notably in the EUA 2011, but absent such restrictions it is no obstacle to the Crown exercising prerogative powers to act *vis-à-vis* the EU that such actions may lead (or even must lead) to changes in rights and obligations which are currently given effect in domestic law. That was the *ratio* of *Rees-Mogg*: the ECA does not impliedly restrict the prerogative power to agree to new provisions of EU law which add to or amend existing rights.

38. It follows that the Claimant's contention that the Government proposes to act inconsistently with the ECA runs contrary to the terms of the ECA itself, to authority and to longstanding constitutional practice.

d. The *Fire Brigades Union* and *Laker Airways* cases

39. That the ECA does not place any relevant restriction upon the exercise of prerogative powers to conclude treaties with other Member States of the EU is also the principal answer to the Lead Claimant's reliance upon *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513 and *Laker Airways v Department of Trade* [1977] 1 QB 643 (Grounds, §§19-33). These cases are said to establish a general proposition, applicable in the present case, that prerogative powers may not be exercised in a manner which contradicts the policy of a statute (even if not its express terms).

40. The *ratio* of *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513 is that the Crown may not use prerogative powers to achieve a particular effect where Parliament has prescribed a detailed scheme for the achievement of that effect. In that case, the Secretary of State used the prerogative to introduce an *ex gratia* compensation scheme rather than bringing into force the detailed scheme set out in legislation, stating in terms that the legislation would not be enacted. Lord Browne-Wilkinson held that by "*introducing the tariff scheme he debars himself from exercising the statutory power for the purposes and on the basis which*

Parliament intended" (p.554G). Lord Nicholls held that the Secretary of State had "*disabled himself from properly discharging his statutory duty in the way Parliament intended*" (p.578F).

41. There is no equivalent legislative scheme in the present case which the Government would be undermining by proceeding under the prerogative. The ECA does not regulate whether or not the UK should be a member of the EU and does not restrict prerogative powers to act in relation to the EU. Indeed, consideration of the broader statutory framework in the present case, including the EUA 2011 and the 2015 Act, confirms that there is no constitutional conflict between statute and the prerogative (see §26 above).

42. The details of the relevant statutory scheme are also key to understanding *Laker Airways*. Parliament had prescribed a detailed – and, as respects the role of the Secretary of State, limited – scheme which the Secretary of State sought to undercut by a revocation of Skytrain's designation under an international treaty. The detailed statutory scheme was held to have "*fettered*" the prerogative power (pp.718G, 719E, 722F-G *per* Roskill LJ and p.728B *per* Lawton LJ). Having regard to the statutory scheme as a whole, no such fetter exists in the present case.

V. Additional Points Raised

a. Constitutional Statutes and the Principle of Legality

43. The designation of the 1972 Act as a constitutional statute adds nothing in these circumstances. The designation was set out by Laws LJ in *Thoburn v Sunderland City Council* [2003] QB 151 to restrict the ordinary application of the doctrine of implied repeal. No issue as to implied repeal arises here. Parliament will consider repeal or amendment of the 1972 Act when the UK's membership of the EU comes to an end. The Article 50 notification process does not impinge on that role.

44. Similarly, the reliance of parties on the principle of legality and the case law on that principle does not assist. The principle of legality is a principle of statutory interpretation: that Parliament is presumed not to have legislated contrary to fundamental rights unless it is clear that it intended to do so (see *R v Secretary of State for the Home Department ex parte Pierson* [1998] AC 539, 587-589; *AKJ v Commissioner of Police for the Metropolis* [2013] EWCA Civ 1342; [2014] 1 WLR 285, §28). It has no purchase on the exercise of prerogative treaty powers.

45. Nor does the reliance of the AB Parties on the Human Rights Act 1998 alter the analysis. No explanation is given as to what Convention rights are relevantly engaged; how it is said that the mere commencement of withdrawal (or a decision to withdraw) could interfere with any such rights; why any interference would not be justified by the implementation of the referendum outcome; or why the Convention would require Parliamentary involvement at all. Indeed, given the application of the Human Rights Act to primary legislation, the logic of the AB Parties' case is that even primary legislation could not secure withdrawal.

b. Other Legislation Implementing European Law

46. It is not necessarily the case that all of the provisions cited by the Lead Claimant (or every provision of primary legislation which was passed to implement EU law) could serve no purpose upon exit from the EU. Whether or not they should do so is a matter of policy and will be related to the outcome of the negotiations to be conducted pursuant to Article 50(3).

47. Primary legislation may require amendment or repeal upon the exit of the UK from the EU. The most appropriate way of achieving that will be a matter for Parliament.

c. The Devolution Legislation

48. Mr Pigney raises the impact of the devolution legislation. The conduct of foreign relations is a matter expressly reserved such that the devolved legislatures have no competence over it.

    (1) In Scotland, see paragraph 7(1) of Schedule 5 to the Scotland Act 1998: "*International relations, including relations with territories outside the United Kingdom, the European Union (and their institutions) and other international organisations, regulation of international trade, and international development assistance and co-operation are reserved matters*".

    (2) In materially the same terms for Northern Ireland, see paragraph 3 of Schedule 2 to the Northern Ireland Act 1998.

(3) In Wales, foreign relations is a not a matter positively allocated to the Welsh Assembly under section 108 and Schedule 7 to the Government of Wales Act 2006.

49. Insofar as the suggestion is only that there are provisions in the devolution legislation which envisage the application of EU law, that is undoubtedly correct but adds nothing to the arguments already addressed. That legislation assumes that the UK is a member of the EU but does not require it to be so and does not become unworkable as a result of the commencement of the process of withdrawal. It underlines that Parliament will have an important role in considering amendments to legislation during the process of withdrawal, but says nothing about the international relations function of the Crown under Article 50 TEU.

50. It is also suggested that withdrawal from the EU will breach Article XVIII of the Act of Union 1707 ("*no alteration be made in laws which concern private right, except for evident utility of the subjects within Scotland*"). This is unarguable. The Court of Session has repeatedly held that the Courts have no jurisdiction to consider the question of 'evident utility': *Maccormick v Lord Advocate* 1953 SC 396; *Gibson v Lord Advocate* 1975 SC 136. Furthermore, EU provisions create public rights rather than private rights: *Gibson*.

d. International Obligations

51. The AB Parties assert that Parliamentary approval must be provided for notification under Article 50 in order to comply with the UK's international law obligations, in particular under the UN Convention on the Rights of the Child. It is sufficient to note that nowhere do the AB Parties explain (a) where in the UN Convention (or any other instrument) any particular role is ascribed to Parliament; (b) why the best interests of children can only adequately be considered by Parliament; or (c) how such a duty, if established, would have any legal effect in domestic law.

Conclusion

52. The Claim, and other associated arguments which will be considered by the Divisional Court, purport on their face to concern only a point of constitutional principle about the respective roles of Parliament and the Crown in the process for giving notification under Article 50(2) TEU.

For the reasons given above, the Secretary of State

submits that it would be entirely appropriate under the UK's unwritten constitution for the Government to proceed to implement the outcome of the referendum using prerogative powers and without the need for further Parliamentary authorisation. Therefore, the claim should be dismissed.

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2 September 2016

The road to Brexit: 16 things you need to know about the process of leaving the EU

Posted on June 24, 2016 by The Constitution Unit

The UK has voted to leave the European Union. So what happens next? How, in practical terms, will Brexit actually happen? ***Alan Renwick*** *explored some key elements of the withdrawal process before the referendum campaign began. Here, he gives a point-by-point overview of what the road to Brexit will look like. This is an updated version of a post published on 20 June, which is available here.*

The effect of the referendum

1. The UK remains a member of the EU for the time being. In purely legal terms, the referendum result has no effect at all: the vote was advisory, so, in principle, the government could have chosen to ignore it. In political terms, however, ministers could never have countenanced that. The Prime Minister has said that voters' will 'must be respected' and indicated the start of a process of withdrawal. We should presume that the

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vote to leave means that we will indeed leave (see point 16) – though there is scope for various complications along the way.

2. The immediate effects of the result are political rather than legal: the Prime Minister has announced his resignation, and a motion of no confidence has been submitted in Labour leader Jeremy Corbyn. There was speculation before the referendum that David Cameron would be out of Downing Street within days after a vote for Brexit, but his decision to stay until his successor has been elected reflects much more than just personal preference. The Cabinet Manual is clear (at paragraph 2.10) that he cannot go until he can advise the Queen on who should form the new government. Conservative party rules set out a two-stage leadership election process: first, the parliamentary party, through successive ballots, whittles the field down to two candidates; then the party membership, by postal ballot, chooses between these. Recent experience suggests this would take two to three months.

The mechanisms of withdrawal

3. The terms of the UK's withdrawal from the EU and the nature of our future relationship with the EU will be worked out through negotiations with the remaining 27 member states, as set out in Article 50 of the Lisbon Treaty. The Prime Minister will trigger this by notifying the European Council (the collective body of the member states' prime ministers or presidents) that the UK intends to withdraw. That will open a two-year window for negotiating withdrawal terms – a period that can be extended, but only with the unanimous support of all the member states. We will leave once a deal – which requires the support of the UK and a 'qualified majority' of the remaining 27 member states (specifically, at least 20 of them, comprising at least 65 per cent of their population) – is struck. If the two-year period comes to an end with neither a deal nor an extension, we will leave automatically on terms we may not like (see point 4).

4. Article 50 skews the balance of power in the negotiations in favour of the continuing member states. That is because of the two-year rule and the unanimity requirement for extensions to that period. If we find ourselves outside the EU with no deal, we will automatically revert to World Trade Organization (WTO) rules on trade. That would require tariffs to be imposed on trade between the UK and the EU, which would be bad for everyone, but especially for the UK. Strenuous – and probably successful – efforts

will be made to avoid that. But, as we explore in our briefing paper on the impact of Brexit on other member states, some countries will drive a very hard bargain. We can presume that the UK will not get its way on everything.

5. It is sensible that the Prime Minister has left triggering Article 50 to his successor. He is not required to inform the European Council immediately of the UK's intention to leave, and it makes sense for the UK to work out its negotiating position and construct its negotiating team before setting the clock running. Leave campaigners hope also to hold preliminary discussions with other member states before formal talks begin – though how far the other states will be willing to engage at this stage is unclear. At the same time, given the damaging effects of uncertainty, there will be strong reasons for avoiding too long a delay.

6. It is vanishingly unlikely that the UK could withdraw without triggering Article 50 at all. During the campaign, Vote Leave suggested that it might be possible to leave via Article 48 of the Lisbon Treaty, which sets out the procedure for revising EU treaties. But a simple majority of member states could block even a request to consider such a route, and the amendments themselves would require ratification by every member state. Given that the Article 50 process skews the balance of power towards the continuing member states, we can presume they will insist on its use. Leaders of both Vote Leave (including Michael Gove) and Leave.EU (including Nigel Farage) have spoken since the result was announced in terms suggesting that they recognise this.

7. Both sides in the campaign have agreed that this whole process will take several years, during which the UK will remain in the EU. The Remain side always argued that the negotiations would be lengthy; the Leave side indicated late in the campaign that it would like to complete the process by 2020. Until the negotiation process is complete, the UK will remain fully subject to its obligations under EU law. Thus, while Vote Leave said during the campaign that it would introduce measures early in the withdrawal process to limit the writ of the European Court of Justice, doing so could violate the law. Professor Kenneth Armstrong has analysed the flaws in this plan in depth.

The content of the negotiations

8. The process of withdrawal will involve three sets of negotiations:

- First will be the negotiation of the withdrawal terms themselves. These will likely include, for example, an agreement on the rights of UK citizens already resident in

other member states and of EU citizens resident in the UK. As Professor Sionaidh Douglas-Scott has explained, those rights – contrary to what some have said – are for the most part not protected under existing international law.

- Second, it will be necessary to negotiate a trade deal with the EU. The official Vote Leave campaign confirmed that it wanted such a deal and correctly pointed out that everyone's interests would be served by having one. The content of the deal will, however, be hotly contested. Vote Leave focused on securing free trade in goods and argued that, because the UK imports more goods from the EU than it exports to the EU, we could expect to be offered a good deal. But there will be greater difficulties in services. Open Europe (which campaigns for EU reform and was neutral in the referendum) highlights particular difficulties in financial services, where it rates the chances of maintaining current levels of access to the EU as 'low'.
- Third, the UK will have to negotiate the terms of its membership of the WTO and will want also to negotiate trade deals with the over 50 countries that currently have such deals with the EU, as the existing arrangements will no longer apply to the UK from the moment of Brexit. The WTO itself has warned that this will not be straightforward: the UK will not be allowed just to 'cut and paste' the terms of WTO membership that it currently has through its EU membership. Similarly, while we might hope that other countries will agree quickly to extend the EU rules to the UK, we cannot presume that all will – and the UK itself might want different terms in some cases.

These negotiations could run in parallel, or the UK could negotiate withdrawal first and future arrangements later. As Professor Adam Lazowski has pointed out, there are difficulties in both approaches.

Will parliament influence the process?

9. Parliament has no formal say over whether or when Article 50 is invoked, as this lies within the royal prerogative powers that are exercised by government. Government's powers in matters of foreign policy are very extensive, and parliament has veto rights only in respect of treaties. If parliament were to pass a motion calling on the Prime Minister not to invoke Article 50, we might nevertheless expect him (or perhaps, by then, her) to respect that. But the Prime Minister could claim the authority of the popular vote to justify ignoring such pressure.

10. Parliament will, however, be able to vote on the withdrawal deal, as that will be a

treaty. Indeed, as we examined in our briefing paper on Brexit's effects on Westminster and Whitehall, parliament will expect to be updated regularly on the negotiations and to have its views heard, perhaps through votes on specific issues. The large majority of MPs currently favour staying in the EU. If they want a post-Brexit deal involving substantial ongoing integration with the EU – perhaps akin to Norway's arrangements – they could potentially have the power to reject any deal that does not provide that. Whether they will do so will depend in part on the political situation and the state of public opinion at the time, both of which are highly unpredictable. It will depend also on the withdrawal timetable: if the two-year window is near to closing, rejecting the deal on the table could be very risky.

11. Beyond the negotiations, parliament will also have a great deal of legislating to do. Withdrawal will require repeal of the European Communities Act (ECA) of 1972 – the legislation that underpins the UK's EU membership. But there will also be two much larger tasks. First, a great deal of legislation has been passed over the last forty years that enacts provisions required under EU membership. Parliament will presumably wish to review – and in places amend or repeal – this body of law during or following withdrawal. Second, EU 'regulations' apply directly in the UK without domestic implementing legislation and will automatically cease to apply upon repeal of the ECA. But it will be essential to retain some of these, at least in the short term: otherwise, we will lack rules on many important matters. Agata Gostyńska-Jakubowska points out, for example, that much of the trading done in the City of London would overnight become illegal unless new provision were made. The process of reviewing this legislation – working out what to keep, what to amend, and what to remove – will be lengthy, complex, and contested. It has been discussed further on this site by former Clerk of the House of Commons Lord Lisvane.

Will Whitehall cope?

12. Whitehall, meanwhile, will be severely stretched by the mammoth exercise of withdrawal. The civil service has zero spare capacity after the cuts of the last five years: many departments have seen budget cuts of over a quarter since 2010, and total civil service employment has fallen by almost a fifth in the same period. Further spending reductions for the coming years were set out in last year's spending review. The UK has no current capacity at all in trade negotiations, as this is a job that has been outsourced to Brussels. The task of reviewing 40 years of EU and domestic legislation could take five or ten years. It will make it very difficult for the government to embark on any new policy while it reviews all these old policies. Whitehall also risks becoming very clumsy in handling important relationships (such as with Scotland: see below) because it will be so severely

distracted.

What about Scotland and Northern Ireland?

13. Scotland's position within the UK will become even more contested. As the polls predicted, the Remain side won clear victories in Scotland and Northern Ireland. The divergence between the UK and Scottish results will inflame nationalist sentiment in the latter. There was widespread speculation during the campaign that such an outcome would lead to a second independence referendum. Nicola Sturgeon has indeed confirmed today that the option of such a referendum is 'on the table'. Nevertheless, there is no guarantee that another independence referendum will actually happen. As we explore in our briefing paper on Brexit's effects on devolution and the Union, Nicola Sturgeon has previously said that she will call a second referendum only if polls consistently show substantial majority support for independence. Brexit will in some ways make independence less attractive: not least, the combination of the two would create an EU border between Scotland and England. The outcome could therefore be that Scotland becomes less satisfied with the UK but more locked into it.

14. This sense of grievance could be further aroused by the process of withdrawal itself. The Scottish Parliament, Welsh Assembly, and Northern Ireland Assembly are all legally required to operate within EU law. In order to withdraw from the EU cleanly, these requirements will have to be repealed (see here for the difficulties that will ensue if they are not). By convention, this will require the consent of the devolved legislatures, which they might well refuse to grant. Sionaidh Douglas-Scott argues that Westminster could precipitate a constitutional crisis if it chooses to override such refusal. Some others doubt that. Nevertheless, it would add to the sense in Scotland that London is breaking the promises it has made to the Scottish people.

15. There are concerns in Northern Ireland that Brexit will undermine the peace process. As our briefing paper on Brexit and devolution also explores, the EU has long been involved in the peace process and gives substantial funding to peace initiatives. Furthermore, experts in both the North and the Republic question whether it will be possible to maintain the existing Common Travel Area between the UK and Ireland following Brexit, which would require imposition of a 'hard border'. The great achievement of the last 20 years has been to remove the border as an issue in Northern Irish politics; its reintroduction could fuel insecurities and threaten the stability and cohesion of the power sharing arrangements.

Could there by a second referendum?

16. There is no easy route to a second referendum. There has been much speculation around the question of whether a second referendum to finalise our future relationship with the EU could be held. As I explored in detail in my earlier post, various kinds of second referendum can be imagined, but all face considerable difficulties. One idea, floated last year by Boris Johnson and revived last weekend by the *Sunday Times*, is that we might take a referendum vote to leave as an opportunity to negotiate not Brexit, but rather radically revised terms of ongoing membership. Given the clear public vote specifically for Brexit, however, it would be politically very difficult for any Prime Minister to pursue such a path – and Boris Johnson and other Leave leaders gave no hint of it in their statements today. Another idea is a vote on the terms of the Brexit deal once they have been negotiated. The alternative to accepting the deal might either be that we stay in the EU after all or that we go back and try to negotiate something better. The trouble with both options is that they are legally perilous: Article 50 provides no mechanism for withdrawing a notification of intent to leave the EU, and the two-year limit means that, if we rejected a deal, we could find ourselves on the outside by default. In practice, some way round these difficulties might well be found – but the UK might have to make significant concessions to get there. So, while scenarios leading to a second referendum are conceivable – such as if government and parliament are at loggerheads over the terms of the deal – we should presume that leave means leave.

These issues have been explored in detail at a special series of seminars hosted by the Constitution Unit and UCL European Institute. Briefing papers and videos of the seminars are available on the Constitution Unit website.

About the author

Dr Alan Renwick *is the Deputy Director of the Constitution Unit.*

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Chris says:
June 27, 2016 at 10:45 am

Nice article

Reply

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fotherington says:
June 27, 2016 at 11:54 am

Excellent article, thank you. In your last section you say that the Government could not withdraw from the process, but the House of Lords report on Brexit says we could: http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/138/13804.htm#_idTextAnchor008

Is this something that can be argued?

Reply

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Paul Greenwood says:
June 28, 2016 at 7:03 am

I thought Referenda inn Scotland were “reserved powers” under Art 29 Scotland Act 1998 and the 2014 Referendum was only possible by London consenting to temporarily set aside sections of the Scotland Act. It seems strange that Scotland which has no Foreign Minister or treaty-making powers seeks to interfere in a Treaty relationship entered into by The United Kingdom of Great Britain and Northern Ireland…….we saw what chaos ensured when Boris Yeltsin withdrew the RFSSR from the USSR

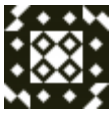
Reply

Steve Kucia says:
June 28, 2016 at 1:35 pm

Excellent piece. What I find most galling is why more of this wasn’t written and

exposed for the common man on the street to understand prior to the vote. Why were more car parts workers in the UK not told that exit from EU would mean their product could not be shipped to Germany to become part of an EU made car. Their vote to exit simply means their factory will likely close. I doubt that's what they wanted and judging by today's session in Brussels where Nigel Farage seems to have done his utmost to stick 2 fingers up to the EU I really don't see them rolling over and helping the UK with any trade concessions. In addition what EU laws have to change to accommodate a favourable trade agreement with the UK if that were on the table. I seriously doubt that 2 years after triggering Article 50 is enough time for the UK to get a satisfactory agreement, but I continue to pray.

Reply



chris m green says:
June 28, 2016 at 3:47 pm

AUTOCAR site published pre election information clearly stating that 77% of the car manufacturing industry was REMAIN.Maybe they changed their mind % several months afore?

Reply

Willy Henri Pfister says:
June 28, 2016 at 5:02 pm

Very interesting and clear article. It seems that the government could withdraw especially if enough people sign the petition. Surely the industry will sign. Many people "out" will also be "remain" today. It has to be decided very soon not to destroy too much Britain and Europe economy.

Reply

Richard Harries says:
June 28, 2016 at 7:55 pm

It's like chucking a box of 100 bananas into an enclosure with 100 monkeys, and expecting each monkey to get one banana. The procedure for working out 'fair shares for all' needs someone with common sense and no axe to grind. Surely with all the computing power at our disposal we can produce an algorithm that can calculate a fair share based on indigenous population statistics. Obviously immigration is very fluid at the moment and the algorithm can produce better terms for the Countries who absorb more population.

Reply

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Parliament or Prime Minister: who can start the process of the United Kingdom's withdrawal from the EU under Article 50 TEU?

Paul Bowen Q.C.[1]

1. Who can start the process of the United Kingdom's withdrawal from the EU under Article 50 of the Treaty on European Union (TEU)? Article 50 sets out the procedure for withdrawal but is silent on this question, providing only that '*Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements*'. So the answer to the question turns on what are the '*constitutional requirements*' of the United Kingdom.

2. The question has assumed critical importance following the outcome of the referendum on 23 June 2016 in favour of leaving the EU and has sparked a considerable political and legal debate. That narrow referendum result, by 52% to 48%, did not have any direct legal consequences under the terms of the European Union Referendum Act 2015. The result is merely advisory, although its political significance is, of course, enormous. But it did not start the Article 50 process. How is the process to start? Is it a '*constitutional requirement*' of the UK that Parliament must legislate to start the process, or can the decision be taken by the Prime Minister (in practice, whoever replaces David Cameron as leader of the Conservative party in the current leadership race)? And what role do the other devolved parts of the United Kingdom, its Crown Dependencies and overseas territories have to play? Some of these (Scotland, Northern Ireland, Gibraltar) voted overwhelmingly to remain in the EU while others (the Channel Islands, Isle of Man, overseas territories such as the Cayman Islands) were not given an opportunity to vote in the referendum at all. Are there any '*constitutional requirements*' relating to these jurisdictions that must be complied with before Article 50 may be triggered? And if the Prime Minister or other Minister did assert their right to start the process, could the courts intervene?

Article 50 and its consequences

3. Article 50 TEU provides:

> 1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
>
> 2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in

[1] Barrister at Brick Court Chambers, Senior Visiting Fellow at Sussex University Law Faculty. I am grateful for the assistance of my colleague Tim Johnston in preparing this paper.

> accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
>
> 3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
>
> 4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
>
> 5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

4. Article 50 TEU was introduced by the Lisbon Treaty in 2007 and came into force in 2009. It provides the only mechanism by which a Member State can leave the EU. There are a number of features of Article 50 that are of significance and which I take to be not in dispute. First, the process can only be initiated by the departing Member State, not the other Member States. Second, a formal decision must be communicated to the EU institutions to commence the process. Third, once the process has begun, by Article 50(3) the EU treaties will automatically cease to apply to the departing Member State after a period of two years or on such other date as may be agreed between the Member State and the EU. If no agreement is reached after two years, and no extension is agreed to the time limit, the UK will cease to be a part of the EU. EU law will cease to operate in the UK and its Crown Dependencies and the rights of British citizens automatically to be treated as EU citizens under Article 20(1) of the Treaty on the Functioning of the European Union ('TFEU') will be lost including rights to move, settle and work freely in other EU countries. The single market in goods and services will be closed to the UK and its territories and WTO rules of trade will apply by default resulting in the introduction of trade tariffs between the UK and EU and the loss of access to preferential trading agreements between the EU and other parts of the world.

5. Article 50(3) provides that the two year period can only be extended by unanimous agreement of the other 27 EU states. Article 50 is silent as to whether a party that has triggered that process may later stop it if it changes its mind. Whether or not it can be stopped will be a political decision for the other 27 EU Member States who will have little incentive either to agree to extend the time period or to the process being stopped. As the expiry of the two year limitation period draws near the UK will be negotiating from an increasingly weak position: with the prospect of a disorderly exit from the EU and with no option of stopping or reversing the clock, the government will be under immense pressure to accept whatever deal is then on

the table, however bad. And two years is no time at all: the trade negotiations between Canada and the EU (which Boris Johnson has said is the model the UK would emulate) started in 2009 and have still to be concluded.

6. Some legal commentators have suggested, including Prof. Mark Elliott in his blogpost here (**https://publiclawforeveryone.com/2016/06/30/brexit-on-why-as-a-matter-of-law-triggering-article-50-does-not-require-parliament-to-legislate/**), that the Article 50 process can be reversed unilaterally by the Member State after it has given notification under Article 50(1). This view was also expressed by Professor Derek Wyatt QC when giving evidence to the House of Lords Select Committee on the European Union on 8 March 2016: (**http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/european-union-committee/the-process-of-leaving-the-eu/oral/30**. Others disagree, for example Barber, Hickman and King in their blogpost here (**https://ukconstitutionallaw.org/2016/06/27/nick-barber-tom-hickman-and-jeff-king-pulling-the-article-50-trigger-parliaments-indispensable-role/**). For my part I cannot see how Article 50 can be stopped by a Member State unilaterally. That would be inconsistent with the express requirement in Article 50(3) that the two year period can only be extended by the unanimous agreement of the other 27 Member States. That rule would be otiose if the departing Member State could simply change its mind and walk away, thereby avoiding the consequences of Article 50. Even if the UK did purport to stop the process, if the other Member States insisted the clock was still running the UK would be unable to challenge that conclusion because the jurisdiction of the CJEU will also lapse once the EU treaties cease to apply. A 2016 Briefing note prepared by the European Parliamentary Research Service for the European Parliament suggests that the process can only be reversed with the agreement of the remaining Member States:

> Furthermore, it should be noted that the event triggering the withdrawal is the unilateral notification as such and not the agreement between the withdrawing state and the EU. The merely declaratory character of the withdrawal agreement for cancellation of membership derives from the fact that the withdrawal takes place even if an agreement is not concluded (Article 50(3) TEU). This does not mean, however, that the withdrawal process could not be suspended, if there was mutual agreement between the withdrawing state, the remaining Member States and the EU institutions, rather than a unilateral revocation.

7. Article 50 is therefore a lobster pot, legally and politically: once a Member State is in it, the only way they can get out is with the agreement of the other Member States who will have every incentive to first ensure the best deal for themselves. Even if they agree to the UK remaining within the EU it might only be on condition that the UK give up its opt-outs and rebates

8. This was also the view expressed by Sir David Edward, a former judge of the European Court of Justice, when giving evidence to the House of Lords Select Committee on 8 March 2016:

> It does not seem to me that you can necessarily say, "Right; I have put you to all this trouble; we have negotiated for two years and now I do not actually like the terms you are offering so I want to go back to zero". My hunch is that many of them might say, "Right, back to zero. No more optouts".

The competing contentions (1) The Prime Minister may pull the Article 50 trigger

9. On any view, then, the legal and political risks of pulling the Article 50 trigger are enormous. On whose authority should those risks be taken?

10. Looking at the position without the complicating factors of the devolved administrations, Crown dependencies and overseas territories, there are essentially two competing contentions.

11. The first is that the Prime Minister can make the decision to initiate the Article 50 process under ancient prerogative powers, exercised on behalf of the Crown, which include the conduct of foreign affairs and the making (and unmaking) of treaties. The exercise of prerogative powers does not require the authorisation of Parliament because any treaty made (or unmade) does not create or remove rights domestically unless and until Parliament gives effect to it by primary legislation. '*Treaties, as it is sometimes expressed, are not self-executing. Quite simply, a treaty is not part of English law unless and until it has been incorporated into the law by legislation*' (Rayner (Mincing Lane) Ltd v DOT [1990] 2 A.C. 418, 500C-D, per Lord Oliver). The EU Treaties were entered into by the UK under those prerogative powers but were given effect domestically by the European Communities Act 1972 (the 1972 Act). If the UK withdraws from existing EU Treaties, or a new treaty is concluded with the EU, then Parliament will need to legislate to give domestic effect to that new treaty and to amend or repeal the 1972 Act, but not before then. Until then, domestic law – the 1972 Act - will remain unchanged and any decision to trigger the Article 50 process under prerogative powers would be lawful.

12. This view is supported by a number of legal commentators, including Carl Gardner (**http://www.headoflegal.com/2016/06/27/article-50-and-uk-constitutional-law/**), David Allen Green (**https://www.facebook.com/permalink.php?story_fbid=1200279093330132&id=137432829614769**) and Prof. Mark Elliott (**https://publiclawforeveryone.com/2016/06/30/brexit-on-why-as-a-matter-of-law-triggering-article-50-does-not-require-parliament-to-legislate/).**

13. This is also the position that the government appears to have taken. In his resignation speech on 24 June 2016 the Prime Minister said this:

> A negotiation with the European Union will need to begin under a new prime minister and I think it's right that this new prime minister takes the decision about when to trigger Article 50 and start the formal and legal process of leaving the EU.

14. Mr Cameron told the House of Commons on 27 June 2016 that 'the triggering of Article 50 is a matter for the British Government', and 'a national sovereign decision' (HC Hansard, 27 June 2016, col 36 and col 51). He said he could not guarantee that there would be a vote in the House of Commons, as the arrangements put in place would be for the new Prime Minister and his or her Cabinet to decide (ibid, col 40).

The competing contentions (2): Only Parliament may pull the trigger

15. The alternative argument – and the correct one, in my view – is that Parliament alone can make the decision to trigger Article 50. This argument may be advanced in two ways and summarised as follows. First, it is a fundamental constitutional principle – the principle of legality - that only Parliament can modify or abrogate existing domestic rights. Because Article 50 will inevitably lead to the modification or abrogation of existing statutory rights under the 1972 Act it cannot be authorised by the executive under prerogative powers but only by an Act of Parliament. Second, on a proper interpretation of the 1972 Act and the European Union Act 2011 (the 2011 Act), the amendment or withdrawal from an EU Treaty can only be authorised by Parliament. The royal prerogative cannot be exercised in such a way as to frustrate the objects and purposes of the 1972 Act (the argument articulated by Barber, Hickman and King in their blogpost here (**https://ukconstitutionallaw.org/2016/06/27/nick-barber-tom-hickman-and-jeff-king-pulling-the-article-50-trigger-parliaments-indispensable-role/**)) or the 2011 Act (an argument put forward by Arvind, Kirkham, and Stirton in their blogpost here (**https://ukconstitutionallaw.org/2016/07/01/t-t-arvind-richard-kirkham-and-lindsay-stirtonarticle-50-and-the-european-union-act-2011-why-parliamentary-consent-is-still-necessary/**)).

(a) The principle of legality: existing rights may only modified or abrogated by primary legislation

16. Returning to the first formulation of the argument, it is a fundamental constitutional principle that '*the Royal Prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights upon individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament*' (Rayner, ibid, 500B-C). This principle was expressed by Lord Coke in the Case of the Proclamations (1610) 12 Co. Rep. 74, *' the King by his proclamation… cannot change any part of the common law, or statute law, or the customs of the realm…'*. This is an instance of the so-called principle of legality, which is itself an expression of an even more fundamental constitutional principle: Parliamentary sovereignty, the *grundnorm* upon which the entire British constitution is based.

Triggering the Article 50 process will deprive individuals of the rights which they currently enjoy under the EU Treaties by virtue of the 1972 Act. While that deprivation will not be immediate it will be inevitable once the two year period for negotiating a new Treaty elapses. Notification under Article 50(1) is the '*event triggering the withdrawal*' from the EU treaties which by Article 50(3) will occur automatically once the two year negotiation period has expired unless some other treaty is made. Notification is therefore '*self-executing*' in domestic law because all the rights arising under the EU treaties, which are given effect domestically by the 1972 Act, will be abrogated or modified in that event without the need for any further Act of Parliament.

17. The doctrines of legality and of Parliamentary sovereignty dictate that only primary legislation can abrogate or modify existing domestic rights; Parliament alone can lawfully authorise the withdrawal from those treaties. To seek Parliament's involvement after the event is to present it with a *fait accompli*: by then the UK may have already left the EU and, in any event, the process is irreversible once begun. Article 50 can only be triggered by an Act of Parliament.

(b) Parliamentary authorisation is required by the 1972 Act and the 2011 Acts

18. The second formulation of the argument is that authorisation to commence the Article 50 process is also required to be given by Parliament in order to comply with existing EU legislation, namely the 1972 and 2011 Acts.

19. Under the scheme of the 1972 and 2011 Acts, any *major* changes to the rights arising under the Treaties such as the accession to a new Treaty require Parliamentary authorisation.

20. Before any *new* EU treaty can enter into domestic law Parliament's authorisation must be obtained at three stages. First, if the Treaty is one that amends the TEU or TFEU then by s 2 of the European Union Act 2011 it must be laid before and approved by Act of Parliament (and, in some circumstances, also approved by a referendum) before it is ratified. In fact, even if the treaty is not one that amends the TEU or TFEU it will need Parliamentary authorisation by way of the negative resolution procedure before ratification under s 20 of the Constitutional Reform and Governance Act 2010. Second, by s 1(2) of the 1972 Act an 'EU Treaty' is to be specified as such for the purposes of s 1(1) by way of Order in Council, which must then be approved by both Houses of Parliament under the positive resolution procedure. Third, an Act of Parliament is necessary in order to make the necessary amendment to the definition of 'the Treaties' in s 1(1). Only then will a new EU Treaty take effect domestically.

21. The 1972 and 2011 Acts therefore provide a 'triple lock' of Parliamentary authorisation in the process of determining whether rights arising under a new EU Treaty are to take effect domestically. In my view it would be contrary to the objects and purposes of both Acts if an existing treaty could be substantially amended, repudiated or otherwise brought to an end, thus

abrogating existing rights under the 1972 Act, by an executive act without Parliamentary authorisation. Parliamentary authorisation which is sought *after* withdrawal from the treaty will be meaningless because the rights will already have been lost, the legislation giving effect to them will be a dead letter and Parliament will simply be presented with a *fait accompli*. Even if a new treaty is agreed requiring Parliamentary authorisation under the 2011 Act a refusal to sanction the terms of a new deal will be ineffective for the reasons I explore at para 28, below. Parliamentary authorisation must come first.

22. It is instructive that in *Macarthys Ltd v Smith* [1979] 3 All ER 325 Denning LJ considered that if ever the EU treaties were to be repudiated that would require an Act of Parliament, not an act of the executive under prerogative powers or s 2(2) of the 1972 Act:

> If the time should come when *our Parliament* deliberately passes an Act with the intention of repudiating the Treaty or any provision in it or intentionally of acting inconsistently with it and says so in express terms then I should have thought that it would be the duty of our courts to follow the statute of our Parliament.

23. It is also implicit in the judgment of the Court of Appeal in R (Shindler) v Chancellor of the Duchy of Lancaster [2016] EWCA Civ 469 that the process of leaving the EU would be led by Parliament, not by the government. Lord Dyson, the Master of the Rolls,

> 19. *I accept that Parliament is sovereign and that it does not need the mandate of a referendum to give it the power to withdraw from the EU*. But by passing the 2015 Act, Parliament has decided that it will not withdraw from the EU unless a withdrawal is supported by referendum. *In theory, Parliament could decide to withdraw without waiting for the result of the referendum despite the passing of the 2015 Act*. But this is no more than a theoretical possibility. *The reality is that it has decided that it will withdraw only if that course is sanctioned by the referendum that it has set in train*. In other words, the referendum (if it supports a withdrawal) is an integral part of the process of deciding to withdraw from the EU. In short, by passing the 2015 Act, Parliament decided that one of the constitutional requirements that had to be satisfied as a condition of a withdrawal from the EU was a referendum.

24. I accept that the point now under consideration was not argued before either Court, but it is instructive that in both cases these very senior judges *assumed* that Parliament, rather than the executive, would be responsible for the process of withdrawal from the EU treaties themselves.

25. The point may be tested in the context of the Article 50 process. Once begun, the process can only end in one of three ways: first, if no acceptable agreement is reached, the UK will be ejected from the EU after the two year period provided for by Article 50(3) and the existing Treaties will cease to apply; second, if the United Kingdom agrees a new treaty with the other Member States requiring amendment or replacement of the TEU and/or TFEU; or, third, the

status quo ante may be preserved, although this can only occur if the other 27 Member States agree.

26. In the first scenario, if no new treaty is agreed between the UK and the EU before the time limit under Article 50(3) expires then there will be no further requirement for Parliament to consider the UK's relationship with the EU at all. The Article 50 notification process will have had the same effect as if the government had repudiated all the EU treaties. The effect will be to abrogate all the rights arising under s 2(1) of the 1972 Act which will no longer give effect to 'the Treaties' as defined in s 1(1). The constitutional process by which EU rights are given effect domestically by the repeal or amendment of the 1972 Act is by-passed, contrary to the statutory framework and frustrating its objects and purposes.

27. In the second scenario, if a new treaty is agreed, this would have to be put before Parliament before ratification by virtue of s 2(1) of the 2011 Act or s 20 of the 2010 Act. But Parliament would be confronted with Hobson's choice. It will have to accept the deal that the new treaty represents because if it rejects the deal and insists on an alternative – including retaining the *status quo* – the result will be the automatic ejection of the UK from the EU under Article 50(3) unless the other 27 Member States are prepared to agree a different deal. That would be contrary to the statutory framework and frustrate the objects and purposes of the 2011 Act and the 2010 Act which require Parliament (and sometimes the electorate) to determine the UK's best interests in relation to its international treaty obligations. In this scenario Parliament does not determine the UK's best interests: the government and the other 27 EU Member States have done so.

28. In summary, both the principle of legality and the 1972 and 2011 Acts require that Parliament must authorise any modification or abrogation of the rights arising under the EU Treaties. Because the modification or abrogation of rights follows necessarily and inevitably once notification is given under Article 50, authority is in fact given by whoever gives the required notification to start the process and Parliament is effectively side-lined from having any further role. Only an Act of Parliament can provide the necessary authorisation under Article 50.

Some other arguments

Is withdrawal from the EU Treaties already authorised by s 2(1) of the 1972 Act?

29. The argument that s 2(1) of the 1972 Act itself authorises the UK's withdrawal from the Treaties is articulated by Prof. Mark Elliott in his blogpost here (**https://publiclawforeveryone.com/2016/06/30/brexit-on-why-as-a-matter-of-law-triggering-article-50-does-not-require-parliament-to-legislate/**). Prof. Elliott argues that the words '*rights … created or arising from time to time*' under the Treaties envisages the addition, or removal, of such rights without the need for further statutory intervention. S 2(1)

gives effect to the rights '*from time to time*' created or arising under the Treaties, whether these are added to, reduced or removed altogether. The repudiation of the Treaties which provide the content of the rights given effect by s 2(1) is not inconsistent with the underlying scheme of the 1972 Act.

30. I do not agree. S 2(1) does not operate so as automatically to give effect to rights arising under a new EU Treaty without the triple Parliamentary authorisation outlined above. Its function is to give Parliamentary authorisation to *non*-Treaty changes to the rights and obligations '*from time to time*' arising under *existing* Treaties, such as those created by way of directly effective Regulations, Directives or judgments of the CJEU, without the need for further legislation. S 2(2) then makes provision for the making of subordinate legislation to give effect to other non-Treaty changes that do not take effect automatically under s 2(1), namely any non-directly effective EU obligation such as a Directive. But neither s 2(1) or 2(2) may be used to give effect to rights arising under a *new* EU Treaty without the Parliamentary authorisations required under the 1972 and 2011 Acts.

31. Nor, in my view, can s 2(1) or 2(2) be used to authorise the repudiation or withdrawal of the UK from any of those Treaties without Parliament's further authorisation for the reasons I have outlined above. Only Parliament can make rights enforceable in domestic law; and only Parliament can unmake them.

32. Prof. Elliot's argument does not grapple sufficiently with the problem we have identified, namely that the notification under Article 50 is itself the event that triggers withdrawal from the EU treaties in the scenarios outlined at paras 23-27 above, and Parliament would be denied any substantive role if the Article 50 trigger is pulled by the Prime Minister or other Minister. His argument proceeds on the assumption that the Article 50 process would be reversible if the UK so desired, which it is doubtful (and certainly cannot be assumed). He also proceeds from the false premise that the complementary roles of the government and of Parliament in *making* Treaties are replicated when *unmaking* them. He states that just as it was for the government to enter into EU treaty obligations, '*so it is for the Government, using prerogative power, to extricate the UK from those obligations*'; and '*just as it was for Parliament to enact such domestic legislation as EU membership required (such as the ECA 1972), it is equally for Parliament to enact any domestic legislation that Brexit may in due course require*'. This approach fails to recognise that that just as rights may not be created in domestic law other than by primary legislation, so they cannot be *removed* without such legislation. The order in which government and parliament execute their function is not the same when breaking treaties as it is when making them. The Government makes the treaty and Parliament has the final decision whether to give effect to its rights in domestic law. Having done so, however, only Parliament can then lawfully authorise the modification or abrogation of the rights to which it gives rise before the government breaks the treaty. Otherwise it is the government which effectively

modifies or abrogates those domestic, statutory rights when repudiating or withdrawing from the treaty.

33. Prof. Elliott's reasoning is also flawed in his assertion that the effect of Article 50 '*does not change statute law, not least because — as noted above — withdrawal from the EU pursuant to the Article 50 process does not require or purport to effect any alteration to the ECA 1972*'. This is to misunderstand the nature of the rights given effect by the ECA 1972. Although these rights are derived from the EU Treaties they are *statutory* rights because they are created by the relevant statute, the 1972 Act. In this respect the rights are similar to those arising under the Human Rights Act 1998 (HRA); the rights arising under the 1972 Act and the HRA are part of our law while those arising under the EU Treaties and the European Convention on Human Rights are not[2]. The amendment or repudiation of an EU Treaty modifies or abrogates statutory rights created by the 1972 Act. Statute law *is* changed.

34. Prof. Elliott's reasoning is also based on a mistaken assumption that the 2011 Act has no relevance to the operation of Article 50[3]. True, the 2011 Act would play no part in the event that the UK withdraws from the EU Treaties in their entirety by operation of Article 50(3). But if an alternative treaty agreement were reached between the UK Government and the EU then the 2011 Act *would* be relevant. The new arrangement would have to be approved by Parliament under the 2011 Act before it was ratified. For the reasons I have explained at para 28, Parliament would have no realistic alternative but to accept that agreement, which would frustrate the objects and purposes of that Act.

35. To summarise, repudiation or withdrawal from the EU treaties, whether by Article 50 or otherwise, is not authorised by s 2(1) of the 1972 Act.

Can withdrawal from the EU Treaties be authorised under s 2(2) of the 1972 Act?

36. An alternative argument, articulated by Mark Tucker in his blogpost **here (https://ukconstitutionallaw.org/2016/06/29/adam-tucker-triggering-brexit-a-decision-for-the-government-but-under-parliamentary-scrutiny/)**, is that authorisation to withdraw from the EU Treaties is given by s 2(2) of the 1972 Act. S 2(2) confers power upon the executive by Order in Council (itself an instance of the prerogative) or by '*order, rules, regulation or scheme*' to make provision '*for the purpose … of enabling any rights enjoyed … by the United Kingdom under or by virtue of the Treaties*'. As Article 50 confers a '*right enjoyed*' by the United Kingdom it may be '*enabled*' by one of the mechanisms in s 2(2).

[2] *R (Al-Skeini) v. Secretary of State for Defence* [2007] UKHL 26, ('*Al-Skeini'*), para 10, 134, citing *Re. McKerr* [2004] UKHL 12, paras 25, 62.
[3] '*And while it is true that the European Union Act 2011 regulates the exercise of the prerogative treaty making power in certain EU related respects, none of those respects is relevant to the present discussion*'.

37. For my part, I am not convinced the use of this power would be lawful to effect major changes to the UK's EU treaty obligations. It could not be lawfully exercised to give effect to any new Treaty not listed in s 1(1) of the 1972 Act which, as I have explained, requires a triple-lock of Parliamentary authorisation including by primary legislation. The function of s 2(2) is to give effect to non-directly effective EU measures made under existing Treaties, not to repudiate or withdraw from those treaties, whether under Article 50 or otherwise. Moreover there are clear limitations on the law-making power in s 2(2) by Schedule 2 of the 1972 Act, which provide (para 2) that the power shall not be used to impose or increase taxation, to apply laws retrospectively, to confer any power to legislate by subordinate instrument or to create any criminal offence. It is inconceivable that the s 2(2) power was intended to be used to enact subordinate legislation, with limited Parliamentary oversight, to authorise the executive to repudiate or withdraw from all the EU Treaties. Any subordinate legislation purporting to do that would be *ultra vires*.

Enter devolution: the devolved administrations, Crown Dependencies and Overseas Territories

38. The argument that Parliament must take the decision under Article 50 is further reinforced once the position of the devolved administrations (Scotland, Wales and Northern Ireland), Crown Dependencies (Jersey, Guernsey and the Isle of Man) and Overseas Territories (Gibraltar, Bermuda, the Cayman Islands, among others) is taken into account. They are either part of the UK or subject to its sovereignty and the Crown, through the government, is responsible for their foreign policy, including entering into and withdrawing from any international treaty. Any rights of the citizens of these jurisdictions under the EU Treaties will also end if and when the United Kingdom withdraws from the EU and the government will be responsible for negotiating any new arrangements with the EU on their behalf. The Article 50 procedure I have outlined above is therefore critical to their continuing enjoyment of any EU rights that they currently enjoy. The '*constitutional requirements*' referred to under Article 50(1) must take into account the particular requirements of each of these jurisdictions.

39. There are significant differences between each of these jurisdictions and significant complexities that will need to be explored in more detail at another time. But the following broad points may be made.

The devolved administrations: Scotland, Wales and Northern Ireland

40. The devolved administrations of Scotland, Wales and Northern Ireland are party to the EU Treaties through their membership of the UK and their citizens enjoy the same EU rights to which the 1972 Act gives effect as any other UK citizen. Each of these jurisdictions participated fully in the EU referendum and will be represented in Parliament if (or when) it considers how the Article 50 process should commence and when any subsequent treaty requires to be ratified and given effect by primary legislation. There is no doubt that the UK

Parliament retains power to legislate for the devolved administrations: for example, the UK Parliament's power to legislate for Scotland is made explicit by s 28(7) of the Scotland Act 1998, which provides: '*This section does not affect the power of the Parliament of the United Kingdom to make laws for Scotland.*'

41. But are there any additional '*constitutional requirements*' to be met before the Article 50 process can be commenced beyond an Act of the UK Parliament? Possibly. There is a reasonable argument that the Scottish Parliament's consent to legislation authorising the Article 50 procedure would also be required. S 28(8) of the Scotland Act 1998 provides that the UK Parliament will not '*normally*' legislate without the consent of the Scottish Parliament for '*devolved matters*' (matters falling within the Scottish Parliament's competence) or where the UK Parliament seeks to modify the powers of the devolved institutions. S 28(8) gives statutory effect to the Sewel Convention which operated, albeit without the force of law, from 1998 until the introduction of s 28(8) with effect from 23 May 2016. The conduct of international relations (including with the EU) is a 'reserved matter' (Sch. 5, Part I, para 7) and not a 'devolved matter' to which s 28(8) applies at all. However, the EU Treaties do affect many areas that are 'devolved matters' and withdrawal from them will also '*modify the powers of the devolved institutions*', a view taken by Paul Reid in his blogpost here (https://ukconstitutionallaw.org/2016/07/02/paul-reid-brexit-some-thoughts-on-scotland/). It is therefore arguable that the consent of the Scottish Parliament must be given to that legislation.

The Crown Dependencies of Jersey, Guernsey and the Isle of Man

42. The Crown Dependencies of Jersey, Guernsey and the Isle of Man are not part of the United Kingdom but are self-governing possessions of the Crown (defined uniquely in each jurisdiction) with their own constitution, legislature and laws. The Crown (through the UK government) may legislate for the islands by Acts of Parliament or Order in Council and is responsible for their foreign affairs including the making and breaking of EU treaties, but these powers are subject to important constitutional limitations.

43. The Crown Dependencies and their citizens have different but nevertheless important treaty rights and obligations arising from their relationship with the EU. These will also be determined by the Article 50 notification procedure. By virtue of Article 355 (5)(c) TFEU and Protocol 3 to the UK's original Accession Agreement the Crown Dependencies are part of the EU for the purposes of free movement of goods but not of services, people or capital. Effect is given to these treaty arrangements by local legislation: for example, in Jersey by the European Communities (Jersey) Law 1973 which operates in a materially identical manner to the 1972 Act. Residents do not enjoy full EU citizenship rights, although the vast majority of the population are also British citizens by virtue of their parents or grandparents or past residence in the UK. They are therefore EU citizens with the right to move, settle and work freely within the EU. It is notable that the vast majority of the Crown Dependencies were not

entitled to participate in the EU referendum because, although British citizens, they had not been resident in the United Kingdom within the last 15 years.

44. What are the '*constitutional requirements*' of Article 50 as far as the Crown Dependencies are concerned? As I have mentioned, while the Crown can legislate for each of the islands this power is subject to laws and conventions the precise ambit of which is uncertain. What is clear, however, is that in Jersey there is a statutory requirement that the States (the legislative assembly) must be given the opportunity to signify their views in respect of any legislation of the UK Parliament that is intended to apply to Jersey (article 31 of the States of Jersey Law 2005). The 2005 Law is primary legislation to which the Crown has given its authorisation by Order in Council. In my view any UK legislation that authorises the pulling of the Article 50 trigger falls within the requirement in s 31 of the 2005 Law. The Article 50 decision would have the effect of modifying or abrogating rights arising under the European Communities (Jersey) Law 1973 in exactly the same way as it does the 1972 Act within the United Kingdom. It must therefore be taken by way of primary legislation in Parliament and communicated to the States for their views to be signified under article 31 of the 2005 Law.

45. Although a reference under article 31 would not entitle the States of Jersey to veto the legislation it would provide an important opportunity for the island's democratically elected representatives to communicate their views about their continuing relationship with the EU. And if Jersey is consulted it would seem inconceivable that the other Crown Dependencies would not also be consulted.

The British Overseas Territories (Gibraltar, Cayman Islands and others)

46. The fourteen British Overseas Territories are territories under the jurisdiction and sovereignty of the United Kingdom. They are those parts of the former British Empire that have not chosen independence or have voted to remain British territories. Most of the inhabited territories are internally self-governing, with the UK retaining responsibility for defence and foreign relations and with power to legislate for the 'peace, order and good governance' of the territory. The rest are either uninhabited or have a transitory population of military or scientific personnel. They share the British monarch (Elizabeth II) as head of state.

47. The Overseas territories include Gibraltar, to whom the EU treaties apply albeit with modified treaty arrangements, and also includes a number of territories (such as the Cayman Islands, Bermuda, British Virgin Islands, Falkland Islands and the Turks and Caicos Islands) with rights arising from their relationship with the EU as Overseas Countries and Territories ('OCT's) of the UK[4]. Under Part IV TFEU (Articles 198 to 204), '*the Member States agree to associate with the Union the non-European countries and territories which have special*

[4] House of Commons Foreign Affairs Committee - Overseas Territories - 7th Report of Session 2007-08 (Vol I), paras 112-118

relations with Denmark, France, the Netherlands and the United Kingdom' (Article 198). The European *acquis* does not apply to OCTs; instead, the detailed rules and procedures for the Association are provided for by the Council Decision 2013/755/EU (the Overseas Association Decision (OAD)). The OAD offers a modernised trade regime that focuses on three main areas: trade in goods, trade in services and cooperation on trade related issues. It ranks OCTs among the EU's most favoured trading partners, not only because of the OCTs' duty and quota free access to the EU market for goods, but also because the OCTs will automatically receive better terms of trade in services and establishment. The OCTs also benefit from significant EU development funding.

48. Although citizens of the overseas territories do not have free movement rights arising out of their status as OCTs, by virtue of the British Overseas Territories Act 2002 they are all treated as British citizens and therefore automatically qualify as EU citizens with full free movement rights.

49. If the United Kingdom withdraws from the EU then the overseas territories would lose their status as OCTs and their citizens would cease to be citizens of the EU. The Article 50 process will affect the rights of citizens of these overseas territories; Gibraltar has most at stake given its proximity and direct road access to Spain. What steps must be taken to meet the '*constitutional requirements*' of Article 50(1) so far as these overseas territories are concerned?

50. There is no doubt that the UK Parliament may legislate to modify or remove the rights of citizens of the overseas territories under the EU treaties. The UK has unlimited powers to legislate for the overseas territories, whether by act of Parliament or prerogative powers by way of Order in Council (except Bermuda for which the UK may only legislate by Act of Parliament, or by Order in Council under an Act of Parliament). This is usually made express in their constitution, for example s 125 of the Constitution of the Cayman Islands and s 8 of the Constitution of Gibraltar both expressly reserve the Crown's right to legislate 'from time to time for the peace, order and good government' of the territory. Moreover the Crown's prerogative powers to legislate may be exercised without the consent of the local population to modify or abrogate even the most fundamental of rights for the benefit of the UK as a whole, even if that does not benefit the people of that territory: see R (Bancoult) v SSFCO [2009] 1 A.C. 453. Indeed, in 2009 the Crown legislated by prerogative powers to dissolve the legislative authority of the Turks and Caicos Islands and to suspend jury trial in response to evidence of serious corruption among members of the legislature and the risks that of influence on jury members in such a small community. This was held to fall squarely within the powers of the Crown by the Court of Appeal in R (Misick) v FCO [2009] EWCA Civ 1549.

51. So there is power to legislate to remove EU rights, but is there any rule of law requiring the consent of, or even prior consultation with, an oversea territory before Parliament (or the Crown) legislates for it? In modern practice consultation with overseas territories is normally

undertaken where practicable[5]. Can this practice be elevated into a principle of law? It is UK policy that '*The people of the Overseas Territories have a right to … self-determination*', which does not sit comfortably with the notion that the Crown can legislate without the consent of or consultation with the people of the territory. Moreover for most of these territories the European Convention on Human Rights has been extended to the territory and given effect domestically through legislation, for example in the Constitution of the Cayman Islands and the Constitution of Gibraltar. As Professor Jeffrey Jowell has said, '*The principle that there should be no legislation without representation … has evolved into a fundamental international legal standard, set out for example in article 3 of Protocol I of the European Convention on Human Rights, now incorporated into UK law under the Human Rights Act 1998,53 which UK courts are now bound to follow*.'[6] The question of whether this is a '*constitutional requirement*' for the purposes of Article 50 is therefore not straightforward and requires determination. If it can be shown that it there is now a rule of law that the UK will not effect profound changes to existing rights of its overseas territories without, at the very least, formal consultation with the local legislature then this may constitute a further '*constitutional requirement*' to be complied with before the Article 50 trigger can be pulled.

Would the decision to start the Article 50 process amenable to judicial review?

52. So could a legal challenge be brought to challenge the decision to start the Article 50 process? Certainly, decisions of government bodies to exercise prerogative powers are susceptible to judicial review and the Courts could even be invited to decide the issue by way of a declaration before any Article 50 notification is made. However, the courts have tended to treat the exercise of the Crown's prerogative treaty making powers as being non-justiciable. But the courts take this approach because the making of treaties does not usually destroy or create rights at domestic law: '*it is outside the purview of the court not only because it is made in the conduct of foreign relations, which are a prerogative of the Crown, but also because, as a source of rights and obligations, it is irrelevant*' (Rayner, ibid, p. 500C-D). Where the effect of the exercise of prerogative treaty-making (or breaking) powers is to determine rights under domestic law then the decision *is* justiciable: see R (CND) v. Prime Minister [2002] EWHC 2777 (Admin), para 36, approved by Lord Kerr in R (SG) v SSWP [2015] UKSC 16, para 237. So the competing contentions of who may take the decision, Parliament or Prime Minister, will also determine whether the decision is susceptible to judicial review.

53. Moreover, and in any event, statutory jurisdiction for the courts to determine the meaning of Article 50 is conferred by s 3(1) of the 1972 Act, which provides that *'For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties … shall be treated as a* question of law *for determination as such in accordance with the principles laid*

[5] I. Hendry and S. Dickson, *British Overseas Territories Law*, p. 57
[6] Jowell, 'The UK's Power over Jersey's Domestic Affairs', from 'A celebration of autonomy: 1204-2004 800 years of Channel Islands' Law', p. 257

down by and any relevant decision of the European Court'. S 3 makes it clear that the meaning of a treaty provision is a question of law for the courts, not for politicians, applying EU law. And it may be that such a legal question would require a reference to the Court of Justice of the EU for an authoritative determination of Article 50's meaning, in particular as to whether the Article 50 process is reversible once begun.

54. I would add that an exercise of the prerogative affecting the devolved administrations, the Crown Dependencies or the overseas territories may also be susceptible to a legal challenge in the United Kingdom (see, for example, R (Barclay and others) v Lord Chancellor [2010] 1 A.C. 464).

Conclusion

55. There are a number of '*constitutional requirements*' that must be fulfilled before the United Kingdom can lawfully set in train the process for withdrawal from the EU under Article 50 reflecting the diversity of the different constitutional arrangements of the territories for which the UK is responsible on the international plane. First, within the United Kingdom the doctrine of legality and the proper interpretation of the 1972 and 2011 Acts requires that the process be authorised by an Act of Parliament. Second, the consent of the devolved legislatures may also be required, particularly in the case of Scotland by virtue of s 28(8) of the Scotland Act 1998. Third, the Crown Dependencies should be consulted, particularly Jersey for whom there is a statutory requirement that the Jersey legislature, the States, have an opportunity to consider any legislation passed by the UK Parliament that extends to it. Fourth, the British Overseas Territories deserve (at the least) to be consulted before any UK legislation removing rights enjoyed by its citizens should come into force, including EU rights which will be lost as a result of any notification commencing the Article 50 withdrawal process.

56. I see no reason why a court should not decide the constitutional question of whether Parliament or Prime Minister should start the Article 50 process. Moreover I think it would be in *everyone's* interests to have an authoritative ruling on the meaning of Article 50 before the process commences.

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BRICK COURT CHAMBERS

4 JULY 2016

Lord Neuberger at the Legal Wales Conference 2014

The UK Constitutional Settlement and the Role of the UK Supreme Court

10 October 2014

1. The changes in the constitutional and institutional governance of the United Kingdom over the past fifty years have been extensive, if somewhat piecemeal. On the international front, the two most important events were (i) joining what was then called the Common Market in 1973 and (ii) incorporating the European Human Rights Convention into UK law in 1998. Internally, the two most important steps were (i) the devolution of many previously centrally administered powers from Westminster to Cardiff, Edinburgh and Belfast from 1997, and (ii) the reform of the House of Lords and the passing of the Constitutional Reform Act of 2005.

2. And we are by no means at the end of the road. The Common Market has become the European Union and the change of name has reflected marked increases in its size and influence; and the terms of our membership, and even the continuation of our membership, of the EU is a matter of political debate, as is the nature of our involvement in the Convention. And if one adds all that to the recent increased devolution in Wales, and the even more recent No vote in the Scottish referendum, coupled with the promises made by the three main UK party leaders during the campaign, it is apparent that we are entering a period of what may very well turn out to be yet more significant constitutional and institutional change.

3. Anyone, particularly a judge, must be very careful about what they say about changes which may or should occur. To pontificate publicly about specific changes, whether in relation to devolution or to Europe, particularly at such a sensitive period, is self-evidently dangerous for anyone, and this is particularly true for a judge: just as the judiciary expects politicians to keep off the judges' territory so should we judges respect the boundary and keep to our side of it. However, the boundary is not entirely clear-cut and there is a degree of over-lap, the constitutional equivalent of the Welsh Marches or Debateable Land, where both politicians and judges can claim to have the right not to be excluded, and where they must therefore step with particular care to avoid treading on each other's toes. That area, I suggest, is principally occupied by issues concerning the rule of law. Although there are occasional lapses on each side, the United Kingdom is very fortunate compared with many other democracies in the mutual respect which judges and politicians generally show towards each other. And, of course, in some circumstances, judges, like politicians, do not merely have to consider whether they have a right to speak out: sometimes, there is a duty to do so.

4. Bearing these factors in mind, it is, I think, both legitimate and appropriate for me to say that any negotiations, whether concerning our relationship with the EU or the Council of Europe, or the devolution of power within the UK, and any outcome of such negotiations, must accord full respect to the two basic inalienable principles, which have long governed and underwritten the United Kingdom's constitutional settlement, namely democracy and the rule of law. Whether we take things for granted or discuss them furiously, whether we make changes or keep things as they are, we must not lose sight of those fundamental two tenets of our system of government.

5. I suspect many people would say that calls for maintaining democracy and the rule of law are as banal as calls for motherhood and apple pie, but neither democracy nor the rule of law is quite as simple as many people seem to believe. Pure democracy has never existed in the sense that no country has been run on the basis that every governmental decision is taken by a vote of all citizens. Even ancient Athens was not governed in that way - women and slaves had no vote. And these days, with multifarious complex government decisions having to be taken daily, it would be inconceivable to subject even all important issues to a referendum. So that means we are talking about democratically elected governments, which in turn means electoral systems. And, as we can see from examining the many different systems which exist throughout the democratic world, any electoral system involves a substantial degree of compromise with, or at least a dilution of, some fundamental aspects of elementary democracy.

6. But, quite apart from this, a democratically elected government may prove to be so unacceptable to enough people to result in its downfall. If a substantial body of its people does not accept a country's electoral system or the outcome which it produces, it will not work, however fair and representative it may appear to outsiders to be. In the United Kingdom and many other countries in the world, we take it for granted that if the government loses an election, then, subject to bona fide legal challenges, it will stand down and make way for the opposing party and the result will be accepted

by the people as a whole. Without that general acceptance, democracy cannot work – Egypt and Thailand represent two recent examples of the truth of that point.

7. The failure of democratically elected governments in those countries may also demonstrate the truth of the connected point that democracy won't work if the democratically elected government does not comply with the rule of law and, for instance, proceeds without regard for the interests of minorities. In the case of Egypt and Thailand, it was, I believe, the interests of the minority who supported the party which had been unsuccessful in the election which were overlooked, but it is true of any minority. That is a moral point as well as a practical one: in the modern world at any rate, democracy cannot simply mean the tyranny of the majority, or oppression of any individual's fundamental rights. And, without those vital features, a democratic government, perfectly properly elected, can result in persecution of minorities; we should never forget that Hitler and Mussolini came to power through democratic elections.

8. The political give and take of democratic government involves messy compromises, last minute deals, short term fixes, sops to interest groups, half-baked concessions, crowd-pleasing sound-bites, and grandstanding provisions. That is the price of democracy, and, when we moan about it, we would do well to remember a perceptive observation, attributed to Winston Churchill, "democracy is the worst form of government except all those other forms that have been tried"[1]. But such imperfections do mean that democratic government cannot always safely stand on its own. We need the checks and balances, as one of the three most prominent founding

[1] Winston Churchill, House of Commons 11 November 1947

fathers of the United States constitution, James Madison, famously explained nearly 240 years ago[2] in one of the immortal Federalist Papers.

9. Those checks and balances, which have been perhaps most faithfully worked out in the United States constitution, involve in organisational terms what the French political philosopher, Montesquieu famously characterised as the separation of powers[3] - a legislature (the Houses of Parliament), an executive (the Civil Service, local authorities etc) and the judiciary, all of which are separate from and independent of each other. Although Montesquieu based his idea on the British system of government and we now purport to embrace it, it is in truth both a relatively new and a not completely implemented idea in the United Kingdom. We Judges are still Her Majesty's judges, and historically the Monarch was head of the executive. Even now, the Prime Minister is the chief executive and Cabinet Ministers are senior members of the executive and yet they sit in the legislature and have a degree of control over it. However, whatever overlap there may be at the top between the executive and the legislature, judicial separation and independence remains an essential ingredient of modern democratic government – and of the UK Government in particular.

10. As long ago as 1783, when the US constitution was in its infancy, a very great English Lord Chief Justice said "The Judges are totally independent of the ministers that may happen to be, and of the King himself"[4], and such judicial independence is of course essential if we are to maintain the rule of law. A person may have views,

[2] James Madison, *51 Federalist Papers* (6 February 1788)
[3] Baron de Montesquieu, *The Spirit of the Laws* (1748)
[4] Lord Mansfield, *Proceedings against the Dean of St. Asaph* (1783) 21 How St Tr 1040.

even strong and well known views, but once selected to become a Judge, he or she must decide every case impartially and according to the law, and, of course free of any influence or concerns from the other branches of the government, the legislature and the executive. A modern democratic society thus needs judges who are honest, fair, independent, committed and competent.

11. Reverting to Madison's checks and balances, they went further than the separation of powers and an independent judiciary, because they were expressed to be based on his concern over "the insecurity of rights under the popular form of government" both inside the legislature and outside it, and identified the need to protect what he called "the rights of individuals, or of the minority"[5]. Accordingly, I suggest that pure democracy will not do on its own; it has to be combined with general acceptability, the separation of powers and judicial independence, and Madison's "rights of individuals, or of the minority".

12. Nowadays we refer to Madison's rights as human rights or fundamental freedoms, which are a vital aspect of the rule of law. But the rule of law is not so simple either. To most right-thinking people, the rule of law comprises much more than properly made laws properly administered: the contents of the laws must respect freedom of expression, freedom from torture and other fundamental freedoms and rights, such as access to justice and equality before the law. Such rights can too easily be taken for granted, but it is worth remembering that, along with the defence of the realm, the

[5] See footnote 7

rule of law is one of the two basic and entrenched roles of government. If a government does not provide those two most basic features, it is not worthy of the name, and, indeed, without defence of the realm and the rule of law, the value of all the newer services provided by the state, such as welfare, health, and education, will also be undermined.

13. But we should not kid ourselves that what we currently regard as fundamental rights and freedoms are timeless. Nobody today would condone slavery; yet, less than two hundred years ago, it had passionate and what in those days passed for respectable supporters. And 2000 years ago, at the dawn of Christianity, slavery was commonplace throughout both the civilisations in which Jesus Christ grew up, the Roman and the Jewish worlds – as was the death penalty. Even today, to European eyes, the death penalty is generally thought to be unacceptable; for instance, no state can join the EU unless it dispense with the death penalty; yet in the United States and many other democratic countries the death penalty is still legal, and, to many, morally justified.

14. However, the fact that the nature and extent of fundamental rights may change to some extent with the passage of time, or even with location, does not begin to invalidate or undermine the establishing and enforcing of fundamental rights as they are perceived to be in our time. Basic principles remain unchanged as most of the Ten Commandments, now some 3500 years old, demonstrate. And the fact that some principles may change or become refined in the future cannot mean that they are

invalid today. Similarly, the fact that any electoral system involves compromises does not begin to justify our turning away from democracy; the fact that perfection is unattainable has never been a reason for not trying to do the best we can.

15. So how do we ensure that democracy is combined with the rule of law? Well, an inherent feature of almost all democracies is a written constitution, by which I mean a document which contains a coherent set of fundamental rights and principles, and which cannot be altered by a simple majority of the legislature. A constitution is a check on the powers of a democratically elected legislature, a counterweight against a simple legislative majority, a principled check or balance to the democratic will of the moment. A formal constitution of this nature effectively enshrines fundamental rights into the system, and operates as a bulwark of constancy and security against the short term vagaries of public opinion, which can sometimes engulf rational discussion or overwhelm principled debate.

16. Some people say that the United Kingdom has a constitution – in documents such as Magna Carta and the Bill of Rights, and in constitutional conventions as developed in practice. But these are merely a collection of provisions which developed somewhat haphazardly to deal with specific historical events or crises, Anyway, they can all be revoked or altered by a simple majority in parliament – indeed, all but three of the sixty or so provisions of the original 1215 Magna Carta, despite being promulgated on several occasions by successive Kings (especially when they got into difficulties) in the 13th and 14th centuries, have been repealed by simple parliamentary

statute over the past three hundred years. As a former *ex officio*[6] chair of the Magna Carta Trust, I would be the last person to call its importance into question, but it is not and never was a constitution.

17. In a country with a constitution, the Supreme Court (as in the US) or the Constitutional Court (as in Germany) can, indeed must, strike down legislation which has been enacted by the democratically elected parliament if the court concludes that the legislation does not comply with the Constitution. Unless and until the Constitution is changed (which in the US requires a Convention called by at least two-thirds of the fifty state legislatures or a two-thirds majority vote in the Senate and in House of Representatives[7]), the Constitution, as interpreted and enforced by the Courts, prevails over the will of the democratically elected legislature. In a country like the UK (which is almost unique in this respect), a democracy without a constitution, we have parliamentary sovereignty: what parliament decides is the law, once it is embodied in an Act of Parliament, a Statute, which is brought into law by the Queen signing and approving it.

18. The academics debate whether it is conceivable that Parliament would enact a law which was so contrary to principle that the courts would ignore it – eg a law which prevents citizens from challenging any decision of a government department in the courts. That is a point which has even been touched on in judgments in one case in

[6] The Master of the Rolls is the *ex officio* chair of the Magna Carta Trust and I was Master of the Rolls between October 2009 and September 2012
[7] Article 5 of the US Constitution

the House of Lords in 2005[8]. I profoundly hope that it is an issue which never has to be tested, not least because, if it does, something will already have gone very wrong with our system of government. Subject to that sort of remote (I hope) possibility, the UK is a country where Parliament has ultimate power with no restraining influence, no check or balance, other than the inherent sense of propriety and moderation, and respect for individual freedoms and minority rights, which have generally permeated our public life for the past centuries.

19. James Madison's notion of checks and balances and Montesquieu's idea of the separation of powers both envisage that power is not exclusively concentrated in any one person or group of people, even in the democratically elected legislature – reflecting Lord Acton's adage that power tends to corrupt and absolute power corrupts absolutely[9]. Furthermore, the reach and powers of the executive branch of government has increased enormously over the past fifty years, not least because of the need to give the executive regulatory, supervisory and management functions in an increasingly complex society; accordingly, the need for citizens to be protected against abusive excessive and arbitrary actions of the executive is as great as it ever has been. Furthermore, the very fact that judges are unelected and have security of tenure means that they can make the unpopular but correct decisions which politicians with an eye on promotion, re-election and party interest, perfectly properly find it sometimes difficult to make. However, ultimately, Parliamentary sovereignty

[8] *Jackson v. HM Attorney General* [2005] UKHL 56, [2006] 1 AC 262, paras 102, 107 and 159
[9] Lord Acton, in a letter to Bishop Mandell Creighton, 5 April 1887, *Historical Essays and Studies*, edited by JN Figgis and RV Laurence (Macmillan, 1907)

means that if the legislature feels strongly enough about the issue, it can reverse or modify the judges' decision. Further, the fact that we are not elected means that judges must be circumspect about exercising their powers. In that connection, the media obviously have an important part to play – ensuring that we do not get too big for our boots, and, it is at least to be hoped, exercising their powers in a responsible way too.

20. Irrespective of whether or not a country has a constitution, the role of the courts is therefore crucial in a democracy which is run in accordance with the rule of law. And that is particularly true in relation to rights granted to citizens against the state, whether under a constitution or in another document. It is no good granting people rights if they cannot get legal advice as to those rights, if they cannot get access to impartial fair and competent judges to decide on their rights, if they cannot get professional legal representation before those judges to claim those rights, and if they cannot get effective enforcement procedures in respect of any judgment based on those rights – ie if they cannot get access to justice.

21. It is arguably worse to have a constitution or other statutes which purport to bestow rights and freedoms on citizens if those rights and freedoms are unenforceable than it is not to grant the rights and freedoms at all. At least refusing to grant the rights is honest, and people know where they stand; if a government grants people rights which they cannot enforce, they do not know where they stand, and the government and the rule of law are brought into disrepute. So, given that a civilised

modern society grants people rights and freedoms, they must be able to enforce them, and the only sensible way in which a right or freedom can be vindicated and enforced is through the courts.

22. However, that in turn means that, as some sections of the British press would put it, "unelected judges flout the democratic will of parliament". And that is indeed what happens in the United States and other countries with a constitution. The democratically elected Senate and the democratically elected House can pass a bill, which is then approved by the democratically elected President, but which is then quashed by the unelected Supreme Court on the ground that it is inconsistent with the Constitution. It is a relatively commonplace event in almost all countries – because almost all countries have a constitution. But in terms of United Kingdom domestic law, it has never been thought to be open to a court to question, let alone to overturn, an Act of Parliament, because we have no constitution.

23. So I suppose that there is a powerful argument for saying that the UK is actually more genuinely democratic than the US. For instance, it would be unthinkable for a UK court to overrule parliament's general ban on any member of the public having a handgun. The new powers which we do have are to declare that a statute passed by parliament is inconsistent with the European Convention or to override a statute which does not comply with EU law. But we judges only have those powers because parliament gave it to us in a statute, and what parliament has given, parliament can take away. Nonetheless, when judges decide that what parliament has decided

conflicts with the European Convention, the British newspapers don't hold back criticising us for thwarting the democratic will – at least when they don't like our decisions. But perhaps particularly in a country without a constitution, a real and independent role for the Judges is vital to preserve the rule of law, to ensure that there is no tyranny of the majority, to avoid a monopoly or undue concentration of power, and to help provide the necessary checks and balances.

24. While the United Kingdom has no constitution, in a typically understated and almost half-hearted we are now developing a sort of quasi-constitution for a number of reasons. First, through signing up to the European Convention on Human Rights in 1951 and then incorporating it in our domestic law in the Human Rights Act 1998. That means that Judges in the UK can now give effect to many of the fundamental rights which are enshrined in most constitutions. So if a decision of the executive infringes someone's human rights, the courts can quash it, and the common law, that it the law developed by the judges, has to be adjusted to accommodate such rights. So new life has been breathed into the law, with proper recognition for the first time to fundamental rights such as respect for privacy[10] and freedom of expression[11].

25. So far as Acts of Parliament are concerned, the 1998 Act enables the judges to give effect to human rights in two alternative ways. The first is by doing our best to interpret all legislation so that it complies with the Convention, and this extends to

[10] Article 8 of the Convention
[11] Article 10 of the Convention

fairly creative interpretation[12]. The second way only arises if the first cannot be achieved: we declare the legislation to be incompatible with the Convention[13]. But the Human Rights Act 1998 does not create a constitution: parliament is still sovereign, and the 1998 Act could be repealed by a normal vote in the Houses of Parliament. Further, unlike in most countries with a Constitution, UK judges cannot override or quash a statute: a declaration of incompatibility means that the statute remains in force unless and until Parliament amends it – which it is only fair to record, has happened every time such a declaration was made - except once.

26. Up to now, at least in the national media and in the Westminster Parliament, Human Rights, and to a lesser extent EU law, have been the headline-catching reason for UK courts, particularly the Supreme Court, becoming more like a constitutional court. But, as you and I know, there are other reasons, which are at least as significant and which are far less likely to be reversed, indeed are in the process of being extended. I refer of course to the devolution of legislative power from the UK parliament in Westminster, elected by a UK-wide franchise, to assemblies in the capitals of Wales, Scotland and Northern Ireland, elected by the residents of those parts of the UK. One of the institutional changes wrought by this fundamental change in our constitutional arrangements is that the Supreme Court now has the power to decide whether legislation passed, or to be passed, by the devolved assemblies is, or would be, within their powers. Thus, although we still have no power to declare legislation passed by the Westminster Parliament to be unlawful or

[12] Section 3 of the 1998 Act – see *Ghaidan v. Godin-Mendoza* [2004] UKHL 30, [2004] 2 AC 557
[13] Section 4 of the 1998 Act

unconstitutional, we do have that power in relation to devolved legislation, and if, as seems quite probable, the pace of devolution increases, this power looks likely to become more relevant.

27. As most of you will know, in relation to Wales, we have decided two references, both made by the Attorney General for England and Wales, and we have reserved judgment on a third. The third reference was made by the Counsel General for Wales, who addressed us on all three references. In the two decided cases, we ruled on the validity of proposed legislation relating to powers given to Welsh local authorities[14] and legislation seeking to fix agricultural wages[15], and both were held to be within the powers of the Welsh Ministers. And we have yet to rule on a bill whose purpose is to enable the NHS to recover the cost of treating asbestosis victims from employers' insurers.

28. It is right to mention one issue which arises from devolution, namely the absence of a specifically Welsh Judge in the Supreme Court. The First Minister has quite reasonably and understandably proposed that we should now have a Welsh Judge in the same way as we always have a Scottish Judge and a Northern Irish Judge. It is important to emphasise, however, that the Constitutional Reform Act 2005 specifies that the constitution of the Supreme Court must be such as to "ensure that between

[14] *Local Government Byelaws (Wales) Bill 2012 - Reference by the Attorney General for England and Wales* [2012] UKSC 53
[15] *Agricultural Sector (Wales) Bill – Reference by the (Attorney General for England and Wales* [2014] UKSC 43

them the judges will have knowledge of, and experience of practice in, the law of each part of the United Kingdom". So it is concerned with expertise not nationality, but that does not, I accept, answer the concern. When I last spoke publicly on this issue, I made two points. First, I said that so long as we had no Welsh Justice, I would do my best to ensure that we co-opted one on any Welsh reference. I have stuck to that, and, with John Thomas as Lord Chief Justice the exercise has been relatively easy – I say "relatively", as it is one thing to identify him as the Judge, but another thing to find a couple of free days in his diary. Secondly, I said that I thought that there was an insufficient body of specifically Welsh law to justify the appointment of a Welsh Judge. However, I acknowledge that there is much to be said for the view that the position is changing, and that it may be changing fast. I should also mention that, when the decision comes to be made, it is not mine alone, but that of the selection panel.

29. I have discussed the increasingly quasi-constitutional role that the courts have been playing in the light of the growth of judicial review, the Human Rights Act and EU law, and how this is particularly true of the Supreme Court, with its additional and real constitutional powers in relation to devolved governments. I have also said that it would be inappropriate for a judge to discuss publicly the consequences of the recent Scottish referendum, or indeed any proposals with regard to the EU or the Convention, save insofar as they relate to the rule of law. However, there is no disputing that the implications of the Scottish referendum are likely to be significant in various ways, and in particular as to the basis upon which we are governed. Similarly, the effect of the Convention over the past fourteen years has been similar to

that of a set of constitutional rights, and implementation of the Conservative party's recent proposals, as I understand them, would not change that feature. In these circumstances, I think it is not inappropriate to raise the question, and I emphasise that it is genuinely no more than raising the question, of whether the time has come for the United Kingdom to have a constitution.

30. The most basic and simple argument against a constitution, and it is no less formidable for being simple, is that we have managed very well for many centuries without a constitution, so why mend it if it ain't broken? It is beguiling to invoke the existence of successful constitutions of other countries, but it is plain that what works very well in one country may not take root successfully in another. The British constitutional system has developed on a piecemeal basis, and to impose a written constitution on such a system is, some may think, a questionable exercise: it could be said to risk forcing an inherently flexible system into an artificial straightjacket.

31. It is also fair to say that a constitution is no absolute guarantor of the rule of law. A country can have the most admirable constitution, but, as I have mentioned, if it is merely a piece of paper whose terms cannot be enforced by citizens through the courts, it is a sham - and perhaps leads to a situation which is even worse than one with no constitution and no rights. But, more to the point, a constitution, even of it is fully enforceable, will not guarantee the rule of law, in that it cannot stop a revolution or a *coup d'etat*. It is interesting to note that, at least so far, no modern European constitution has survived for 200 years: the longest survivor is, I believe, the Danish

Kongelov, which came into force in 1665 and lasted till 1849, and it is noteworthy that it was a somewhat autocratic document, placing enormous power in the hands of the King[16]. As is the case with democracy, the rule of law, with or without a constitution, is not possible unless the legal system is generally acceptable and credible so far as the broad mass of citizens are concerned. Accordingly, those against a UK constitution can perfectly fairly point out that our system has lasted since 1689 without a revolution or a constitution, whereas no other European country can point to such stability even though most of them have enjoyed more than one constitution over that period.

32. But there are powerful arguments the other way. First, we are in a new world whose increasing complexity appears to require virtually every activity and organisation to have formal rules as to how it is to be run and to work, and there is no obvious reason why that should not apply to the most important organisation of the lot. Secondly, we are now in what to some people might seem to be in an unsatisfactory position with an international treaty, as interpreted by an international court, namely the European Convention on Human Rights, acting as a semi-constitution. Further, if we had a constitution, this would presumably have primacy over decisions of the Human Rights Court in Strasbourg and even those of the EU Court in Luxembourg. Accordingly where those decisions appeared to be inconsistent with any fundamental constitutional principles, those principles would prevail. At the moment, without an overriding constitution, it is very difficult for a UK court to

[16] See Geoffrey Parker, *Global Crisis War, Climate Change and Catastrophe in the Seventeenth Century* (2013), Chapter 8

adopt such an approach[17], but it is an approach which, for instance, the German Constitutional Court has shown itself quite ready to take when appropriate.

33. It is easily understandable why the anti-constitution argument based on the status quo – better the devil you know – has so far held sway. We have a proud and successful history with a pragmatic, rather than principled, approach to law and legal systems, and we have managed pretty well without a constitution. But times change, and the fact that we managed well without a constitution in a very different world from that which we now inhabit may be a point of limited force when applied to the present. So long as things remained much the same, the argument based on the status quo was hard to resist. However, if, and it is a big "if" which is ultimately a political decision, our system of government is going to be significantly reconsidered and restructured, there is obviously a more powerful case for a written constitution. Writing a constitution may help focus minds on the details of the restructuring, and, once the restructuring has occurred, a new formal constitution should provide the new order with a clarity and certainty which may otherwise be lacking. On the other hand, it remains the case that grafting a written constitution onto our pragmatic system would almost inevitably involve something of a leap in the dark, and many people may fear that it would turn out to be a classic example of a well-intentioned innovation which had all sorts of unintended and undesired consequences.

[17] See See eg R (*HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3, [2014] 1 WLR 324, paras 196-211

34. In this connection, it is worth mentioning that the sort of questions I have raised have been considered over the past few years by the House of Commons Political and Constitutional Reform Select Committee, chaired by Graham Allen MP, during their review of various aspects of our constitutional settlement. Three months ago, the committee launched a public consultation, on various possible models for a codified constitution for the UK, and the consultation closes in January 2015[18].The Committee plans to report on the public responses in time for them to be taken into account ahead of the general election: I for one await with interest what they say.

35. Ladies and gentlemen, we live in interesting times, whether we are politicians, civil servants, lawyers or judges, whether we are Welsh, Northern Irish, Scottish or English – or even European. Over the next few years we are going to have to consider and make difficult and important decisions about the constitutional foundations of the UK, decisions which will vitally affect us and future generations. I hope and believe that we will approach those decisions with a mixture of bravery, prudence and principle.

36. Thank you very much.

David Neuberger

Bangor, 10 October 2014

[18] http://www.parliament.uk/business/committees/committees-a-z/commons-select/political-and-constitutional-reform-committee/news/report-a-new-magna-carta/

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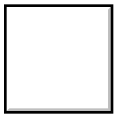

Article 50: where are we now?

26th June 2016

Law and politics are separate things, and they do not often overlap. It is rare that politics is driven, or even shaped, by legal process or any legal issue. But it does happen sometimes, and it is happening in the United Kingdom at the moment.

The legal issue is about a provision in a European Union treaty known as Article 50, which deals with Member States leaving the EU. The provision has a binary nature, in that the provision is either invoked (or activated, or whatever verb you want) or it is not. That is a legal question. If the provision is invoked, then there are certain legal consequences, and if it is not invoked then there are not those legal consequences.

Until a couple of weeks ago few people in the UK, and almost no politicians or pundits, knew or cared about Article 50. What was important for them was instead something which had no real legal significance (even if politically significant), a non-binding referendum on whether the UK should remain part of the EU. That referendum also had a binary nature: you either voted Remain or Leave. As it happened, a couple of days ago, the clear (if not large) majority of voters voted Leave.

Now a problem in UK politics comes from a mismatch – a disconnection – between the result of the referendum vote and the invoking of Article 50. One has not automatically led to the other, and it may not do so.

The supporters of Remain campaign did not think about this, because they thought they were going to win. But the supporters of the Leave campaign also did not think much about this, as it seems they regarded winning the referendum as an end in itself to bring about their desired "Brexit".

It appears that few if any people involved in the campaigns on either side thought about what would come next in the event of a Leave vote.

On the day the result of the referendum became known, the Prime Minister David Cameron did not do something, and I believe the omission was significant (I have discussed this here).

In essence, Cameron did not invoke Article 50: no notification was sent to the European Union. In my view, the failure to send the notification on the very day after the referendum will mean that there is a strong chance it will never be sent at all.

Since the referendum result there has been considerable media and political discussion and speculation about Article 50. This post examines a few of the contentions which have been made about Article 50 – in particular the first two paragraphs of the Article – and sets out whether they seem good points or bad points.

The best place to start is the provision itself. Article 50 contains a sequence of stages which are separated out as numbered paragraphs. I will set out the Article as a whole, and I will then go through paragraphs one and two in particular.

> *1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*
>
> *2. A Member State which decides to withdraw shall notify the European Council of its*

> *intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*
>
> *3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.*
>
> *4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.*
>
> *A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.*
>
> *5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.*

So, to begin with, let's look at paragraph one of Article 50:

> *1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.*

What does this mean? I think there are two key elements to this. The first is "*decide*" and the second is "*in accordance with its own constitutional requirements*".

The reference to "*decide*" is crucial. It means there has to be a decision. Without a decision, nothing else follows. It is the Marley's Ghost of Article 50.

The provisions which come afterwards in Article 50 do not even become engaged unless

there is a decision.

So what is a decision?

In my view a decision in a UK context may be one of a number of things:

– a decision by the Prime Minister in accordance with the "royal prerogative" (that is, in accordance with the legal fiction that the Prime Minister can exercise powers on behalf of the Crown);

– as above, but the decision being made by the Prime Minister either in consultation with his or her cabinet, or after a vote of cabinet (or conceivably the same but with consulting the Privy Council instead);

– a decision by the Prime Minster following a resolution or motion in either House of Parliament or by both houses;

– a decision not by the Prime Minister but one embedded somehow in a new Act of Parliament (or a special statutory instrument or "order in council"), or a decision made in compliance with an existing statutory or similar regime; or

– any of the above following consultation with – or even the consent of – the devolved governments of Scotland, Wales, and Northern Ireland.

Any of these would be a decision for the purposes of Article 50(1). And each would be decision it would be fair and plausible to say is "*in accordance with [UK's] own constitutional requirements*".

The UK does not have a codified constitution. Some would say it has not got a "written constitution" (though my view is that the UK constitution is (largely) written down, it is just not written down in one place; it is instead spread out over many texts and legal instruments).

But what the UK constitutional does not have, at least not in any explicit way, are

prescriptive "*constitutional requirements*" – where one could point to a text and say: *A-ha! That is how to make a decision to exercise a power under an existing treaty!*

Without such a helpful provision, one can only look at how formal decisions can be made by those with political power in the UK, and the five examples set out above seem to all meet the Article 50(1) wording: they are *"decisions"* made "*in accordance with [UK's] own constitutional requirements"*.

What does not meet the Article 50(1) wording, either as a *"decision"* or something made "*in accordance with [UK's] own constitutional requirements"* is the mere result of a non-binding referendum.

The referendum on EU membership was advisory not mandatory. It was deliberately drafted by Parliament not to have any legal consequences. (The last UK-wide referendum, on the AV voting system, did have such a binding provision, but this time Parliament chose not to include one).

As such, the result of the poll has no more legal standing than the result of a consultation exercise. It was a glorified opinion survey, and that is what Parliament intended it to be.

The result is not a "decision" for the purposes of Article 50(1) and, on this basis, the other provisions in the provision are not engaged.

(For more on this, see this excellent post by Professor Mark Elliott.)

In my opinion, it could have been open to the Prime Minister on Friday, either on the basis of the royal prerogative or after involving the cabinet or the Privy Council, to have made the "decision". It was not even a decision to enter a new international treaty but to exercise a power within an existing one; in other words, it is the sort of decision a Prime Minister can usually make.

When the Prime Minister chose not to make that decision, that was a matter for him; and he in turn said it is a matter for his successor.

There is also a point about the devolved governments of Scotland, Wales, and Northern

Ireland. If the governments of any of the devolved states chose to (somehow) formally to object to the Leave decision then that opens the issue of whether the decision to Leave "*in accordance with [UK's] own constitutional requirements"*.

This is not to say there would be a legal bar – but in an un-codified constitution, force is given to "conventions", as well as laws. It would seem that many believe it is arguable that there is a convention at play here – that there should be consent by the devolved governments, even if not an absolute legal requirement.

As Article 50(1) talks vaguely of *"constitutional requirements"* it seems to me that a convention may be as capable of being a constitutional requirement as any statutory provision.

In other words: say if the Scottish government chose to formally object to a Leave proposal then it may make it harder to make out that the "*in accordance with [UK's] own constitutional requirements"* element of Article 50(1) has been satisfied.

This is not (strictly) a legal point – as Professor Elliott explains in another post – but I still think it can still be significant in terms of Article 50(1): for if a convention is breached then a constitutional requirement cannot have been met.

But in any case, it certainly will be significant in terms of politics. Not a formal veto perhaps – but important.

We now come to Article 50(2):

> *2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.*

Remember this paragraph only even matters if there has been an Article 50(1) decision – if there is no decision, Article 50(2) falls away. In effect, we don't get past the fifth word of this rather wordy paragraph.

But it is not the fifth word which has been much-discussed over the last couple of days; it is the ninth – "*notify*".

Once a decision has been made – which is not the case – then the decision shall be notified: there will be a notification.

What is a notification?

It has been suggested (including by those who should know better) that there could be a notification by accident or by informal means – a situation of "*whoops I made a notification*". This could be by the mere presence of the Prime Minister at a council meeting, or by an admission of the referendum result, or even one imposed upon the UK by another Member State or organ of the European Union.

Much of this speculation is utter twaddle.

The thing about words in formal legal document is that they must mean something and cannot mean anything. A "notification" – especially of something which would have fundamental and (it would seem) irreversible legal consequences – is not something to be taken lightly, but should be taken reverently and responsibly in the sight of any number of lawyers.

In particular, the notification would have to be (a) formal and (b) intended to be communicated: that is what "notify" means. There has to be no doubt (or room for doubt) as to what the statement means and that it was intended to be communicated as such.

One would think this was obvious. But this has not stopped the "all depends" mongers coming with ingenuous hot-takes on what "notification" means.

But in any case, a spokesperson for the European Union has now put it beyond doubt:

> *"The notification of Article 50 is a formal act and has to be done by the British government to the European Council," the spokesman said. "It has to be done in an unequivocal manner with the explicit intent to trigger Article 50."*

Indeed. There will be no *"whoops we notified the Council"*.

The spokesperson's statement also expressly confirms what was the position all along: that the if and when of the Article 50 notification is entirely a matter for the UK government.

It is up to the UK whether to make the notification and, if so, the timing of it. This in turn means that the notification may never be made.

There is nothing – nothing at all – which the EU can do at law to force the UK to make that notification.

It may be an irony, but this is what sovereignty looks like.

**

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Graham Senior-Milne

26th June 2016 at 21:35

Surely it is the most fundamental constitutional requirement of all that parliament should abide by the wishes of the people?

REPLY

Matt Parker

26th June 2016 at 21:36

I once bought a flat. The seller insisted we move very fast, but then as we got close to

exchange; the solicitors on the other side went quiet. We informed them that our offer would reduce by £5,000 for every week that they failed to exchange: we exchanged contracts at the end of that week.

While they can't force it, the EU could presumably make it clear that the longer we delay, the eventual negotiations will be steadily harder and less favourable. And the longer that goes on, then presumably the likelihood of decision and notification decreases further.

And separately, while this seems very unlikely, presumably Cabinet could over-ride Cameron and make a decision (Scots issues etc. notwithstanding).

REPLY

Mike Scott

29th June 2016 at 09:02

They're a bit stuck there. They can't threaten to worsen the conditions of our exit without first saying what those conditions might be, which is what they're refusing to do. Saying "We won't tell you what our offer is, but we'll take something off it if you delay" is not a credible threat.

REPLY

Kommentator

26th June 2016 at 21:36

There is nothing *official* which the EU can do at law to force the UK to make that notification.

There. Fixed that for you.

REPLY

Pingback: BREXIT: THE LEGAL CONSEQUENCES: USEFUL LINKS | Civil Litigation Brief

Si

26th June 2016 at 22:18

Given that uncertainty is the common enemy and contagion is the EU fear, what chance that if the Tories prevaricate the EU goes for the nuclear option of Article 7?

REPLY

Sandvika

28th June 2016 at 20:54

On the basis of Article 7, it seems that the prejudice against minorities in central and eastern Europe could justifiably have triggered it already. Not sure what breaches of Article 2 could be pinned on UK for now!

REPLY

David

26th June 2016 at 22:21

Clarity. Thank you so much, Mr G.

Is it so hard for journalists to seek this kind of information before appearing in front of cameras and asking clueless politicos questions (not that their answers would be illuminating).

REPLY

Misha

26th June 2016 at 22:37

Excellent as always, David.

Put the oven on, I think someone's cooking up some fudge.

REPLY

---

chrisj

26th June 2016 at 22:43

I can't help wondering whether Scottish Independence gives the EU a potential way to skirt round this. Consider the following scenario:
Scotland runs Indyref 2, and gets a majority for independence. The EU then declares that it regards Scotland as the successor-state to the no-longer-united Kingdom, and that article 50 notification is now irrelevant; the rump UK will be out of the EU as soon as Scottish independence officially happens, and will need to apply through the usual diplomatic channels if it wants anything.
Would that make sense within the current EU legal framework? They're not expelling a country, they're just choosing only to admit one of the successors of a collapsed state.

REPLY

Fidget

26th June 2016 at 22:51

Very interesting article.
Political question – if the PM (Cameron or successor) stalls on activating Article 50 would it be possible for a pro-Brexit MP to propose a piece of legislation compelling the government/PM to do so within 30 days? Individual MPs would have to vote and be in the uneviable position of choosing between what they think is right (around 75% were Remain) and how their constituencies voted (nearly all English and Wales shires were Leave).

REPLY

Babble

4th July 2016 at 07:36

The big 2 could fix it but not when theyre fighting civil wars.

MPs in Remain areas vote Remain.

MPs

REPLY

Babble

4th July 2016 at 07:39

…

MPs who are really committed to Remain… or want to retire anyway etc. vote Remain.

Then do the sums and work out which Remain MPs can vote Leave and which have to take one for the team.

REPLY

Prof Andrew A. Adams

27th June 2016 at 00:45

Thank you for this. A calm and reasoned explanation of the legal situation. There is also the political situation to consider in which an advisory vote (as you say, the referendum was specified as advisory in the bill creating it) had a choice between a clearly understood outcome (Remain) and an unclear one (Leave). The reason I believe "Leave" is an unclear situation is that there is no definition of what leaving the EU meant in detail. Norway is not in the EU, but is a member of the EEA. Is this what is meant by "Leave", but what is the EU27 wouldn't accept that for the UK? What if they required the UK to withdraw from all EU-related status?
To me, the sensible way forward would be:

1. For the UK government to informally negotiate a binding offer of an exit agreement without notifying the Council under Art 50. A binding referendum on "stay in the EU; accept this treaty exit agreement" could then be held. At that point the lies on things like immigration, incl. free movement (into the UK of EU citizens) and funding (what about that 350m pounds Johnson, Gove and Farage?) could be held. It would also be possible at that point to have separate referenda in each of the four constituent nations of the UK with

a subsidiary question; if the UK as a whole decides to leave, stay in the EU as a newly independent nation.

REPLY

Pingback: A Constitutional Solution to this Constitutional Crisis – LaPSe of Reason

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Pingback: What is sufficient to constitute an Article 50 decision to leave the EU? – Aberdeenunilaw

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Mike Scott

28th June 2016 at 10:08

If you want to know what happens next, I think we should be looking at Article 48. Article 50 seems to be unusable, but Article 48 offers an alternative route where they can't refuse to engage entirely.

REPLY

Athene

28th June 2016 at 11:57

Avery useful article to those of us on the outside of the Uk and with only basic understanding of international human rights law. Thank you

REPLY

TonyB

28th June 2016 at 12:12

David

good to see your website back on the air, thanks for the interesting posts.

I am not a lawyer so I am still a bit confused about the issue of sovereignty. I *do* trust experts though so could someone tell me the flaw(s) in the following reasoning.

The argument seems to be that Brexit cannot 'take back our sovereignty' because we never lost it. This seems to be based, ultimately, on the fact that parliament gave the EU the powers that it has, and gave EU laws the weight that they have, by passing the 1972 European Communities Act. Since the UK parliament has the power to repeal that act whenever it chooses then it is sovereign. In other words the UK parliament is sovereign because it can choose to leave the EU.

However, we now seem to be saying that in the light of the referendum, push has come to shove, and many people think that we should not (will not) make the article 50 declaration because the consequences for the UK would be too awful for any responsible politician to do it. This means that the UK will remain in the EU. So it is not actually possible for us to leave, and if it is that way now then (for all practical purposes) it is impossible for us to leave ever. If it is not possible for us to ever leave then is parliament still sovereign? It may, in theory, be in its power to repeal the 1972 act, but if it could never do it in practice then isn't its sovereignty a fiction.

This appears to suggest that if we leave the EU then our parliament is sovereign but we will possibly suffer economic damage in the short term. Whereas if we remain parliament is not sovereign and we will possibly be damaged at a time and in a manner of someone elses choosing, because we will have no way to stop a gradual (but monotonically advancing) ever closer union?

REPLY

Mike Scott

28th June 2016 at 20:09

There are all kinds of things that Parliament can't in practice do, not because they are legally prohibited but because they're really stupid ideas. It can't give everyone £1 million. It can't ban imports altogether. It can't launch a mission to relocate the population of the UK to Mars. The fact that it can't in practice do these things is not a limitation on its sovereignty, and so if leaving the EU turns out to be in the same category, that's also not a limitation on our sovereignty. It only affects our sovereignty if the restriction on our ability to do it is legal, not practical.

REPLY

TonyB

29th June 2016 at 20:46

Thanks for the reply. Sorry, my question was not terribly well phrased.
I understand the point that just because something can't be done by parliament that isn't a limitation on it's sovereignty. Your examples are clearly instances of that, however isn't the point that nothing rests on parliament's ability to do those things?
With regard to the EU: the supremacy of its laws is a legal restriction on what our parliament can do, and would limit its sovereignty were it not for parliament's ability to repeal the European Communities Act. (even if it never chooses to do that, it could do, therefore parliament is sovereign)
If we remain a member of the EU because the economic consequences of leaving are so bad as to make it impossible to ever leave, haven't we lost sovereignty *not* because we cannot leave the EU per se, but because *being able* to do so is what underpins our parliament's sovereignty despite the supremacy of EU laws under the treaty?

REPLY

George Trevelyan

28th June 2016 at 12:46

https://www.theguardian.com/commentisfree/2016/jun/27/stop-brexit-mp-vote-referendum-members-parliament-act-europe

Is Geoffrey Robertson's view, reported in yesterday's Guardian and Independent, that Art 50's implementation requires an Act of Parliament, agreed by both houses, relevant to this discussion?

REPLY

Pingback: Write to your MP now to make sure Parliament decides Britain's future | The Chaos Chronicles

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Guel

29th June 2016 at 06:44

Can someone please explain why the Leavers are reacting this way, with such arrogance? I have never seen such a disdain against people, with their : you lost, get a grip, you can't reverse what happen.

I do understand that most of it was a vote of protest and not really to leave, I know that there's always going to be a part of the population who are extremes. What I don't get is that there's no place to discuss this is not right, like a fatality.

IT'S Not BeCause you WIN that you are RIGHT….,It's not because you win that you are

right…

History is full of errors like this; so, saying that you have to get on with it, is like being in your worst nightmare: paralysed and stuck, while seeing your life going on without you.

Plus, how on earth can you think this is a good victory when around the world the ONLY persons that said it's a good think are extreme parties and racists people?

I don't understand and lost.

REPLY

Matt Langley

29th June 2016 at 14:37

What about the Act that took us in? Wouldn't that to be repealed or replaced by a majority vote in the Commons and Approved by the Lords? Pretty sure the Royal Prerogative can't override an Act of Parliament. They would have thought of that when agreeing the Magna Carte?

REPLY

Pingback: More Brexit Thoughts / Zen Mischief

M. MacInnes

1st July 2016 at 18:48

A strong article, but the first sentence is completely wrong. Law is an essential aspect of

politics and part of the framework in which politics takes place.

REPLY

Pingback: EJIL: Talk! – ‘Brexit’, Article 50 TEU and the Constitutional Significance of the UK Referendum

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Pingback: The Brexit Referendum Through a Behavioural Lens | The Ripple Effect

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Structure of the courts & tribunal system

Our courts system is complicated and – in places – confusing, because it has developed over 1,000 years rather than being designed from scratch.

Different types of case are dealt with in specific courts: for example, all criminal cases will start in the magistrates' court, but the more serious criminal matters are committed (or sent) to the Crown Court. Appeals from the Crown Court will go to the High Court, and potentially to the Court of Appeal or even the Supreme Court.

Civil cases will sometimes be dealt with by magistrates, but may well go to a county court. Again, appeals will go to the High Court and then to the Court of Appeal – although to different divisions of those courts.

The tribunals system has its own structure for dealing with cases and appeals, but decisions from different chambers of the Upper Tribunal, and the Employment Appeals Tribunal, may also go to the Court of Appeal.

Structure of the courts & tribunal system

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The courts structure covers England and Wales; the tribunals system covers England, Wales, and in some cases Northern Ireland and Scotland.

The diagrams in the links below show the routes taken by different cases as they go through the courts system, and which judges deal with each.

Further information

The courts of England and Wales updated July 2015

Tribunals Structure Chart updated September 2016

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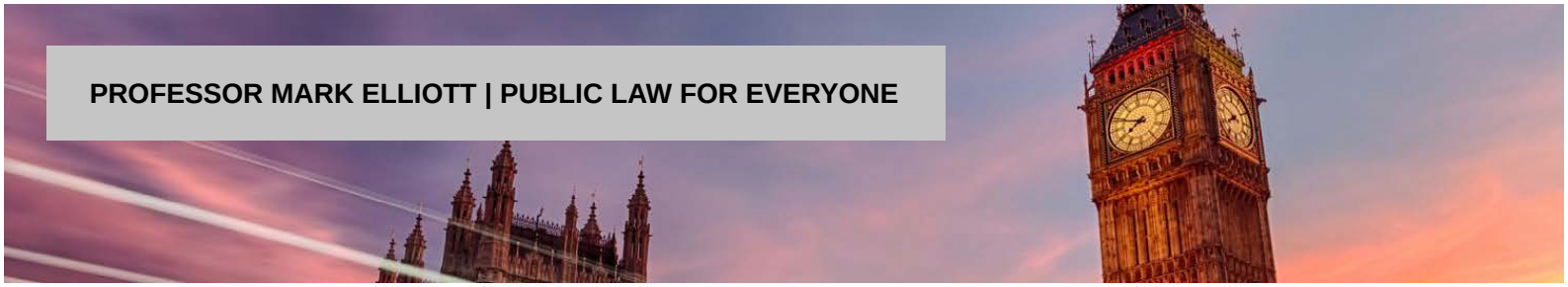

POSTED JUNE 30, 2016 / CONSTITUTIONAL LAW

Brexit | On why, as a matter of law, triggering Article 50 does not require Parliament to legislate

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In his resignation statement, David Cameron took it to be the case that triggering the UK's formal withdrawal from the EU under Article 50 of the Treaty on European Union is a matter for the Prime Minister (or, more specifically, the *next* Prime Minister). Article 50, about which I have written in another post, provides that once a Member State has decided to withdraw from the EU, it must communicate its intention to leave to the European Council, thereby triggering a two-year negotiation period. A great deal has been written recently about *when* — and even

Public Law for Everyone is written by Mark Elliott. Mark is Professor of Public Law at the University of Cambridge, a Fellow of St Catharine's College, Cambridge, and Legal Adviser to the House of Lords Select Committee on the Constitution. *Public Law for Everyone* features a combination of posts aimed at general readers, with the intention of explaining the real-world

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whether — the UK should trigger Article 50, but the concern of this post is *who* gets to trigger it.

What is abundantly clear is that the Article 50 starting gun can be fired only by a decision taken by the UK, in accordance with its national constitutional arrangements, to withdraw from the EU. What is also abundantly clear is that the "decision" made by the people of the UK in the referendum is not a "decision" for the purpose of Article 50. The European Parliament, in a resolution adopted on 28 June 2016, therefore fell into error when it said that if — as it thought he should — the Prime Minister were to notify this week's European Council of the "outcome" of the referendum, that "notification" would "launch the withdrawal procedure". By eliding the "outcome" of the referendum and an Article 50 "decision" to withdraw, the European Parliament implied that the Prime Minister would initiate formal withdrawal merely by communicating the referendum result to the Council. That is wrong.

Putting to one side the European Parliament's incorrect take on this, three possibilities remain in respect of who gets to make the Article 50 decision, thereby triggering the withdrawal process:

(1) The Prime Minister, by exercising prerogative power

(2) Parliament, by enacting primary legislation

(3) The Government, by making an Order in Council under powers conferred by the

implications of public law, posts for students who are grappling with the subject, and more specialised posts that reflect Mark's research interests and projects. Information about Mark's research and publications can be found on his website.

On the sidelining of Parliament: The Brexit Secretary's statement to the Commons

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The Government's

European Communities Act 1972 ("ECA").

This post argues that the best view is the first one. The reasons for preferring (1) over (2) are explored below. Let me begin, however, with (3).

Is section 2(2) of the ECA an exclusive statutory basis for triggering Article 50?

In an intriguing post published on the *UK Constitutional Law Blog*, Adam Tucker argues that those who think the key question is whether option (1) or (2) is correct are overlooking a crucial detail in the European Communities Act 1972 — specifically, section 2(2). The relevant part of it provides that:

> Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by order, rules, regulations or scheme, make provision …
>
> (a) for the purpose of implementing any EU obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties

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to be exercised ...

The burden of Tucker's argument is that Article 50 vests in the UK a right to leave the EU that it previously lacked; that that right is a relevant right for the purpose of section 2(2)(a); and — crucially — that section 2(2)(a) forms the exclusive mechanism whereby the UK can take advantage of that right. (The exclusivity argument is founded upon an application of the *De Keyser* principle, which is examined further below when considering the relative merits of approaches (1) and (2).) It follows, it is suggested, that the only way for Article 50 to be triggered is by making an Order in Council under section 2(2) — which would take the form of a statutory instrument that would be subject to parliamentary override.

There are two objections to this. The first is that it is far from clear that the right which the UK would be exercising when triggering Article 50 is a right that it enjoys "under or by virtue of the Treaties". It is at least arguable — but, I accept, not clear — that Article 50 merely constitutes a mechanism or process for the exercise of a right that the UK already had, and continued to have independently of Article 50, in general international law. If this is so, then Tucker's argument fails because triggering Article 50 would not involve the exercise of a right arising "under or by virtue of" the EU Treaties.

There is, however, a second, and more fundamental, reason to doubt the argument that section 2(2) forms an exclusive — or,

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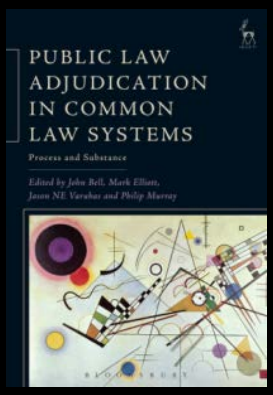
indeed, *any* — statutory basis for triggering Article 50. It seems to me to be quite clear that the purpose of section 2(2) is to enable the UK to make secondary legislation when the making of such legislation is necessary in order to enable rights under the Treaties to be exercised or in order to implement EU obligations or otherwise give effect to the EU Treaties. Indeed, section 2 is headed "General Implementation of Treaties". There is, however, no need to resort to section 2(2) when domestic law already permits rights under the Treaties to be exercised — just as there is no need to resort to section 2(2) in order to implement Treaty obligations that are already taken care of by existing UK law. In such circumstances, the implementation powers conferred by section 2(2) are redundant.

It follows that section 2(2) does not bite in relation to Article 50. If there had been no prerogative power to trigger Article 50, section 2(2) could have been used to create a domestic power to do so. But because there is already a domestic power to trigger Article 50, section 2(2) is beside the point. In other words, there is no need to make UK secondary legislation enabling the UK to exercise whatever right Article 50 confers, because HM Government already has a legal basis for exercising that right — viz the royal prerogative. Section 2(2) is permissive ("may") in relation to the making of secondary legislation in respect of both rights and obligations because it will sometimes simply not be necessary to use section 2(2) thanks to pre-existing position in UK law. Section 2(2) is therefore not an exclusive statutory mechanism for the exercise of the

Common Law Systems: Process and Substance (Hart Publishing, 2016) is a collection of essays arising from the inaugural Cambridge Public Law Conference. It is co-edited by John Bell, Mark Elliott, Jason Varuhas and Philip Murray.



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Article 50 power; it is a permissive statutory power that could be used to create a statutory basis for the exercise of the Article 50 power. But there is no *obligation* to use the section 2(2) power, and no *need* to do so, because a prerogative mechanism for the exercise of the Article 50 power already exists.

Does the ECA displace the relevant prerogative power?

If, as I think it must, approach (3) is to be put to one side, then the choice is between (1) (prerogative) and (2) (primary legislation). A number of commentators have recently argued in favour of (2), contending, in effect, that the ECA 1972, along with other relevant EU-related domestic legislation, displaces the prerogative power that the Prime Minister would otherwise have been able to use to trigger Article 50. For instance, Scott Styles writes:

> In Britain it is Parliament which is sovereign, not the Prime Minister or even the whole Cabinet. The UK entered the EU by means of the European Communities Act 1972. The repeal of an Act of Parliament may only be done by a subsequent Act of Parliament to that effect. As the effect of an Article 50 notification is to trigger a two year timeline at the

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end of which that even UK would automatically cease to be an EU Member State that would be to nullify the effect of the 1972 Act as a matter of EU law. But as a matter of British law a statute may only be repealed by another statute. It therefore follows as a matter of British law that to have sufficient authority a Prime Minister would need that authority of an Act of Parliament to that effect giving him the authority to make an Article 50 notification and prospectively repealing the 1972 Act with effect from two years of making the notification.

This analysis is, to my mind, problematic, not least because it oversimplifies the way in which international (and EU) law interacts with domestic law. The UK became bound in international law by EU law as a result of an exercise by HM Government of its treaty-making prerogative. It was then necessary for pertinent EU law measures to be incorporated by Act of Parliament into domestic law. That was done via the ECA 1972. That Act, however, simply assumes binding EU obligations: it does not make them permanent or transfer the executive's function in contracting those obligations to Parliament. Just as it is inaccurate, or incomplete, to say that the UK joined the EU by means of enacting the ECA 1972, that Act's repeal is not a necessary component of

Brexit, if Brexit is understood to mean the extrication of the UK from its EU Treaty obligations. The argument that by triggering Article 50 a Prime Minister would be taking upon herself or himself a power to "prospectively repeal[]" the ECA 1972 — and thereby asserting authority to do something that she or he lacked — is therefore incorrect.

However, a more subtle version of this argument is advanced by Nick Barber, Tom Hickman and Jeff King in a fascinating post. The core of their argument is that any prerogative power that would otherwise be available to the Government in order to make an Article 50 withdrawal decision is displaced by legislation enacted by Parliament, including the European Communities Act 1972 — which, among other things, enables directly effective EU law to have legal effect in the UK without the need for further domestic legislation. Barber *et al* base this contention on their understanding of how legislation and prerogative power interact. The general principle, as they correctly say, is that "statute beats prerogative" — a proposition that follows from the fact that Parliament is sovereign. However, statute can only "beat" prerogative if there is a relevant conflict between the two. In order to explore whether there is such a conflict, it is helpful to examine three key cases.

Case of Proclamations

In the first, the *Case of Proclamations*, Sir Edward Coke famously said that

> the King by his proclamation … cannot change any part of the common law, or statute law, or the customs of the realm.

Giving notice under Article 50 does none of these things. Clearly, it does not change the common law. But equally, it does not change statute law, not least because — as noted above — withdrawal from the EU pursuant to the Article 50 process does not require or purport to effect any alteration to the ECA 1972. Certainly, an Article 50 process may, some way down the line, alter the *effect* of the ECA 1972 — by causing it to bite upon no or, in the event of a relevant deal with the EU, fewer EU rights and obligations — but using the prerogative to trigger Article 50 implies no assertion that prerogative power can be used to "change statute law". It might, of course, be argued that this prohibition upon using the prerogative to "change statute law" should be read more broadly — a point that is considered below in relation to the third of our three cases. For the time being, it is sufficient to note that the use of prerogative power so as to adjust or extinguish Treaty obligations to which domestic legislation refers is some distance from the sort of mischief that Sir Edward Coke had in mind in the *Case of Proclamations*.

De Keyser

The second case is *De Keyser*, in which the

Appellate Committee of the House of Lords had to determine whether the Government could use a broad prerogative power to requisition property, rather than using a statutory power which allowed the same but imported an obligation to pay compensation. The Appellate Committee held that only the statutory power could be used. Explaining this conclusion, Lord Dunedin said:

> Inasmuch as the Crown is a party to every Act of Parliament it is logical enough to consider that when the Act deals with something which before the Act could be effected by the prerogative, and specially empowers the Crown to do the same thing, but subject to conditions, the Crown assents to that, and by that Act, to the prerogative being curtailed.

The principle established by *De Keyser* is clear. If legislation grants the Government a power to do something which the Government is also empowered to do under the prerogative, then the statutory power displaces the prerogative power if the statutory power is subject to conditions to which the prerogative power is not. That ensures that the Government is unable to circumvent legislation designed to safeguard the position of individuals by ignoring such legislation and instead relying upon broader

prerogative powers.

But this principle reveals no relevant tension between prerogative and legislation in the Article 50 context. The ECA 1972 is not concerned with the extent of the Government's powers to conduct foreign policy, either generally or specifically in relation to the extrication of the UK from its obligations under the EU Treaties (whether by means of Brexit or something falling short of that). And while it is true that the European Union Act 2011 regulates the exercise of the prerogative treaty-making power in certain EU-related respects, none of those respects is relevant to the present discussion. In the Article 50 context, there simply is not the form of specific overlap between statute and prerogative that is evident in either the *De Keyser* or *Fire Brigades Union* cases.

Fire Brigades Union

In the *Fire Brigades Union* case, the question was whether the prerogative could be used to establish a criminal injuries compensation scheme, given that such a scheme — a more expensive one — was already on the statute book albeit not yet in force. The Appellate Committee of the House of Lords concluded that the prerogative could not be used in such a way. As Barber *et al* point out, in this case Lord Browne-Wilkinson said that

> the present day, prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament as expressed in a statute and, to an extent, to pre-empt the decision of Parliament whether or not to continue with the statutory scheme.

Barber *et al* go on to acknowledge that the scope of the principle for which the *Fire Brigades Union* case stands is contestable. A narrow reading of the case, they say, "would limit its application to situations where the statute proscribes in detail how Government must act, but where the Government circumvents that guidance by recourse to the prerogative". Such a reading of the case plainly does not establish that the prerogative cannot be used to trigger Article 50.

It is then argued that on a broader reading the principle is that "it is not open to Government to turn a statute into what is in substance a dead letter by exercise of the prerogative powers; and that it is not open to the Government to act in a way which cuts across the object and purpose of an existing statute". And it is contended by Barber *et al* that, on this reading of the *Fire Brigades Union* case, legislation should be taken to have precluded the use of prerogative power to trigger Article 50, such that an Act of Parliament would be necessary to start the Article 50 process.

This forms the strongest strand of the

argument put forward by Barber *et al*, and I do not reject out of hand the possibility that a court, presented with the crucible of legal, constitutional democratic arguments that would be in play were this matter ever to be tested, might take such an expansive view of legislation's capacity to delimit the prerogative as to make the argument tenable. Nor, however, do I reject the possibility that a court would do the opposite bearing in mind the macro-political nature of the issues at stake.

In any event, there are two aspects to the argument advanced by Barber *et al* that lead me to the conclusion that the better view is that the prerogative remains. First, it is not the case that triggering Article 50 amounts to the Government's turning the ECA 1972 into a dead letter, since the outcome of any Article 50 process cannot be known. Such a process might result in an agreement that the UK should remain a member of the EU on altered terms, such that the ECA 1972 would continue to bite upon a substantial set of EU-related matters, or that the UK should become a member of the European Economic Area, in which case a substantial corpus of EU law, upon which an amended ECA 1972 might continue to bite, would remain pertinent to the UK. Equally, an Article 50 process would ultimately amount to nothing if it were to be aborted. (It is plain that it can be aborted by agreement, and arguable that the UK could abort it unilaterally.)

Second, and more fundamentally, it is far from clear that invoking Article 50 would — to use Lord Browne-Wilkinson's words in the *Fire Brigades Union* case — "frustrate the will of Parliament" *vis-à-vis* the ECA 1972.

Whether invoking Article 50 would have the effect of frustrating the will of Parliament depends on what it is that we deem Parliament to have been trying to do when it enacted the ECA 1972. The Act is centrally concerned to ensure that "such rights, powers, liabilities, obligations" and so on as are "*from time to time* provided for by or under the Treaties" have effect in UK law. The Act does not, however, confer any *particular* rights upon anyone. Instead, the purpose of the Act — or of the will of Parliament in enacting it — can be understood to be enabling the UK to discharge such obligations as it has from time to time under the EU Treaties, by enabling EU law to have such effect in the UK as those Treaties require. The ECA 1972 leaves entirely open the possibility that those Treaties might cease to so require. If the EU Treaties were no longer to require EU law to have effect in the UK because the UK was no longer a party to them, that would therefore not amount to a frustration of the purpose of the ECA 1972. Rather, the Act would continue to do the job for which it was enacted, namely giving such effect to EU law in the UK as the Treaties might require at any given point in time. A similar analysis can be applied to the European Parliamentary Elections Act 2002, to which Barber *et al* also refer, the purpose of which can best be understood as the fulfilment of such Treaty obligations in respect of the European Parliament as the UK had when the legislation was enacted.

Another way of looking at this is to acknowledge that the Government and Parliament played different, and complementary, roles in securing EU

membership, and that they will (or may) play different, and complementary, roles in terminating such membership. Just as it was the UK Government, exercising prerogative power, that caused the UK to be bound by EU Treaty obligations, so it is for the Government, using prerogative power, to extricate the UK from those obligations — including by triggering the Article 50 extrication process itself. Meanwhile, just as it was for Parliament to enact such domestic legislation as EU membership required (such as the ECA 1972), it is equally for Parliament to enact any domestic legislation that Brexit may in due course require. On this analysis, no tension between the ECA 1972 and the prerogative arises because they concerned with distinct spheres of activity, the one operating on the plane of diplomacy and international law, and the other operating on the plane of domestic law.

This is not to deny that domestic law could not have the effect of curtailing the prerogative, but as legislation that simply facilitates discharge of Treaty obligations entered into under the prerogative, the ECA 1972 does not amount to a statute that cuts across the prerogative. Indeed, if it were the case that legislation giving effect to Treaty obligations were to extinguish any prerogative power to renegotiate or extricate the UK from such obligations, it would be necessary to enact legislation every time the Government wished to secure such renegotiation or extrication — and that simply does not happen. The fundamental point, then, is that legislation — like the ECA 1972 — facilitating the discharge of treaty obligations does not occupy the same legal

space as, and therefore does not conflict with, the Government's prerogative power to contract, renegotiate or extricate the UK from treaty obligations.

Closing remarks

Just because, on my analysis, the Prime Minister can trigger Article 50 without reference to Parliament, it does not follow that that would be a wise or sensible thing to do. Triggering Article 50 would be a highly significant step, given that it would open up the possibility of — even though, as discussed above, it certainly would not render inevitable — the wholesale departure of the UK from the EU. In such circumstances, the case for parliamentary involvement is strong. Indeed, in other contexts — most notably the use of the prerogative to deploy the armed forces abroad — there is an increasing expectation, and arguably a constitutional convention, concerning parliamentary involvement. In the Article 50 context, there is no equivalent established convention that requires parliamentary involvement, but there is certainly a normative argument in favour of such involvement that could in due course form the basis of a convention.

Even if one dismisses the possibility of "ignoring" the result of the referendum, much remains to be decided — including about the UK's interests would best be served by triggering Article 50 or seeking to proceed in some other manner — and there are excellent democratic reasons for arguing that Parliament should play a full part in those deliberations. As we are rapidly discovering,

the volume and complexity of the issues left unresolved by the binary view expressed by the electorate is immense, and Parliament has a crucial role to play in shaping the way forward. For all that the UK has experimented with direct democracy through the holding of a referendum on EU membership and on other constitutional matters, the UK remains, fundamentally, a parliamentary democracy, and it cannot plausibly be argued that the referendum substitutes for proper parliamentary involvement.

But such normative arguments are a distinct issue from the question whether Parliament, as a matter of law, *must* be involved at the outset, by way of enacting primary legislation firing the Article 50 starting gun. For the reasons given in this post, the better view is that Article 50 can be invoked by the Prime Minister using prerogative power, without the involvement of Parliament.

I am grateful to a number of academic colleagues, including Catherine Barnard, Lorand Bartels, David Feldman, Hayley Hooper, Aileen McHarg, David Mead, Philip Murray, Gavin Phillipson and Alison Young, and to Jack Williams, a pupil barrister at Monckton Chambers, for their invaluable comments on and discussion of matters related to this post. The usual disclaimer applies.

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Speech

EU referendum outcome: PM statement, 24 June 2016

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From:	Prime Minister's Office, 10 Downing Street and The Rt Hon David Cameron MP
Delivered on:	24 June 2016 (Transcript of the speech, exactly as it was delivered)
Location:	Downing Street, London
First published:	24 June 2016
Last updated:	28 June 2016, see all updates
Part of:	EU referendum

Prime Minister David Cameron made a statement in Downing Street on the outcome of the referendum on the UK's membership of the European Union.

00:00:00 - + Mute

The country has just taken part in a giant democratic exercise – perhaps the biggest in our history. Over 33 million people – from England, Scotland, Wales, Northern Ireland and Gibraltar – have all had their say.

We should be proud of the fact that in these islands we trust the people with these big decisions.

We not only have a parliamentary democracy, but on questions about the arrangements for how we are governed, there are times when it is right to ask the people themselves, and that is what we have done.

The British people have voted to leave the European Union and their will must be respected.

I want to thank everyone who took part in the campaign on my side of the argument, including all those who put aside party differences to speak in what they believed was the national interest.

And let me congratulate all those who took part in the Leave campaign – for the spirited and passionate case that they made.

The will of the British people is an instruction that must be delivered. It was not a decision that was taken lightly, not least because so many things were said by so many different organisations about the significance of this decision.

So there can be no doubt about the result.

Across the world people have been watching the choice that Britain has made. I would reassure those markets and investors that Britain's economy is fundamentally strong.

And I would also reassure Brits living in European countries, and European citizens living here, that there will be no immediate changes in your circumstances. There will be no initial change in the way our people can travel, in the way our goods can move or the way our services can be sold.

We must now prepare for a negotiation with the European Union. This will need to involve the full engagement of the Scottish, Welsh and Northern Ireland governments to ensure that the interests of all parts of our United Kingdom are protected and advanced.

But above all this will require strong, determined and committed leadership.

I am very proud and very honoured to have been Prime Minister of this country for 6 years.

I believe we have made great steps, with more people in work than ever before in our history, with reforms to welfare and education, increasing people's life chances, building a bigger and stronger society, keeping our promises to the poorest people in the world, and enabling those who love each other to get married whatever their sexuality.

But above all restoring Britain's economic strength, and I am grateful to everyone who has helped to make that happen.

I have also always believed that we have to confront big decisions – not duck them.

That's why we delivered the first coalition government in 70 years to bring our economy back from the brink. It's why we delivered a fair, legal and decisive referendum in Scotland. And why I made the pledge to renegotiate Britain's position in the European Union and hold a referendum on our membership, and have carried those things out.

I fought this campaign in the only way I know how – which is to say directly and passionately what I think and feel – head, heart and soul.

I held nothing back.

I was absolutely clear about my belief that Britain is stronger, safer and better off inside the European Union, and I made clear the referendum was about this and this alone – not the future of any single politician, including myself.

But the British people have made a very clear decision to take a different path, and as such I think the country requires fresh leadership to take it in this direction.

I will do everything I can as Prime Minister to steady the ship over the coming weeks and months, but I do not think it would be right for me to try to be the captain that steers our country to its next destination.

This is not a decision I have taken lightly, but I do believe it is in the national interest to have a period of stability and then the new leadership required.

There is no need for a precise timetable today, but in my view we should

aim to have a new Prime Minister in place by the start of the Conservative party conference in October.

Delivering stability will be important and I will continue in post as Prime Minister with my Cabinet for the next 3 months. The Cabinet will meet on Monday.

The Governor of the Bank of England is making a statement about the steps that the Bank and the Treasury are taking to reassure financial markets. We will also continue taking forward the important legislation that we set before Parliament in the Queen's Speech. And I have spoken to Her Majesty the Queen this morning to advise her of the steps that I am taking.

A negotiation with the European Union will need to begin under a new Prime Minister, and I think it is right that this new Prime Minister takes the decision about when to trigger Article 50 and start the formal and legal process of leaving the EU.

I will attend the European Council next week to explain the decision the British people have taken and my own decision.

The British people have made a choice. That not only needs to be respected – but those on the losing side of the argument, myself included, should help to make it work.

Britain is a special country.

We have so many great advantages.

A parliamentary democracy where we resolve great issues about our future through peaceful debate.

A great trading nation, with our science and arts, our engineering and our creativity respected the world over.

And while we are not perfect, I do believe we can be a model of a multi-racial, multi-faith democracy, where people can come and make a contribution and rise to the very highest that their talent allows.

Although leaving Europe was not the path I recommended, I am the first to praise our incredible strengths. I have said before that Britain can survive outside the European Union, and indeed that we could find a way.

Now the decision has been made to leave, we need to find the best way,

and I will do everything I can to help.

I love this country – and I feel honoured to have served it.

And I will do everything I can in future to help this great country succeed.

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From:

Prime Minister's Office, 10 Downing Street

The Rt Hon David Cameron MP

Part of:

EU referendum

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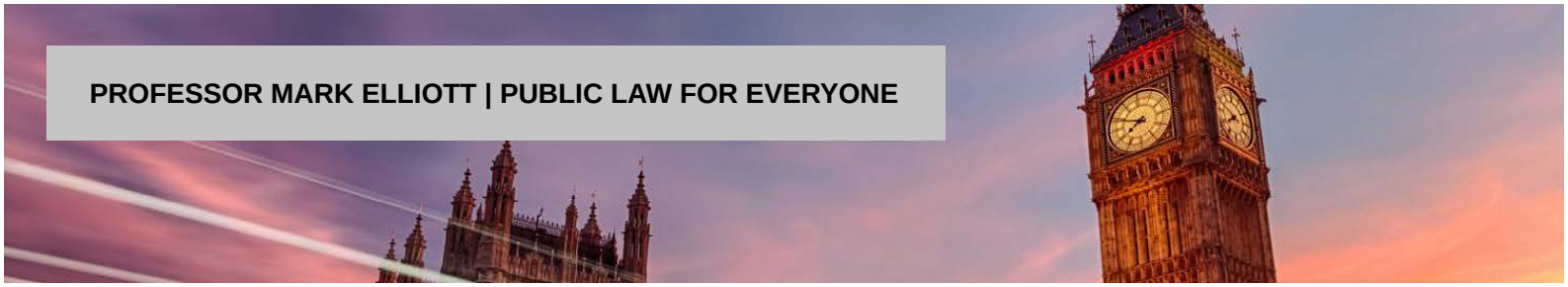

POSTED JUNE 26, 2016 / CONSTITUTIONAL LAW

Brexit | Can the EU force the UK to trigger the two-year Brexit process?

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There has been a great deal of discussion over the last couple of days about whether the European Union can force the United Kingdom to begin the two-year exit process set out in Article 50 of the Treaty on European Union. So: can the EU make the UK do that? The short answer is "no". Below is a slightly longer answer, and an explanation of why the UK Government – legally, at least – is in the driving seat on this matter.

Although there is more than one legal basis on which Brexit could be accomplished, the most likely mechanism is Article 50 of the Treaty on European Union. This provision has been much discussed in recent days, but

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the discussion has not always been on the basis of an accurate understanding of what Article 50 actually *says* and *means*. Let's start, then, with the actual text of Article 50. For now, the most salient parts are paragraphs 1 to 3. (The italics are mine.)

> 1. Any Member State may decide to withdraw from the Union *in accordance with its own constitutional requirements.*
>
> 2. A Member State *which decides* to withdraw *shall notify* the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union ...
>
> 3. The Treaties shall *cease to apply* to the State in question from the date of entry into force of the withdrawal agreement or, failing that, *two years after the notification referred to in paragraph 2*, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

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On Friday, Donald Tusk, the President of the European Council, said that he expected the UK to trigger this process "as soon as possible". But that may not be in the UK's interests, not least because of the hiatus that is caused by David Cameron's decision to resign. He clearly envisaged in his referendum statement that negotiations with the EU would not formally begin until his successor was in place in the autumn. The question, then, is whether Article 50 allows the UK to insist upon its preferred timetable.

There are two fundamental points about Article 50 that help us to answer that question. The first is that Article 50 is wholly irrelevant unless and until a Member State has made a *decision in accordance with its own constitutional arrangements* to leave the EU. The second point is that once such a decision has been taken there is an *obligation to notify the EU* at which point the departing Member State loses control of the timetable: exit is (unless the EU agrees otherwise) irrevocably set for two years from the date of the notification.

The crucial question, therefore, is whether a "decision" has been made in the sense that Article 50 uses that term – to which the answer is "no". The outcome of the referendum is not a decision for the purposes of Article 50. That is so because the referendum – legally speaking – was purely advisory. The legislation that allowed the referendum to take place did not invest the outcome of the referendum with any sort of legal effect. The UK Government is therefore not legally obliged by the referendum to

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trigger the Article 50 process, either at any particular point in time or at all. Nor does anything else obliged it to do so. Whether – and, if so, when – to trigger Article 50 is a matter for the discretion of the UK Goverment using its inherent powers – known as "prerogative powers" – to conduct UK foreign policy. It follows that, as far as the UK's "own constitutional arrangements" (as Article 50 puts it) are concerned, no "decision" has yet been taken.

The referendum, then, is not the "decision" that fires the Article 50 starting gun. But what about the conversations that the Prime Minister will inevitably have when he attends this week's European Council meeting? By talking about Brexit, will Cameron be notifying the Council of the UK's decision to leave, thereby – as has been suggested by one commentator over the weekend – inadvertently triggering Article 50? No he will not – because unless and until Her Majesty's Government formally makes a decision within the meaning of Article 50, any conversations that the Prime Minister has cannot amount to notification of that decision – quite simply because there is no decision to be notified.

The upshot is that although the EU may bring great *political* pressure to bear upon the UK to get on with formal Brexit negotiations, there is nothing it can *legally* do so as to force the pace.

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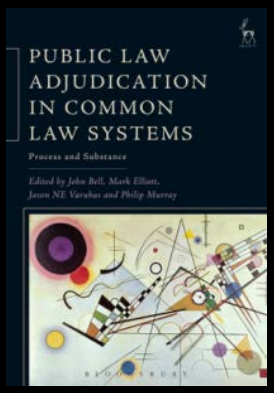

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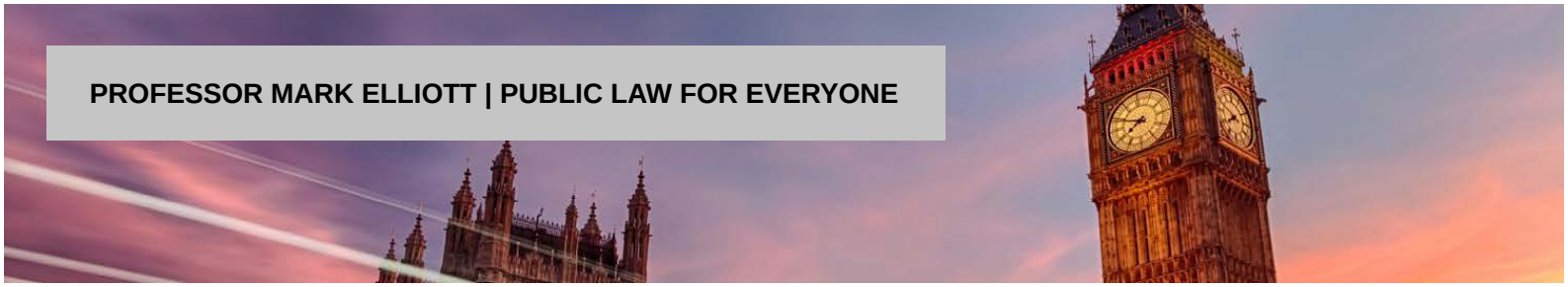

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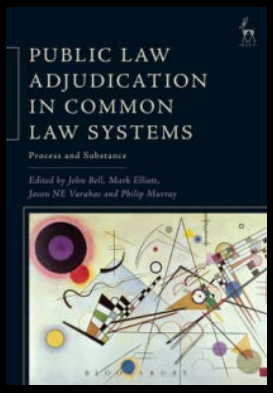

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DAVID PANNICK, QC

Why giving notice of withdrawal from the EU requires act of parliament

David Pannick, QC

June 30 2016, 12:01am, The Times

David Pannick: “Article 50 is a notification of ‘withdrawal’ and does not allow for turning back”

Leaving the European Union raises the most challenging questions of constitutional law in modern British legal history. The first of them is whether parliamentary approval is needed before the United Kingdom can give notification of an intention to leave. The answer is that an act of parliament is required.

Article 50 of the EU Treaty on European Union says that “any member state may decide to withdraw from the union in accordance with its own constitutional requirements”. Once Article 50 is invoked by the withdrawing state, there is a maximum of two years for the “arrangements for withdrawal” to be

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The referendum result is binding

Invoking Article 50: the Law, the Constitution and Politics

- **The legal power to invoke Article 50 of the Treaty on European Union is in law a prerogative power vested in the Crown, which may be exercised by government ministers without the need for authorisation or consent from Parliament. There is no credible legal argument supporting the legal challenge being advertised by law firm Mishcon de Reya.**

- **Constitutionally the referendum result was decisive and binding and not just advisory. The referendum result not merely authorises but positively mandates the government to exercise its legal power to give notice under Article 50.**

- **As a matter of democratic politics it is astonishing that so many people should apparently regard it as legitimate to engage in activities designed to frustrate the expressed will of the British people. Sadly, this is a symptom of the serious damage which 40 years of membership has done to our sense of national cohesion. This damage can begin to heal once we leave.**

Moves to undermine and block the referendum result

Since the result of the Brexit referendum was announced on 24 June 2016, it has become clear that there are significant forces in this country who do not accept the democratic result. There have been both legal and political moves in certain quarters to seek to delay, frustrate, re-run or somehow ultimately reverse the decision taken by the people of the United Kingdom.

One of those moves has been a legal action bugun by the law firm Mishcon de Reya on behalf of undisclosed clients, whose stated aim is "*to ensure the UK Government will not trigger the procedure for withdrawal from the EU without an Act of Parliament*." Mishcons website

The stated aim of this legal action is to "*protect the UK Constitution and the sovereignty of Parliament*". But there can be little question that its true aim is an attempt to block the implementation of the referendum result through using a pro-Remain majority in Parliament - particularly in the House of Lords - to frustrate the expressed will of the people. Indeed, the whole action is breath-takingly hypocritical: invoking professed concern for the sovereignty of Parliament in order to fetter and ultimately extinguish that sovereignty through continued membership of the EU.

Another move on the political front has been as online petition calling for a retrospective nullification of the referendum result and a re-run which states that:

> "We the undersigned call upon HM Government to implement a rule that if the Remain or Leave vote is less than 60% based on a turnout less than 75%, there should be another referendum."

It has been reported that that petition attracted 4 million signatures, but on 10 July 2016 it was formally rejected by the government.

A third move, this time a mixture of legal and political, has been a letter to the Prime Minister which claims to be signed by over 1,000 barristers. This calls for an Act of Parliament before the procedure is triggered under Article 50 of the Treaty on European Union for the withdrawal of the UK from the European Union, and for a Royal Commission to examine the consequences and report back before the vote is taken on such an Act. Again, there can be little doubt that this is not a serious attempt to enhance the workings of Parliamentary democracy, but rather an attempt to delay and frustrate the implementation of the decision of the British people for years in the hope that it can somehow be reversed.

This series of attacks on democracy raise a number of legal, constitutional and political issues, which will be addressed in depth in this article.

The law on invoking Article 50

Article 50 of the Treaty on European Union was inserted into that Treaty by the 2007 Lisbon Treaty. It is often (inaccurately) referred to as "Article 50 of the Treaty of Lisbon". It entitles any Member State to withdraw from the European Union and sets out (in broad outline) the procedure to be followed. Article 50(1) and the first sentence of Article 50(2) set out in very simple terms how the process of withdrawal is begun:

> "1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
>
> 2. A Member State which decides to withdraw shall notify the European Council of its intention. ..."

As paragraph 1 above confirms, the constitutional law of each Member State governs how that State shall take a decision to withdraw and who, under its national law, has power to take such a decision. The procedure by which this will done will vary from State to State. For example, where, as in the case of some States, membership of the EU has been embedded into the national constitution, it might be necessary to amend that constitution by some special procedure in order for the State to make a valid decision to withdraw.

The United Kingdom does not have a written constitution which spells out who has the power to take a decision to withdraw from the EU and communicate that decision to the European Council. Therefore, one starts by looking at the general law on who has the power to conclude and withdraw from international treaties. And the general rule is quite clear. Under the UK's constitution, it is the Crown (the

Queen acting under the Royal Prerogative in practice on the advice of government ministers) which has the power to enter into and withdraw from international treaties.

Before 2010, there was no legal requirement for Parliament to approve the ratification of treaties or even to be consulted, although there was a constitutional convention (the “Ponsonby rule”) under which the government undertook to lay treaties in front of Parliament 21 days before ratification. The Constitutional Reform and Governance Act 2010, sections 20 to 25, put the Ponsonby rule on a statutory footing and empowers the House of Commons (but not the House of Lords) to block the ratification of a treaty by passing a resolution against it.

Many international treaties contain provisions similar to Article 50 which allow notice to be given withdrawing from or terminating the treaty. The 2010 Act applies to the initial ratification of a treaty, but does not apply to the giving of a notice withdrawing from it or terminating it, or indeed to measures or decisions made under it (as made clear by section 25(2)). Accordingly, the giving of a notice of termination or withdrawal remains part of the prerogative powers of the Crown untrammelled by any legal requirement for the approval of Parliament.

Although the Crown has extensive powers over international treaties which as a matter of law can be exercised without reference to Parliament, it has no power to alter the internal laws of the United Kingdom. This can only be done by Parliament, or under specific powers granted by Parliament. This means that the Crown is in practice unable to ratify international treaties which contain obligations to alter the internal law of the United Kingdom without Parliament first having made the necessary changes in the law, or at least being very confident that Parliament will make the required changes, or it would end up in breach of its international treaty obligations.

It is sometimes loosely said that Parliament has “ratified” a treaty when it passes an Act which gives effect to a treaty in the UK’s internal law. But this is inaccurate - Parliament enacts the necessary changes in the law and the Crown then ratifies the treaty under its prerogative powers. They are separate acts, one by Parliament the law-maker, and the other by the Crown exercising its international treaty powers.

Parliament has made the necessary changes in the UK’s internal laws to give effect to the European Union treaties, mainly through the European Communities Act 1972. This was passed in 1972 in order to give effect to the Treaty of Rome which applied to the United Kingdom from 1 January 1973. Whenever the Treaty of Rome has been amended, Parliament has passed another Act amending the 1972 Act in order to give the necessary effect in the UK’s internal law to the European treaties as amended.

But the fact that the European Communities Act 1972 gives effect to the European treaties in UK internal law does not exclude the prerogative powers of the Crown in relation to the operation of those treaties on the international plane. And actions taken by the Crown on the international plane will have consequential effects of altering the law within the UK. For example, if a Minister votes in the Council of Ministers in favour of a Regulation which is directly applicable inside Member States, that Regulation will then alter internal UK law.

The giving of notice under Article 50(2) of the Treaty of European Union is an act on the international plane, which alters or affects the UK's international treaty obligations by bringing the UK's adherence to the EU treaties to an end after a maximum 2 year period. Clearly this will then produce a consequential effect in UK domestic law since once we leave the EU, its various laws and rules will cease to apply internally in the UK. But the primary effect is on the international plane, and the subsequent effect on domestic law is consequential.

Insofar as it is possible to understand the arguments put forward by Mishcons in their intended legal action, it would appear that they wish to argue that Parliament by enacting the 1972 Act has (by implication) restricted the exercise of the royal prerogative to prevent the Crown from giving notice under Article 50 without the consent of Parliament. The argument has to be based on implication because there is nothing in the express words of the 1972 Act or any Acts of Parliament which follow it which restrict the Crown's right to exercise this international treaty power.

There are however three answers to this argument.

First, there is no coherent or logical basis for arguing that Parliament has not impliedly restricted the exercise of the prerogative where a Minister of the Crown takes an action which increases EU powers, for example by voting for a new Regulation in the Council of Ministers, but arguing that Parliament has impliedly restricted the exercise of the prerogative power in case where (under Article 50) the exercise of the power results in a reduction EU powers. Such a claimed distinction appears to arise solely from the prejudices of those who seek to advance this argument rather than from any coherent logic or legal principle.

Secondly, the proposition that Parliament has impliedly restricted the exercise of prerogative powers under the European treaties has been rejected by the courts. In *R v Foreign Secretary ex parte Rees-Mogg* [1994] QB 552 (Lord Rees-Mogg's unsuccessful challenge against the ratification of the Maastricht Treaty), Lord Lloyd giving the judgment of the Queen's Bench Divisional Court rejected an argument that the European Communities Act 1972 impliedly restricted the exercise of the Royal prerogative under the European treaties. He said: "*When Parliament wishes to fetter the Crown's treaty-making power in relation to Community law, it does so in express terms, ...*"

Thirdly and conclusively, the argument that Parliament has impliedly restricted the prerogative power of the Crown under Article 50 is impossible to reconcile with the European Union (Amendment) Act 2008. That Act was passed to enable the UK to adhere to the Lisbon Treaty by adding it into the list of European treaties in section 1 of the European Communities Act 1972. As pointed out above, the Lisbon Treaty amended the Treaty on European Union by inserting Article 50 into it, as well as making a large number of other amendments to that Treaty and to the Treaty of Rome (which it renamed the Treaty on the Functioning of the European Union or "TFEU").

But nowhere in the 2008 Act in there any restriction upon the exercise of the Royal prerogative to give notice under Article 50. By contrast, section 5 of the 2008 Act imposed an explicit restriction on the Royal prerogative by requiring that any amendment of the founding treaties under the Ordinary Revision Procedure of

Article 48(2) to (5) of the Treaty on European Union cannot be ratified unless approved by Act of Parliament. In addition, section 6 imposed a requirement of Parliamentary approval (by resolution of both Houses) on a number of prerogative actions by Ministers of the Crown under certain other Articles of the Treaty on European Union and of the TFEU.

So Parliament in the 2008 Act created a detailed scheme under which prerogative actions under certain specified Articles of the Treaties were explicitly made subject to Parliamentary control, either by a requirement for an Act of Parliament or for resolutions of both Houses. Since Parliament did NOT include Article 50 among the Treaty provisions where the acts of the Crown or of Ministers require Parliamentary approval, it is quite impossible to argue that such a restriction of the Royal prerogative arises by implication in the case of Article 50 and of other Treaty articles where Parliament has chosen to impose no such restriction.

In conclusion, the power in law to give a notification under Article 50 is a prerogative power of the Crown which may be exercised by the government without the need for Parliamentary consent or approval. Mishcon's legal challenge is quite hopeless and is bound to fail.

Constitutional authority and obligation

So far, we have considered the question of who has the *legal* authority to trigger Article 50, and it is the government exercising Royal prerogative powers.

However, under the UK's unwritten constitution, the question of who has *legal* authority to do something is not always the same as who has *constitutional* authority to do it according to the practice and conventions of the constitution. There are many instances where the holder of a legal power is constrained by constitutional practice to exercise it or not to exercise it in a certain way.

A famous and well known example is the constitutional convention under which the House of Commons alone is responsible for taxation. When the House of Lords broke that constitutional convention by exercising its legal power to vote down Lloyd George's 1909 budget, it provoked a constitutional crisis which ended with the curtailment of the powers of the House of Lords under the Parliament Act 1911.

The legal power to trigger Article 50 rests in the Crown (i.e. the government) as explained above. However it is clear that as a matter of constitutional practice, that government legal power must be exercised to give effect to the declared result of the referendum.
First, the Conservative General Election Manifesto of 2015 promised a referendum on membership of the EU in the following terms:

> "We believe in **letting the people decide**: so we will hold an in-out referendum on our membership of the EU before the end of 2017."

It should be noted that the election promise was to "**let the people decide**". It was not a promise to hold an advisory referendum, with the final decision being left to Parliament. Nor was there any mention of minimum thresholds of percentage of vote or of turnout before the referendum would be binding. Therefore the British people

were given a politically and constitutionally binding promise in the election manifesto of the successful party that they would be given the final and deciding say in a referendum in which the majority would prevail.

As a matter of constitutional practice, the inclusion of a policy in the election manifesto of a political party which achieves a majority at a general election gives rise to a constitutional mandate to implement that policy.

Secondly, Parliament enacted the European Union Referendum Act 2015, whose formal title stated that its purpose was "*To make provision for the holding of a referendum in the United Kingdom and Gibraltar on whether the United Kingdom should remain a member of the European Union*". That Act authorised the holding of the referendum, regulated who would be legally entitled to vote in it and other matters about the conduct of the campaign, and specified that the question would be: "Should the United Kingdom remain a member of the European Union or leave the European Union?"

The Act does not contain any provision saying that its result is subject to a minimum turnout threshold or a mininum percentage vote in favour of either remain or leave. Such thresholds can be imposed, for example a 40% of the electorate threshold was specified by Parliament in the 1979 Scottish devolution referendum. What would be unprecedented would be restrospectively imposing a threshold after the vote has taken place, as proposed by the petition mentioned above.

The letter from 1,000 barristers claims that the result of the referendum is "advisory" because that Act "*does not make it legally binding*". Clearly there is something seriously wrong with legal education today if 1,000 barristers can be found with such deep ignorance of the British constitution. It is true that the Act does not contain a section at the end expressly saying that the government is under a legal duty to proceed to implement the result of the vote.

But that does not mean that the referendum result is "advisory". The Act itself does not say that it is advisory. At no point did ministers in their public statements either to Parliament or outside say that the referendum result would only be advisory. On the contrary, they repeatedly said that the referendum would allow the British people to *decide* the question of whether we remain or leave.

In opening the second reading debate (Hansard) on the Referendum Bill on 9 June 2015, the Foreign Secretary said:-

> "This is a simple, but vital, piece of legislation. It has one clear purpose: to deliver on our promise to give the British people **the final say** on our EU membership in an in/out referendum by the end of 2017." (emphasis added)

And he concluded that speech as follows:

> "Few subjects ignite as much passion in the House or indeed in the country as our membership of the European Union. The debate in the run-up to the referendum will be hard fought on both sides of the argument. But whether we favour Britain being in or out, we surely

> should all be able to agree on the simple principle that **the decision about our membership should be taken by the British people**, not by Whitehall bureaucrats, certainly not by Brussels Eurocrats; **not even by Government Ministers or parliamentarians in this Chamber**. The decision must be for the common sense of the British people. That is what we pledged, and that is what we have a mandate to deliver. For too long, the people of Britain have been denied their say. For too long, powers have been handed to Brussels over their heads. For too long, their voice on Europe has not been heard. This Bill puts that right. It delivers the simple in/out referendum that we promised, and I commend it to the House." (emphasis added)

Thirdly, in the course of the referendum campaign the government spent £9.5million of taxpayers' money on printing a leaflet and distributing it to all households in the United Kingdom. That leaflet attracted widespread (and deserved) criticism for its gross bias in favour of remaining in the EU. However, on the consequences of the referendum it could not have been clearer. On the page headed "A once in a generation decision" it stated that:

> "The referendum on Thursday 23rd June is **your chance to decide** if we should remain in the European Union."

It did not say "it is your chance to *advise on* whether we should remain, *the actual decision being taken by Parliament*."

But it went on to be even clearer and more emphatic:

> "**This is your decision. The Government will implement what you decide.**"

It is therefore clear that the referendum was not merely advisory, but was constitutionally *decisive and binding*. The clear, repeated and unequivocal promise made to the British people was that their vote in the referendum would finally decide the course which our country takes. Treating the result as merely advisory would be a flagrant breach of the repeated and unequivocal promises made to the British people. There should be no second guessing or reversal of the result by Parliament or by anybody else.

The government is therefore constitutionally mandated to exercise its legal power under the Royal prerogative to trigger the Article 50 process.

Political commentary

What is astonishing about these various moves to frustrate the result of the referendum is that the people involved have so little respect for democracy, and so little self-awareness. They arrogantly believe that their minority views should prevail in the face of the clear majority decision of the British people. Many of them seem coloured by the view that people who voted to Leave are stupid, uneducated, xenophobic, racist and live outside London, and accordingly their votes are worth less than their own educated and enlightened votes cast by people such as them in London or (even better) in Hampstead.

It is deeply disturbing that any citizens of this country should be so dismissive of the democratic rights of millions of their decent and intelligent fellow countrymen and countrywomen, who cast their votes in the poll with the highest national turnout for 24 years. The 17,410,000 people who voted to leave the European Union were the highest number ever to have voted in the history of the United Kingdom for a proposition or for a political party.

The astonishing arrogance, petulance, and desperate plotting to negate the democratic decision of the British people which has been displayed since the referendum result was announced is a deeply worrying symptom of the great damage which 40 years of EU membership has done to our sense of national and civic cohesion. The EU has persistently pursued policies which at every level are designed to weaken the bonds which bind us together as a nation. Its technique is to recruit an elite inside each Member State which regards its primary allegiance as being to the EU and not the country, and which is rewarded with power and influence in return for keeping the serfs under control.

It is by leaving the European Union that we can begin the long term process of healing our nation from this disease, and re-unify our people once again as a proud independent self-governing nation.

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Nick Barber, Tom Hickman and Jeff King: Pulling the Article 50 'Trigger': Parliament's Indispensable Role

In this post we argue that as a matter of domestic constitutional law, the Prime Minister is unable to issue a declaration under Article 50 of the Lisbon Treaty – triggering our withdrawal from the European Union – without having been first authorised to do so by an Act of the United Kingdom Parliament. Were he to attempt to do so before such a statute was passed, the declaration would be legally ineffective as a matter of domestic law and it would also fail to comply with the requirements of Article 50 itself.

There are a number of overlapping reasons for this. They range from the general to the specific. At the most general, our democracy is a parliamentary democracy, and it is Parliament, not the Government, that has the final say about the implications of the referendum, the timing of an Article 50 our membership of the Union, and the rights of British citizens that flow from that membership. More specifically, the terms and the object and purpose of the European Communities Act 1972 also support the correctness of the legal position set out above.

The reason why this is so important is not only because Article 50, once triggered, will inevitably fundamentally change our constitutional arrangements, but also because the *timing* of the issue of any Article 50 declaration has major implications for our bargaining position with other European States, as we will explain.

(i) Article 50

The relevant provisions of Article 50 read as follows:

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

The first point to note about Article 50 is that it is a once-and-for-all decision; there is no turning back once Article 50 has been invoked. If no acceptable *withdrawal*

Information

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agreement has been reached after two years, the exiting Member State is left without any deal with the EU. It is of course possible to extend the time period. But this is in the gift of the EU Council and requires its unanimous agreement.

It may be argued that implicit within paragraphs 2 and 3 is a right for the member state to revoke the notice to withdraw. Yet this argument depends on reading such a right into a text from which it is conspicuously absent. That text clearly provides that only the terms of withdrawal itself are negotiable and states that if agreement is not reached then the Treaties cease to apply to the State concerned. The point is however probably moot since the UK must trigger Article 50 expecting and intending to exit the EU. And it could not safely assume that it is able to withdraw notification on the basis of the terms of Article 50.

Article 50 therefore tips the balance of negotiating power massively in favour of the remaining EU States. The UK has far more to lose from withdrawing from the EU with no deal in place than has the EU. Whilst the EU does want access to the UK market, it knows that the UK will be in a very weak bargaining position during withdrawal negotiations, with extremely dire consequences for the UK economy if it were to leave without any deal. This is likely to limit the UK's negotiating position in relation to key aspects of the exit deal.

The question of how an Article 50 notification can be given is consequently of paramount importance. Unfortunately, this is less clear than it might first appear. The first paragraph of Article 50 specifies that the decision to leave the Union, which must be made before the Article 50 declaration, must be made in 'accordance with its own constitutional requirements' – but what are these requirements in the British system?

(ii) The Domestic Constitutional Requirements For an Article 50 Declaration

In his resignation speech, David Cameron said:

> **"A negotiation with the European Union will need to begin under a new Prime Minister, and I think it is right that this new Prime Minister takes the decision about when to trigger Article 50 and start the formal and legal process of leaving the EU."**

The Prime Minster did not specify the legal authority under which he believed he or his successors might invoke Article 50, but the typical answer will be obvious to constitutional lawyers: it is the royal prerogative, a collection of executive powers held by the Crown since medieval times, that exist unsupported by statute. The Prerogative is widely used in foreign affairs, which Parliament has largely left in the hands of the Government. The treaty-making prerogative of the Crown is one such area.

If the Prime Minister is correct, and the Prerogative is the basis for the declaration, he enjoys complete discretion about when to issue the declaration: the trigger could be pulled in October, next year, or in ten years' time.

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The relationship between statute and the prerogative has long been contentious, and up until quite recently – the 1980s – it was arguable that the exercise of prerogative powers (though not their existence) was beyond the capacity of the court to review; the King could do no wrong. Whilst the courts might not have been able to review its exercise, they certainly could and did rule on whether the prerogative contended for by the Crown existed in the first place. One of the earliest limits on the prerogative was that it could not be used to undermine statutes; where the two are in tension, statute beats prerogative. In one of the seminal cases of the common law, *The Case of Proclamations*, (1610) 12 Co. Rep. 74 Sir Edward Coke declared:

> **"..the King by his proclamation... cannot change any part of the common law, or statute law, or the customs of the realm..."**

A more recent statement of this principle can be found in the *Fire Brigades Union Case* [1995] 2 AC 513 in 1995, where Lord Browne-Wilkinson stated that:

> **"...it would be most surprising if, at the present day, prerogative powers could be validly exercised by the executive so as to frustrate the will of Parliament as expressed in a statute and, to an extent, to pre-empt the decision of Parliament whether or not to continue with the statutory scheme..."**

This case law forms a core part of the separation of powers in the British Constitution: the Government cannot take away rights given by Parliament and it cannot undermine a statute. For the courts to hold otherwise would place the rights of British citizens at the mercy of the Government and would be contrary to Parliamentary supremacy.

Admittedly, and with most aspects of our constitutional law, the precise ambit of the principle invoked in the *Fire Brigades Union* case, and in associated case law, is open to different interpretations. A narrow one would limit its application to situations where the statute proscribes in detail how Government must act, but where the Government circumvents that guidance by recourse to the prerogative. The wider principle is that it is not open to Government to turn a statute into what is in substance a dead letter by exercise of the prerogative powers; and that it is not open to the Government to act in a way which cuts across the object and purpose of an existing statute. In our view the wider principle correctly states the law and is particularly apt here, as we are concerned with a constitutional statute upon which an extensive system of rights is founded.

This argument does not entail that the Government can never withdraw from an incorporated treaty. Everything depends on the terms, object and purpose of the statute in question. The Human Rights Act 1998, for instance, incorporates the European Convention on Human Rights in a very different way.

(iii) The Consequences for Article 50

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As we have seen, the purpose of a Member State embarking on the Article 50 process is to withdraw from the EU. The EU Treaties "cease to apply" to the UK immediately upon either, (i) the entry into force of the concluded agreement, or (ii) the expiry of the two year guillotine (subject to unanimous agreement to extend). Can such a decision be made by the Government *alone*, even following a referendum?

First, the European Communities Act 1972 is, as its long title states, an Act "to make provision for the enlargement of the European Communities to include the United Kingdom". The long title of the Act is a permissible aid to interpreting the terms, and object and purpose of the Act.

Section 2 then provides that all such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the EU Treaties are part of UK law.

The obvious intention of the Act is to provide for the UK's membership of the EU and for the EU Treaties to have effect in domestic law. The purpose of triggering Article 50 would be cut across the Act and render it nugatory. Once a withdrawal agreement took effect, or if not deal was reached, the 1972 Act would be left as a dead letter. It would instruct judges to apply the Treaties which themselves declare they had "ceased to apply" to the UK. Indeed, there would not be any need for Parliament to repeal the 1972 Act once the Article 50 process was completed because there would be no remaining rights and obligations for the UK under the terms of the EU Treaties.

It is not an answer to say that section 2 refers to rights and liabilities "from time to time arising" under the Treaties because this is obviously intended to cater for the changing rights and obligations of the UK under EU law, such as to comply with EU legislation, *within* the EU. It does not allow the Government to do an act which would resulting the withdrawal from the EU Treaties, which cuts across the whole object and purpose of the 1972 Act, which is to make the UK part of the EU.

Some might argue that there would be no such conflict since the 1972 Act does not regulate the process of withdrawal, and because the executive act of withdrawal leaves the statute formally untouched. However this would be a very formalistic analysis in circumstances where the undoubted intention of the UK in triggering the Article 50 process would be to effect the opposite of that which the 1972 Act is designed to achieve.

By issuing an Article 50 declaration, the Prime Minister would start the process that would inevitably end in the loss of EU rights (even if a way was found to negotiate a set of substitute, non-Treaty rights).

Secondly, if this were not sufficient, the Article 50 declaration will strip British citizens of their rights in relation to the European Parliament. The European Parliamentary Elections Act 2002 confers a right to vote and to stand in European elections. The Government cannot unilaterally do an act which will render the 2002 Act nugatory and strip away the rights that it confers.

More examples could be given, but the general point is plain. Our membership of the European Union has conferred a host of legal rights on British citizens, some through incorporating statutes, some granted directly in domestic law. Applying the common law principle found in *The Case of Proclamations* and *Fire Brigades Union*, the

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Government cannot remove or nullify these rights without parliamentary approval. Its prerogative power cannot be used to overturn statutory rights. Statute beats prerogative.

This has significance not only in terms of our domestic law, but also for EU law. Article 50 specifies that a decision to leave the European Union must be made in conformity to a Member State's constitutional requirements. If the Prime Minister sought to issue an Article 50 without parliamentary approval, it would not satisfy this test; it would not be effective in European Law.

(iv) The Role of Parliament

It might be thought that this gives rise to something of a constitutional chicken and egg dilemma: how can Parliament legislate to take the UK out of the EU before the exit negotiations are complete? There is in fact a straightforward answer to this apparent conundrum. Before an Article 50 declaration can be issued, Parliament must enact a statute empowering or requiring the Prime Minister to issue notice under Article 50 of the Treaty of Lisbon, and empowering the Government to make such changes to statutes as are necessary to bring about our exit from the European Union.

Is this a mere formality? The political reality might be "yes". Parliament might consider that following the referendum it must pass a statute in these terms. But the answer in constitutional terms is "no". As a matter of constitutional law, Parliament is not bound to follow the results of the Brexit referendum when deliberating this legislation. A number of options are constitutionally open to Parliament.

First, it could decide not to grant this power at all. As some of the core claims made by the leave campaign unravel, Parliament might decide that the case for Brexit has not been made – or was gained under a false prospectus. As Edmund Burke taught us, ours is a representative, not a direct, democracy. Those representatives whose consciences required them to reject the referendum vote would have to justify themselves to their electorates at the next General Election – an event that is likely to arrive quite soon. We should make clear that we take no position as to whether Parliament should adopt such a course, but it is undoubtedly open to Parliament as a matter of constitutional law. Parliament is, after all, sovereign.

Secondly, Parliament could conclude that it would be contrary to the national interest to invoke Article 50 whilst it is in the dark about what the key essentials of the new relationship with the EU are going to be, and without knowing what terms the EU is going to offer. Parliament might well conclude that to require the Government to issue the notice immediately would be contrary to the national interest, even if Parliament is committed to leaving the EU, because the legal structure of Article 50 would place the UK at a seriously disadvantageous position in negotiating acceptable terms. Surely, Parliament is unlikely to require the Government to issue notice under Article 50 if it considers that the Government might be forced to accept exit terms which do not protect key aspects of our economy. Parliament may therefore require the Government to engage in extensive informal negotiations or even to seek to negotiate exit from the EU by formal Treaty amendments rather than through the Article 50 process.

If the UK seeks to obtain some form of framework agreement on key terms before invoking Article 50, once these terms are in place, Parliament could then trigger the Article 50 procedure to effect exit, perhaps with only details left to negotiate by the

Government. Immediately upon an agreement being finalised the UK would no longer be part of the EU. This option would comply with the outcome of the referendum.

Finally, of course, Parliament could decide to authorize notice under Article 50 at once by empowering the Prime Minister to issue the declaration.

There are very good reasons for involving Parliament. With its broad range of representatives and peers, various pertinent committees with extensive evidence gathering powers, it is an institution that has the expertise and legitimacy to discuss the implications of various withdrawal options and any framework conditions or further approvals that Parliament may want to stipulate. The referendum was silent on the terms of withdrawal. Such terms should be matters for cross-party discussion in open Parliament rather than among the front bench of a (divided) single party in closed Cabinet meetings.

Conclusion

Far from being a straightforward and streamlined process of exit, the Article 50 process raises very complicated legal and political issues and is pregnant with risk (additional to those inherent in existing outside the EU). These complexities are compounded by the murky ambiguities of our unwritten constitution.

The referendum result itself does not speak to the question of how the UK should leave the EU. It is up to the Government and to Parliament to ensure that the exit is managed consistently with the UK's national interest.

Our analysis leads to the possibility that the process of extraction from the EU could be a very long one indeed, potentially even taking many years to come about. Of course, the EU Member States have made clear that they will only negotiate once the Article 50 exit provisions have been triggered and are pressing the UK to pull the trigger "as soon as possible". It is also clear that uncertainty is itself undesirable. But uncertainty needs to be weighed against other imperatives, such as the need to comply with the UK's constitutional requirements and the need to ensure that Brexit is effected consistently with the national interest. A quick pull of the Article 50 trigger is unlikely to be feasible under the UK's constitutional arrangements and may well not be desirable for any UK Government or Parliament, even one committed to eventual withdrawal from the EU.

Brexit is the most important decision that has faced the United Kingdom in a generation and it has massive constitutional and economic ramifications. In our constitution, Parliament gets to make this decision, not the Prime Minister.

Nick Barber, Fellow, Trinity College Oxford.

Tom Hickman, Reader, UCL and barrister at Blackstone Chambers

Jeff King, Senior Lecturer in Law, UCL

(Suggested citation: N. Barber, T. Hickman and J. King, 'Pulling the Article 50 'Trigger': Parliament's Indispensable Role', U.K. Const. L. Blog (27th Jun 2016) (available at https://ukconstitutionallaw.org/))

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Gavin Phillipson
June 27, 2016

Excellent and timely analysis. I would add only one small point, which if I have time over the next few days, I might flesh out into a blogpost. In the above, the authors say: 'The Prerogative is widely used in foreign affairs, which Parliament has largely left in the hands of the Government. The treaty-making prerogative of the Crown is one such area.' I would just like to draw attention here to the provisions of Part II of the Constitutional Reform and Governance Act 2010 which give Parliament a (highly qualified) right to give or refuse consent to the ratification of Treaties: http://www.legislation.gov.uk/ukpga/2010/25/part/2

Since the end result of the Article 50 negotiations would presumably be a treaty, or series of Treaties, that would at least prima facie require approval by Parliament under the 2010 Act, this I think reinforces the authors' argument that Parliament should give prior approval both to the triggering of the Art 50 process and to the (future) Government's negotiating stance – in particular its position on the Single Market. There is after all no point in the Government negotiating a deal with the EU that Parliament will then reject.

Reply

Richard Vaillancourt
June 27, 2016

What bothers me is that none of the leading players have mentioned the fact that there has to be an act of parliament in place before invocation. Are they still trying to bamboozle us plebes? I have commented on this in a previous post and I'm no lawyer! I was delighted to come across this article. Maybe saner heads will prevail. Let's

hope so.

Reply

Hamish Macphail
June 29, 2016

The whole point of the article is aimed at establishing whether there has to be an act of parliament prior to invoking article 50 or not. The authors conclude that there should be, but it is not an established fact.

Norman McIlwain (@NorMcI)
June 29, 2016

"Politicians have repeatedly stressed that there was "no going back"if the British people voted to back Brexit in the referendum." Why? I offer the following:

An 'Advisory Referendum' cannot be received, or treated, as a win or lose 'binary' referendum. An Advisory Referendum can produce more than one result, as determined demographically, and these results must be considered by Parliament for debate, together with the outcome of the referendum as a whole, margins and numbers of votes cast. To do otherwise is to act with criminal neglect with respect to the electorate's advice. Parliament cannot prejudge the advisory, but is required to debate it before deciding upon the best course of action, as judged by Her Majesty's MP's to be in the best interests of the nation. With respect to an Advisory Referendum, therefore, it is illegal for HM Government to decide beforehand on a course of action on the basis of majority vote alone, as though the referendum were 'Binary'.Consequently, it is also illegal for HM Government to act upon the outcome of a referendum without the requirement of a Parliamentary debate that calls for a vote or votes with respect to questions raised from an Advisory Referendum's results.

The less than 4% victory for Brexit is like saying: The nation, at this time,after being bombarded with slogans, spin and 'some' facts, believes that thereis a slight possibility that leaving might be better for Britain. While the 28%who chose not to vote are saying to Parliament: "What do you think?"

The nation has democratically presented its advice to Parliament. – Parliament is legally bound 'to receive' that advice – however slight and ill-informed.But, is 'not' bound to take it. It is wrong to ignore the advice of the 48% of the electorate of the UK, including demographically the advice of Scotland,Northern Ireland and Gibraltar, who advised

the opposite. All advice needs to be taken into consideration for the sake of the UK's future, not just that of a slight majority at the time of the referendum.

There should in my view be a legal challenge.

Geoffrey Robertson QC, makes the legal and democratic obligation of Parliament very clear.

Reply

Richard Tetlow
June 30, 2016

Great news to open the debate widely, but where are the Press and BBC etc in all this? On the face of it, it is a crazy constitutional situation if the PM can both make a decision to have a referendum and then be responsible for accepting it. What of our hundreds of years of constitutional history! He is not the government or parliament. What a mess but is to be urgently clarified.

Laurence Coventry
June 30, 2016

The result was not as large as the majority for Scotland staying in the UK. However it is just as convincing as Obama's victories over McCain and Romney. If you want different parameters these need to be put in place in advance, not like the EU with Ireland and the EU constitution because you don't like the result post hoc facto.

I am thankful we are going out because the German words for EEC were from Hitler in 1943 and the technocratic work was done by the bright university sparks of Vichy.These I have read ,were taken over holus bolus by Monnet after the war, as to plan and personnel. Heil Juncker!

Perhaps overriding all the interesting discussion is the letter available as "Kilmuir letter to Heath" on Google, laying out the Lord Chancellor's stringent multi point definitions of treason. It could be held that the European Communities act of 1972 was treasonous, being an impermissible abrogation of sovereignty.

Lee Moore
July 3, 2016

The referendum is relevant to the politics, it is perfectly irrelevant to the legal question. The question legal is – can the Cabinet authorise a

Minister to send the appropriate Article 50 notice in, without consulting Parliament ? Or rather, if that's what happens, can anyone go to court and get a judgment saying the notice is invalid ? All the rest is smoke.

James Stead
July 7, 2016

Here, here, I can only concur!

Susan Gooch
July 19, 2016

This was not an Advisory referendum... The government, foreign secretary said "let the people decide" and they have!

AS
July 19, 2016

"This was not an advisory referendum" – what are you basing that on? Or have you just decided you're going to rewrite UK law Susan?

Solange Lebourg
July 20, 2016

What have the Scottish People decided? What have the Northern Irish People decided? What was decided by all of the all of the other People, the 63% of People, who did not agree with you? In our representative democracy, these People matter, too.

Marvin
July 21, 2016

The EU referendum attracted the greatest number of votes ever. Taking into account that N.Ireland and central London have vested interests in the EU, and that the media and Government in Gibraltar was heavily biased (I read the Gibraltar newspapers) – this would indicate that a far larger number of the electorate were in favour of Brexit. Those in favour of remain, after following all the social media on the topic – appeared not to have understood marketing evolution. The EU with it's ill advised grant awards served to block the ever

changing markets as opposed to adapting to market needs. In turn, this encouraged even more unemployment. Unemployed labour is a loss to potential financial gains! The electorate had waited long enough for the changes within the EU, that were never to materialise.

Rodney Atkinson
July 11, 2016

This is all complete rubbish. Parliament never approved of the Accession Treaty to the EU and Hurd rightly said that parliament could not overturn the Maastricht Treaty. That is because they were signed – illegally in fact on precedent – under Crown Prerogative Powers granted to Ministers. Now we wish to leave the same process in reverse must be instigated. In fact we could have long ago rescinded these treaties under the many corruptions and illegalities recognised by the Vienna Convention on the Law of Treaties as justification for so doing. See my article on freenations.net

And there is no need for any trade agreement or other treaties when we leave. We will trade initially under the minimum tariffs paid by other non EU members – producing a massive saving over the costs of budget contributions, regulatory costs, trade manipulation and fraud costs of EU membership.

The sovereigns have spoken. Those who alienated their sovereignty are defeated. Those who used one mechanism to destroy our sovereignty cannot now demand a more complicated one before they do our democratic bidding.

Reply

Tom Austin
June 27, 2016

This all looks eerily like sophistry to me – I mean this in a positive way.

How should the final paragraph be read, when the initial folly is considered.

What constitutional construct gave Cameron the power to declare – late in the game, that our government would accept the referendum result as binding?

What is 'lawful' in setting up a friendly kick about only to declare before the final whistle that the winning team is the winner of a cup-competition that was never run?

Surely, there is a mechanism to prevent such unilateral 'monarchical' rule-changes?

If the referendum was commenced with the understanding that its result would be binding, would there not have been more note taken of the misleading claims by either side?
Would there not have been an onus upon 'Vote Leave' to offer concrete proposals; manifesto style?

How can 'we' claim to knowing what procedure is to be followed now, without first expanding on the constitutionality and legality of the mid-game rule change?

At the very least, this mood-measure via referendum should have been laid before Parliament for the decision about how to proceed to be made.

Reply

Tim
June 28, 2016

"What constitutional construct gave Cameron the power to declare – late in the game, that our government would accept the referendum result as binding?"

-> He has certainly accepted it as binding on his Government, but that is not the same thing as it being binding on Parliament. Which is why the constitutional law point of whether HM Government can invoke Art. 50 without any further vote in Parliament is not just sophistry.

On the other hand, probably far more important than constitutional law is the politics. Whether HM Government commands, and will continue to command, the necessary parliamentary majority to win any such vote or confidence motion is not yet known. Nor is whether, in the current febrile climate, a future Prime Minister will choose to associate his or her name with the invoking of Art. 50 and the precipitation of his/her negotiating team into a very weak position with the EU negotiators without further political cover for doing so.

Reply

Tom Austin
June 28, 2016

Well, it strikes me that if Cameron's declaration that the referendum result would be binding on his Government has no lawful basis, then arguing about how to act in accordance with this 'improper' move is arguing from a false premise – i.e. sophism: "A plausible but fallacious argument. "

I am not trying to insult anybody. I'm simply nonplussed as to how it can be lawful to change the rules once the games' afoot.

David Jeremiah
June 29, 2016

One may argue that many things David Cameron said during the referendum campaign were never intended by the Prime Minister to be regarded as being legally binding or binding in any other respect, for that matter. HIs repeated assertion that, in the event of a vote to leave, he would go to Brussels on the Friday June 24 and invoke article 50 is just one thing that springs to mind.....

richard jarman
June 29, 2016

Politicians say things, as does everyone, that they wish to happen or may happen or things they intend to do.
Some things, buying a house , making laws etc require something lse in this case procedure in accord with law; which presently has been expressley not the case; read the threads above!

Alessandra Asteriti
June 27, 2016

In a Commons debate on 25 February 2016, following a question from Alex Salmond MP, which was phrased as follows

The Foreign Secretary invokes article 50. Before notification was given under article 50, given that the referendum is an advisory one in terms of the constitution, would there be a vote in Parliament? Would there also be a vote in the Scottish Parliament, given the impact on devolved competencies under the Sewel convention?

Mr Philip Hammond, Secretary of State for Foreign Affairs, stated as follows:

The Government's position is that the referendum is an advisory one, but the Government will regard themselves as being bound by the decision of the referendum and will proceed with serving an article 50 notice. My understanding is that that is a matter for the Government of the United Kingdom, but if there are any consequential considerations, they will be dealt with in accordance with the proper constitutional arrangements that have been laid down.

In reply to another question in the course of the same debate, Mr Hammond also added,

The propositions on the ballot paper are clear, and I want to be equally clear today. Leave means leave, and a vote to leave will trigger a notice under article 50. To do otherwise in the event of a vote to leave would represent a complete disregard of the will of the

people. No individual, no matter how charismatic or prominent, has the right or the power to redefine unilaterally the meaning of the question on the ballot paper.

No issues of constitutional role of the parliament, and necessity of a parliamentary vote, were raised, either inside or outside of the Commons, with the exception of the apposite question by Mr Salmond. May I suggest that there has been a systemic failure to examine the implications of the vote both inside and outside the Commons?

Reply

Tom Austin
June 27, 2016

Thank you for that.
I am still troubled by the absence of any and all responsibility for the veracity of claim and counterclaim, and the lack of policy planning for a post-Brexit result.
"To do otherwise in the event of a vote to leave would represent a complete disregard of the will of the people."
How can any such 'will' be measured in the absence of reasoned argument?

Reply

Alessandra Asteriti
June 27, 2016

Having predicted the result of this referendum, I argued, but not publicly unfortunately, that an involvment of parliament, while legally correct and potentially required (noting that the crux of the argument is that article 50 does not allow for withdrawing the withdrawal notice, as it were, and that this, while possibly to be deduced from the text, is not crystal clear and might require a referral to the CJEU) would be political suicide. As both sides in the Commons seem to have committed suicide already, the time might have come for the Commons to be involved, and vote against invoking article 50.

Tom Austin
June 27, 2016

Yes. I have argued since Friday morning that it would be just as easy to 'disappoint' 52% as it is the 48%.
Especially as many of the 'planks' of the Brexit stance have been rowed-back upon.
IF?!! If the referendum were to be re-run with this clearer understanding of the 'non-sense' of Brexit positions its likely the outcome would be different.

While I don't advocate this, it is becoming clearer that many Breixit voters are having second thoughts.

Tim Bradshaw
June 27, 2016

Thank you for reprinting this Alessandra. It is yet another of those dished out before the result, which should cause contrition and a substantive response from those who made them. Politically, it should be dynamite for Mr Hammond, and the wider Government. Like so much in this argument, however, it does not in any way change the constitutional position regarding Article 50. We shall have to rely, it seems, on Oliver Letwin to find a typically British get-out clause instead.

Reply

Alessandra Asteriti
June 27, 2016

Leaving aside domestic constitutional questions, on which I am absolutely no expert, I would have thought that a statement in the Commons such as the one offered by Mr Hammond in February might effectively estop the government from now claiming that its own constitutional requirements demand a vote in parliament before article 50 can be invoked as a matter of international/EU law.

alrich
June 28, 2016

Alessandra,
Not sure your estoppel point works. Nobody, presumably, has suffered loss as a result of relying on Hammond's statement. It won't have prompted more people to vote Leave.

If he had made the statement when the Commons was considering the bill ie before the Referendum Act was passed, the statement might have some legal force as clarifying ambiguity in the Act and making clear the intention of the Act (under the Pepper v Hart doctrine). But he didn't.

It was in February: 25 Feb 2016 : Column 498
http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm160225/debtext/160225-0002.htm

As such it would be embarrassing for him to renege on it but no more. Arguably, if Parliament had wanted the final say on Article 50 it should have made that clear itself by including words in the Act to that effect (a point made by Denis Cooper elsewhere in these comments).

Without such words it is not necessarily unreasonable to believe that Parliament intended whatever the contingent result of the referendum turned out to be. In which case it would need neither a Prime Minister with a Royal Prerogative nor a further parliamentary seal of approval – just a messenger with some small authority to nip over the Channel to inform the European

Council of the decision.

On the other hand, Parliament could stop the whole process now by passing a quick Bill before the message is sent – if it dared.

Reply

Alessandra Asteriti
June 28, 2016

I meant that Cameron might not be able to rely on the UK constitutional structure to argue at the EU level that the UK is not in the position to invoke article 50 without a vote in parliament and I think that there might be some form of detrimental reliance on the part of the EU and its member states that the UK would start the process expediticiously, and that damage both political and actual economic damage, would be resulting from the continuing situation of uncertainty following failure to invoke the article and get the process and the timing of withdrawal on firmer grounds.

Alessandra Asteriti
June 28, 2016

To be clear, I am talking about the international law doctrine of estoppel.

Graham Watts
August 24, 2016

Fact is, the power of any Government is secured ONLY on the will of the voting public. To all those who question the legitimacy of the EU Referendum, please tell us, whether the 1975 Referendum is questionable also?

Reply

richard jarman
August 27, 2016

No it could have been challenged politically; what the legal situation was then I cannot recall, but laws change.

The nonesense about all this is that people are just as entitled to try to reverse Brexit as orthers were to encourage it.

We have a representative government. It is not delegated...and is subject only to the ballot box... other than any constitutional supremacy.. .. here you may find entrenched provisions such that NI Irish & maybe Scottish governments are to remain

subject to some, at least, of the EU treaties... We gave away constitutional power...taking it back is force majeure?

Oh yes! even outside the EU mass deportation is against international law- with a little luck all the Bulgarians & Romainians will come here now, leaving those countries empty, and then vote us back into the EU

G
August 31, 2016

"The nonesense about all this is that people are just as entitled to try to reverse Brexit as orthers were to encourage it." You conveniently forget the important phase that took place after those exchanges. Perhaps you were out of this Solar System at the time.

Richard Allen
September 4, 2016

No surprise there...potatoes the lot of them

Reply

Sean Feeney
October 1, 2016

The European Union Bill received Royal Assent on 17 December 2015, prior to the statement on 25 February 2016 relied on by Alessandra Asteriti to evidence the Pepper v Hart reading that the 2015 Act is "advisory".

This statement is therefore of little relevance (even if it were to be admissible in evidence), in a Pepper v Hart reading, compared to any clear statement by a Government proposer made during the Bill's passage at, say, second reading in the Commons.

The ratio of Pepper v Hart is that reference to Parliamentary material is permitted as an aid to the construction of legislation which is ambiguous, or obscure or the literal meaning of which leads to an absurdity.

The judgment made it clear weight should only be given to clear statements in Parliament by a Bill's proposer prior to its enactment, if there was a need to justify admission, as possible evidence (to be interpreted and weighed by Judges) of the purpose of the legislation.

At the second reading of the European Union Referendum Bill in the House of Commons, the then Secretary of State for for Foreign and Commonwealth Affairs (Mr Philip Hammond) moved the Bill by what I believe is the clearest possible statement that the statutory purpose of the Bill was to make the British people the statutory decision-maker on on whether the UK should leave the EU:

"This is a simple, but vital, piece of legislation. It has one clear purpose: to deliver on our promise to give the British people the final say on our EU membership in an in/out referendum

by the end of 2017."

Hansard 9 Jun 2015 : Column 1047

http://www.publications.parliament.uk/pa/cm201516/cmhansrd/cm150609/debtext/150609-0001.htm#15060939000001

Any lingering doubt should be dispelled byMr Hammond's identification in his concluding remarks of who, as Government proposer, he intended would take the "decison":

"But whether we favour Britain being in or out, we surely should all be able to agree on the simple principle that the decision about our membership should be taken by the British people, not by Whitehall bureaucrats, certainly not by Brussels Eurocrats; not even by Government Ministers or parliamentarians in this Chamber."
Hansard 9 Jun 2015 : Column 1052

For the ratio of Pepper v Hart see, for example, the speech of Lord Bridge of Harwhich :

"It should, in my opinion, only be in the rare cases where the very issue of interpretation which the courts are called on to resolve has been addressed in Parliamentary debate and where the promoter of the legislation has made a clear statement directed to that very issue, that reference to Hansard should be permitted. Indeed, it is only in such cases that reference to Hansard is likely to be of any assistance to the courts."

Lord Griffiths:

"My Lords, I have long thought that the time had come to change the self-imposed judicial rule that forbade any reference to the legislative history of an enactment as an aid to its interpretation. The ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the court in interpreting legislation is to give effect so far as the language permits to the intention of the legislature. If the language proves to be ambiguous I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted. Why then cut ourselves off from the one source in which may be found an authoritative statement of the intention with which the legislation is placed before Parliament? I have had the advantage of reading the speech of Lord Browne-Wilkinson and save on the construction of the Act, without recourse to Hansard, I agree with all he has to say. In summary, I agree that the courts should have recourse to Hansard in the circumstances and to the extent he proposes. I agree that the use of Hansard as an aid to assist the court to give effect to the true intention of Parliament is not "questioning" within the meaning of article 9 of the Bill of Rights. I agree that the House is not inhibited by any Parliamentary privilege in deciding this appeal."

Lord Oliver of Aylmerton:

"It is, however, important to stress the limits within which such a relaxation is permissible and which are set out in the speech of my noble and learned friend. It can apply only where the expression of the legislative intention is genuinely ambiguous or obscure or where a literal or prima facie construction leads to a manifest absurdity and where the difficulty can be resolved

by a clear statement directed to the matter in issue."

Or, of course, the speech of Lord Browne-Wilkinson:

"In my judgment, subject to the questions of the privileges of the House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief aimed at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised I cannot foresee that any statement other than the statement of the Minister or other promoter of the Bill is likely to meet these criteria.

...

"If, as I think, significance should only be attached to the clear statements made by a Minister or other promoter of the Bill, the difficulty of knowing what weight to attach to such statements is not overwhelming. In the present case, there were numerous statements of view by members in the course of the debate which plainly do not throw any light on the true construction of section 63. What is persuasive in this case is a consistent series of answers given by the Minister, after opportunities for taking advice from his officials, all of which point the same way and which were not withdrawn or varied prior to the enactment of the Bill.

...

"Accordingly in my judgment the use of clear ministerial statements by the court as a guide to the construction of ambiguous legislation would not contravene article 9. No doubt all judges will be astute to ensure that counsel does not in any way impugn or criticise the Minister's statements or his reasoning."

Reply

Petru Hobincu
June 27, 2016

Lisbon Treaty "Article 10 (1) The functioning of the Union shall be founded on representative democracy. (2) Citizens are directly represented at Union level in the European Parliament." The functioning of EU and consequently, the representation is over all a Parliament activity. In my opinion only the Parliament may entitle the Government to apply or not, the results of social consultative results of referendum.

I quote from this article (http://blogs.lse.ac.uk/europpblog/2016/06/27/scotland-or-northern-ireland-could-reject-brexit/):

"EU law is incorporated directly into the devolution statutes in Scotland, Wales and Northern Ireland. Section 29(2)(d) of the Scotland Act 1998, for example, provides that acts of the Scottish Parliament that are incompatible with EU law are 'not law'. A similar provision, section 6(2)(d), appears in the Northern Ireland Act 1998. Indeed, the status of the UK and Ireland as EU member states and signatories to the European Convention on Human Rights was fundamental to the negotiation of the Belfast or 'Good Friday' Agreement."

In conclusion, the Parliament and the Government in this order and in their legal attempt to trigger or not art 50, should comply with, still applicable, EU law.

Reply

Stephen Laws
June 27, 2016

Good stuff. I am not sure that I am wholly convinced that an Article 50 notice would be reviewable or invalid in domestic or EU law if served without Parliamentary sanction; but this has certainly convinced me that it would be constitutionally highly inappropriate – and certainly politically very unwise – for an Article 50 notice to be given without there having been a commitment from Parliament, preferably in an Act, either to the actual terms of exit or to the grant of a power for the Government to implement whatever terms of exit are eventually agreed.

The 1910 precedent perhaps suggests that the passing of such an Act would best follow an election in which its contents and any restrictions in it were the main issue, not least to ease its passage through the House of Lords.

Reply

STEPHEN SEDLEY
June 27, 2016

I agree broadly with this analysis. The EU Referendum Act 2015 lays down no constitutional or legal consequences of the vote. If ministers now seek to use the prerogative treaty power to operate Art. 50, it seems arguable that they can be stopped by court order from frustrating or bypassing domestic legislation predicated on EU membership. Only Parliament can authorise this, and its members are constitutionally bound to vote according to conscience and not to mandate.

Is any move being made to institute (and no doubt to crowd-fund) proceedings? The Public Law Project comes to mind.

Reply

Rosemary Mulley
June 27, 2016

I would support such a crowd-funding.

Reply

Barry Goddard
June 28, 2016

Me too wher do I send it?

Bob keen
June 29, 2016

I second that, when do we start?

Kieron Beal QC
June 29, 2016

A number of EU practitioners are currently looking very seriously at the issues raised here. If (and at the moment it is only if) litigation is in contemplation, it would be good to find out if there was broad support for the views expressed above within the realms of other former members of the Judiciary and experts in constitutional law. Please do let me know if anyone would be interested in becoming associated with any such endeavour.

Reply

Rosemary Mulley
June 29, 2016

Litigation is in contemplation – please see above for a link to the crowdfunding proposal.

Tom Austin
June 29, 2016

An idea of this sort could find wide appeal (npi), and a trickle of funding could turn into a flood, but how would such a thing begin and how would the news of it be spread? (I'm not laying any onus on you Stephen.)

Reply

Jolyon Maugham
June 30, 2016

There has already been some money crowd-funded. You can read about it here: https://www.crowdjustice.co.uk/case/should-parliament-decide/ We have instructed John Ha

Jolyon Maugham
June 30, 2016

Some money has already been crowd-funded. You can read about it here: https://www.crowdjustice.co.uk/case/should-parliament-decide/ We have instructed John Halford of Bindmans LLP and hope to make an encouraging announcement about Counsel later today. The best places to keep abreast of

developments on this are at waitingfortax.com or on twitter (@jolyonmaugham) where, apologies in advance, you will receive a regular but varied diet.

Tom Austin
June 30, 2016

Thank you Jolyon, that is exactly what I was looking for, and I trust that the others here that wished to help get to hear this news.

Guillaume McLaughlin
June 29, 2016

Parliament is indeed sovereign and was sovereign when it passed the referendum bill which essentially cut it out of the decision on continued UK membership of the EU. It should have used its statutory rights to establish a procedure for control of transmission of the result. It didn’t. And furthermore by agreeing to the holding of a referendum is has relinquished its representative quality. So the government is obligated to transmit to the EU the result of the referendum. It is already a great improvement on previous treaties that article 50 provides for a negotiated exit. Previous treaties had no such provisions so on notification of the outcome of the referendum the treaties would have been considered unilaterally repudiated according to Vienna convention.

Reply

Solange Lebourg
June 30, 2016

The referendum result is not binding in law.

John Andrews
June 29, 2016

Why would such work not be on an entirely or largely pro bono basis. After all suitably expert lawyers stand to achieve very substantial fee income in advising the major funder parties.

Reply

Robert Andrews
July 24, 2016

No relation John but you have hit the nail on the head, “lawyers stand to achieve very substantial fee income...”

That's the nub of it. These greedy parasites

conspire in legal agreements to deliberately phrase wording ambiguously, so that when the time comes they can rake it in. All agreements could be written in unambiguous language with the pre cursor, "in any area of dispute, the common sense view shall prevail". Sadly that will never happen as they couldn't enrich themselves anymore with spurious arguments.

AS
July 25, 2016

Robert, I think you're being way too hopeful to believe that 1) Anything can be written unambiguously and 2) that everyone's going to agree on what "common sense" is. It's a very optimistic attitude to have on the human race though, so keep it up.

jklondon
June 27, 2016

So an act of Parliament is definitely required or arguably required to invoke Article 50?

Reply

Greg Callus
June 27, 2016

I would say arguably, as in I think it'd get permission to bring a Judicial Review, but would stand no better than a 20% chance of succeeding in that JR.

Reply

valerieeliotsmith
June 27, 2016

Reblogged this on valerieeliotsmith.

Reply

Pingback: RT @JolyonMaugham: An incredibly important point.... » Personal blog of Peter "Sci" Turpin

gadlam
June 27, 2016

I thought UK retained full rights & obligations under the Treaties until the expiry of the 2 yrs post A50 notification or agreed extension, with the exception participation into discussions concerning exit negotiations. Could you clarify EP position post A50?

Reply

Greg Callus
June 27, 2016

I disagree, but with trepidation given the authors' individual and collective expertise.

A governmental decision on Article 50, notified to the Council, would be an intra vires exercise of prerogative powers. There is an argument about whether it is 'foreign affairs' or pursuant to EU law, but it is (in my view) clearly a matter within the competence of HM Government (which may explain why nobody raised it until now).

Notifying a decision under Article 50 doesn't itself affect any statute, or the common law, or the Scotland Act (for all those Sewel Conventioneers out there) or devolution or anything else relating to the rights of the people of the UK. Nor even does ceasing to be a Member State up to two years afterwards.

For as long as s.2 European Communities Act 1972 is in force (and for as long as EU law is written into the competency of the devolved legislatures), EU law (with all attendant rights and privileges accrued to date) will continue until repealed. Public lawyers seem to agree this repeal should be the final step, once the situation is settled at an international/EU level, but I think all agree it will be a necessary step.

To change *this* position will require an Act of Parliament, of course, but there is no question of the ECA being repealed by any other method. But that doesn't mean that an Act of Parliament is required to deliver the Article 50 letter.

There's also a practical point. Imagine the Article 50 letter was delivered to the Council tomorrow, with no Act of Parliament. What prospect would you give a judicial review holding that it was ultra vires, because (even though approved by a referendum, and the largest vote for a single option on a ballot paper in our history) Parliament hadn't approved it? I'd say 20% at-best. Judges are not as anti-democratic as some at Policy Exchange would like us to believe...

I'd be grateful for your thoughts, and correction of my obvious errors!

Reply

Jeffrey MCGEACHIE
June 27, 2016

The Scotland Act mandates that any laws passed by the Scottish Parliament must conform to EU Law. The issue of an article 50 notice is an irrevocable step in the disapplication of EU law in Scotland. By the time Parliament debates the exit deal the die will have been cast.

In effect an act of the executive will have overridden statute.

Reply

Greg Callus
June 27, 2016

Again, an Art 50 notification is a step towards, but doesn't actually do it. We could leave the EU by way of Art 50 and *still* leave in place in domestic statute (section 29(2)(d) of the Scotland Act 1998) the fetter on the Scottish Parliament's legislative competence that it cannot legislate against EU law.

It is arguable – on the most expansive view – that a change to devolved powers (even, as here, increasing them by removing a limitation) falls within the Sewel Convention, even though EU membership is not itself a devolved matter: however, it would only be engaged by amending the Scotland Act (which is several steps beyond Art 50 and leaving the EU) and even then, Westminster could legislate even without a Legislative Consent Motion in Holyrood.

seanjones11kbw
June 28, 2016

But Article 50 is EU Law

Dan Law
June 27, 2016

Greg – you say: "For as long as s.2 European Communities Act 1972 is in force ... EU law (with all attendant rights and privileges accrued to date) will continue until repealed."

Art 50(3) says that the Treaties shall cease to apply to the state 2 years after notification etc. If ECA is not repealed, s.2 ECA means that Art 50 and this provision of EU law is applicable, in effect nullifying the rights under EU law once the period had expired.

Even if ECA is not repealed, I can't see a UK court continuing to recognise EU rights under the treaties when primary EU law unequivocally says the treaties shall cease to apply. I certainly don't see the ECJ holding this (note also s.3 ECA).

The notion of repeal of ECA being necessary pre-dates

Lisbon and Art 50. While it may have been accepted wisdom that repeal of ECA is a necessary step, this is not a convincing argument that this still holds true and to thus suppose Art 50(3) has no effect on rights incorporated by s.2 and s.3 ECA.

If, as you argue, EU law with exception of Art 50(3) continues in force until repeal of ECA irrespective of Art 50 being invoked, then exercise of the prerogative would not effect individual rights. Your conclusion would then follow. However, while having great respect for your legal acumen, I am not convinced by the premise of your argument – i.e. that the EU law which is applicable is the corpus with the exception of Art 50(3).

I may perhaps have misunderstood your point, which may be more subtle:. If Art 50 was invoked without Parliamentary involvement, then constitutional principle would mean than this would not of itself effect rights under EU law as recogised in ECA; repeal of ECA would be necessary to comply with domestic constitutional law i.e. as stated by Lord Oliver in the Tin Council case:

"as a matter of the constitutional law of the United Kingdom, the Royal Prerogative, whilst it embraces the making of treaties, does not extend to altering the law or conferring rights upon individuals or depriving individuals of rights which they enjoy in domestic law without the intervention of Parliament."

However, supposing (per absudum), that invoking Art 50 this way were in accordance with Art 50(1), then (as per Factortame), the supremacy of EU law would mean that this principle of domestic constitutional law would have to be set aside to give effect to Art 50(3) (assuming s.3 ECA is still in force). From this it seems apparent that this would not be withdrawing from the Union in accordance with domestic constitutional requirements, but in a way which is incompatible with domestic constitutional law. Hence the Art 50(1) requirement would not be met by simple exercise of prerogative powers; Parliament must approve this. Without that approval, any notification would be a legal nullity given the requirement of Art 50(1).

Of course if the Act establishing the referendum had given Parliamentary approval to the result (making this 'binding') further Parliamentary involvement would not be necessary. But that is not so.

You might perhaps argue that Lord Oliver expresses constitutional law too narrowly, and that the principle

requires the intervention of Parliament or a referendum (even if expressed as advisory). I don't know any authority which supports that proposition, and until such a development of our domestic constitutional law is recognised, it would be hard to claim the requirement of Art 50(1) was met on this basis.

Reply

Greg Callus
June 27, 2016

You have a very good point that a likely (if not, in my view, 'the' likely) reading of the ECA is that once the Treaties cease to apply to the UK, EU law ceases to apply. So after Art 50 letter is sent, and we leave, UK citizens would (after up to 2 years) cease to have rights under EU law. Imagine that this position is correct (which I don't concede).

If that were the case, the rights 'lost' would be lost not by exercise of the prerogative power alone, but by the effect of the will of Parliament – expressed in the ECA – that domestic law automatically gives effect to the EU Treaties (which are agreed, amended and rescinded by prerogative power alone). It would be the ECA itself (i.e. Parliament) that gave effect to Art 50 TEU and the rescission of EU law.

And this demonstrates the flaw in the entire premise that Parliamentary pre-approval is needed to notify the Council under Article 50. Whilst there is a case for saying that some forms of the prerogative require Parliamentary approval, prerogative acts in relation to the EU almost certainly don't: they are (at present) automatically approved by Parliament by operation of the ECA.

The ECA giveth, and the ECA taketh away.

Dan Law
June 27, 2016

You say "It would be the ECA itself (i.e. Parliament) that gave effect to Art 50 TEU and the rescission of EU law." ECA s.3(1) stipulates that such questions are to be determined in accordance with principles laid down in any relevant decision of ECJ. From that standpoint Art 50 has effect not by virtue of ECA, but as a treaty provision.

In any case ECA doesn't authorise a minister to invoke Article 50. Where an Act gives such

delegated authority there is usually a positive or negative resolution procedure. I don't see how anything in ECA can be regarded as giving Parliamentary authority for triggering this process.

Stephen Laws
June 27, 2016

I agree with everyone who thinks that the possibility of a successful legal challenge is highly unlikely; but the implementing Bill repealing the ECA and, presumably saving large chunks of law made under it until we can decide what we no longer want – and changing other existing law immediately – has to represent (or at least have effect in the context of) the terms of what is negotiated by way of exit terns. Getting that Bill through a pro remain Parliament is going to be even more difficult without an electoral mandate for the exit terms. The referendum provides a mandate for exit but leaves acres of room to quibble over the terms and how you give effect to them and no mandate for what emerges from the negotiation. This is specially so when it is clear that the vote for exit comprised votes for numerous different perceived versions of the likely exit terms. Can you sensibly or safely commit with the Art 50 notice without knowing if you can deliver on the terms or how. So ideally some preliminary Bill to provide a workable mechanism for implementation should come first – perhaps with endorsement in a general election. The mistake would be to think negotiating the exit terms is all there is to it. Even when you've negotiated them, you need to be able to implement them and relatively quickly.

Reply

seanjones11kbw
June 28, 2016

I would just post "I agree with Greg" but that got me into terrible trouble last time I did.

Reply

Dan Law
June 28, 2016

Do you agree with Greg 100%? (inc. his view of 20% chance of success) or is your view that this is not even arguable?

Anthony Arnull
July 1, 2016

You may have a point.

Article 50 sets out how a Member State wishing to withdraw from the EU must go about doing so. It seems to fall within the scope of s2(1) of the ECA as a power or obligation 'created or arising by or under the Treaties' and must therefore be 'recognised and available in law, and be enforced, allowed and followed accordingly...' In other words, triggering Article 50, a provision of one of the EU Treaties, cannot be incompatible with the very Act that makes those Treaties binding in the UK.

There may, however, be good reasons of policy and pragmatism for authorising that step by Act of Parliament. As has been pointed out, Parliament is equipped to carry out a detailed analysis of all the implications. Moreover, a challenge after the Article 50 process had started could cause chaos, with no certainty that it would stop the Article 50 clock (a question that might be referred to the ECJ, along with the question whether an Article 50 notification may be revoked).

The departure agreement itself would take the form, not of a treaty, but of an international agreement concluded by the Council acting by qualified majority after obtaining the consent of the European Parliament. If Treaty changes were considered necessary (eg to the list of Member States or the provisions on the territorial scope of the Treaties), these would be made by the 27 Member States without the UK.

It should also be remembered that the EU is operating on the basis that the Article 50 agreement will only deal with the process of disentangling the UK from the rest of the EU. The UK's future trading relationship with the EU would need to be the subject of a separate agreement, negotiations on which would not start until after it had left.

Reply

seethingmead
June 27, 2016

Made me stop and think. A couple of quick points, and not at all sure I know at outset where they might go

1. Not convinced the factual matrix of either Case of Proclamations or FBU lend itself fully (or much?) to this scenario. Neither is discussing an Act itself passed to give effect to Int Law relations, quite properly entered into by the Crown as an exercise of prerogative. FBU was, in effect, extinction of earlier prerog scheme by Parl – a deliberate change of policy/mind by parliament evinced in the legislation. That does not seem to obtain here – though whether that does or would lead to different outcome is obviously moot.

2. It seems to me interesting and of note that Art 50 does not speak of "domestic constitutional requirements" though this Jeff, Nick and Tom is what you choose to head section (ii) above. "Its own constitutional arrangements" presumably wider and able to encompass its external constitutional arrangements i.e. its Treaty-making (and altering) power. Again, what mileage in this, I am not sure.

3. Even on the analysis provided in (iv) the "decision" to withdraw is that of the Govt. PM/ Crown – empowered or even required to do so by Parliament. There is as I understand the argument above no proposal that (say) the Speaker communicate the UK's decision. The operative decision must surely be that Art 50 is getting at, which bring as back to the prerogative point

Reply

Aileen McHarg
June 27, 2016

Sorry to disagree, but I think this is an exercise in wishful thinking. I don't think you can reduce the principle of the dualism of domestic and international law to a mere technicality, and I think you are making too much of Fire Brigades Union, which not only involves very different facts, but a wholly different policy area, where there are no strong issues of justiciability.

Reply

Holly Hathrell
June 27, 2016

Do you believe we need an independent regulatory authority such as the IPSO to maintain minimum factual standards in political campaign material? There is currently no law to stop official political campaigns from lying. We deserve better. We had a protest in Oxford today calling for the creation of such an authority. Could there be an argument that, at such a close vote, infringement of voter autonomy due to lies by official campaigns may have effected the results, and thus the rights afforded to us as EU citizens? https://www.facebook.com/groups/1790856724483816/

Reply

Joe Barrett
June 27, 2016

Very interesting, but will not bear up to serious scrutiny. Also, just pause and think about the politics – London based lawyers go to Judges to thwart the will of the people. An interesting academic exercise, but pursuing this line of attack would not be well advised. If there is an 'answer' to Brexit it will have to be a political one, following a general election.

Reply

Keith Syrett

June 27, 2016

I agree entirely.

Reply

Dan Law
June 27, 2016

You could say that London based lawyers go to judges in order to ensure will of the people is given effect. If Parliamentary approval is legal requirement under the treaty, then ignoring this means that legal validity of withdrawal would be questionable.

I think the UK may still be a constitutional monarchy (maybe that too changed in the last couple of days). If so, supreme power is Queen in Parliament. Constitutionally, the decision in referendum could be overidden by Parliament – but there would be political cost. It wouldn't be lawyers "thwarting the will of the people", it would be Parliament.

Reply

William Porter
June 28, 2016

Completely agree, and this whole post/discussion carries a strong whiff of that.

Reply

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seethingmead
June 27, 2016

Another another point has just struck me – and apologies if this is LAW101 stuff, or indeed subject of recent blogs. Its an extension of the competing dualist perspectives of public law

The contention as I understand it is that Crown cannot deprive citizens of (here) accrued EU rights, conferred under statute – the 1972 Act. Only Parl can take away those rights. The answer surely is that it can do so – or can choose not to – but an Art 50 authorising statute will not be the vehicle.

To explain.

The ECA – and the rights therein – will not fall if we activate Art 50 or indeed as and when after that we leave. Section 2 makes clear that the domestically-enforceable EU rights etc that we have are those that are created or arising under the Treaties. There is nothing in s.2 or in s.1(2) – where we find the definition of Treaties – that limits this to those that from time to time are the ones that UK continues to be bound by. They are defined as at time of signature or accession. Thus EU law – as agreed to by the UK in 1972, rejected

by the UK in 2018 (say) but adhered to by those that remain in the Union – continues to exist in domestic law unless and until Parliament chooses otherwise by (for example) repealing the ECA 1972. Their continued application in domestic law is not parasitic on continued international membership, as a result itself of the 1972 Act.

Thus, Parliament will have its chance to remove – or assert – continuation of EU rights as a matter of domestic law as and when there is a vote on repeal of the 1972 Act.

There are echoes I suppose – in the context of the ECHR – of Conventions rights and rights in the ECHR: see Lord Nicholls in Re McKerr [2004] UKHL 12 at [26]

Reply

Stephen Laws
June 29, 2016

I don't believe this is correct.

Directly applicable rights and obligations themselves are dependent on the UK being a member State. So they don't exist if it's not. You cannot distinguish between the substance of a right or obligation and who has it.

Others derive from implementing regulations the power to make which depends on the UK, as a member State, continuing to be bound by the directive. The general principle in UK law is that if you remove a power under which a legislative instrument has been made, the instrument ceases to have continuing effect from the time when the repeal takes effect. Even if s.2(2) stays in place, the power to make the implementing regulations disappears if the UK is no longer bound by the directive. The state's obligation to implement is an essential component of the power.

In other words, the U.K. leaving the EU at the end of the Art 50 notice period creates legal chaos unless Parliament has already passed a Bill that sorts it out, or at least postpones the need to do so. That's why it's important, in practical and constitutional terms, that there should be clear endorsement by Parliament of the route to the end of the process before it is begun.

Reply

Pingback: Brexit, la democracia y la crisis constitucional británica | Toda historia es contemporánea

JabbaTheCat
June 27, 2016

Well summed by Dr Richard North...
"I think this is BS. Parliament has no role in the Art 50 notification. This is done by the Government under Crown prerogative. For sure, Parliament must ratify the final settlement, but it has no direct power to interfere with the Art. 50 process."
http://www.eureferendum.com/blogview.aspx?blogno=86120#comment-2752870190

Reply

Jeffrey MCGEACHIE
June 27, 2016

BS is when individuals profess devotion to the unwritten Constitution and then casually subvert it through misuse of prerogative. See above

Reply

Robin E
June 27, 2016

Have you any basis for this assertion? Given the depth of analysis and reference above a more substantial response than 'this is BS' would be useful and respectful.

Reply

Pingback: Brexit live: Tories announce 10-week deadline for new leader as Corbyn fights coup | I Survived College

Pingback: Brexit live: Tories announce 10-week deadline for new leader as Corbyn fights coup | The Langley Tribune

Marty Caine
June 27, 2016

Two things are puzzling me here, firstly can you send me a link to our constitution as I never realised we actually had one. They are normally written after a country has won its independence, something we have never had to do before.

Secondly, the Lisbon Treaty is the EU rule book, one that we have signed up and agreed to. The exit route of that is Invoke Article 50 and then negotiate exit terms. Now no matter what anyone else say I am quite sure the first step is to Invoke Article 50 and not doing so leaves us in the exact same position as we were before the referendum was called. No negotiations can take place until Article 50 is invoked. We can't renegotiate exit terms with the EU without first doing so, nor can we negotiate with the many already offering us trade deals, America and Germany including. So I think I am right in saying that until we invoke Article 50, nothing has happened and nothing can be changed.

Reply

It doesn't add up...
June 27, 2016

Nonsense. Parties are always free to negotiate howsoever they wish, if they are agreed in doing so.

> Article 50 is not the sole lawful means of leaving the EU. If this were the case, Greenland could not have left the EU in 1985, but it did. Greenland left under what is now the 'ordinary revision procedure', or article 48 of the Treaty on European Union (TEU) (TEU, art. 48, link; Official Journal, 1 February 1985, link). Under international law, it is also possible to leave the EU under article 54 of the 1969 Vienna Convention on the Law of Treaties (Rieder, 2013, link; Dorr, 2012, link).
>
> The EU has also on many occasions ignored its own rules to reach deals that are politically convenient. The recent bailouts and the 'outright monetary transactions' programme were both adopted in prima facie violation of provisions of the EU Treaties agreed at Maastricht which were necessary to secure Germany's agreement to economic and monetary union.
>
> It will be for the Government to decide when, if at all, Article 50 is triggered and the most appropriate means by which the UK leaves the EU.

http://www.voteleavetakecontrol.org/a_framework_for_taking_back_control_and_establishing_a_new_uk_eu_deal_after_23_june

Article 50 is merely the emergency exit cord should the EU be so stupid as not to indulge in sensible negotiations any other way. It contains an obligation on the EU (I've checked the texts in German, French, Spanish and Dutch on this point) to negotiate (if they attempt to stonewall, they could be dragged before their own court for breach of the treaty), and to conclude an exit treaty (that is to reach an agreement) – an obligation which persists after the guillotine on the applicability of the existing treaties ceases. In the mean time, the UK would be obligated to continue paying contributions until the guillotine takes effect, so that in fact the boot is on the other foot so far as extension of the guillotine period is concerned – it would be the UK that relies on this to prevent the ongoing abuse by the EU, and the EU who would seek to persuade us to keep contributing.

Reply

Marty Caine
June 28, 2016

That is not quite correct, Article 50 is the only legal way of leaving the EU, any other means such as repealing old acts would actually be seen as a breach of not just the Lisbon Treaty but also International law. Now considering the exit negotiations are pretty much irrelevant as we are only really interested in a trade agreement with the EU and a FTA would be far more in their own interest than ours because of the massive trade deficit we have with the EU. Would it not make sense to play by the rule book and not give the EU the opportunity that they so desperately need to punish us for voting to leave. If they do not punish us then others will undoubtedly follow our route to the exit door.

By delaying the Invoking of Article 50 our government are causing uncertainties in the

markets, and risking Britain still being a member of the EU when the eurozone collapses. The €1 Trillion of QE was clear evidence it is not a case of if but when and Brexit will undoubtedly speed up that unavoidable collapse. If we are still members when that happen we will be fully liable for any bailout costs the EU deem fit to charge us.

chrisharrison
June 27, 2016

That's not what's being discussed here. The issue is whether Parliament must give effect to a triggering of Art 50 or not.

Reply

Marty Caine
June 28, 2016

As far as I am aware parliament is there to fulfill the wishes of those who have elected them to be there, as the referendum result was democracy in action should any parliamentarian then go against the will of the people would they not then be in breach of their own code of conduct. I fail to see how parliament could reverse this democratic decision but if they should, ironically the European Court of Justice could overrule that decision. That would certainly be a strange scenario.

I am fairly confident that David Cameron will uphold this referendum decision and so will his successor, who I suspect will be Theresa May.

David L Brown
June 29, 2016

Parliament has never been there to fulfil the wishes of those who have elected them. We are a representative democracy. We elect MP's to represent us, but it is impossible for those MP's to find out on every single vote what the majority of the constituents in their constituency want. It is even quite normal for MP's to vote against their own manifesto (reference the Liberal Democrats and Tuition Fees in the previous Parliament). If we don't like how they have represented us our only recourse is to kick them out at the next election.

Has anybody actually worked out in how many constituencies a Remain vote was the majority,

and in how many a Leave vote was the majority?

An MP is absolutely not in Parliament to represent the entire UK.

markandrews
August 3, 2016

What is being discussed here is how those who support remain with the EU can block the result of the referendum through legal manipulation.

Tom Austin
August 5, 2016

Rather than argue with your thrust:What I'd change;By lawful means. We cannot run a Democracy along 'Maradona' lines.

Stephen Pigney
June 27, 2016

Reblogged this on Past and Present Progressive.

Reply

Brita Forsstrom
June 27, 2016

I'm listening to Cameron in Parliament right now. Has the message of this article got through to him? If not, please could you send it to him, or indeed to all members of parliament.

Reply

Pingback: Article 50, and UK constitutional law | Head of Legal

Pingback: BREXIT: THE LEGAL CONSEQUENCES: USEFUL LINKS | Civil Litigation Brief

Denis Cooper
June 27, 2016

Over the past eight years Parliament has had at least three opportunities to assert a right to determine whether or not an Article 50 notice can be issued, and it has shown no interest in doing so. So in my layman's pragmatic view it's a bit late now for Parliament to object to a notification being made under Royal Prerogative.

The first opportunity was when the Act to approve the Lisbon Treaty

was being passed in 2008, when Parliament could have insisted on an amendment to the Bill to prevent the government triggering the new Article 50 TEU without some kind of parliamentary authorisation.

The second was during the passage of the European Union Act 2011, which lists many treaty articles where the government may not make a decision without some kind of parliamentary authorisation. The list actually includes a decision to move Article 50(3) from unanimity to majority voting but it does not include Article 50(2) which relates to the notification being given.

The third opportunity was last year when the European Union Referendum Act 2015 was being passed. That Act is actually silent on what would ensue from a vote to leave the EU, but Parliament had ample opportunity to insert a clause laying down that the minister may not give the formal notification that we are leaving the EU without prior parliamentary authorisation of some kind.

Reply

Dan Law
June 27, 2016

If Art 50(1) requires Parliament to approve the decision to withdraw, then there is no requirement for Parliament to stipulate this requirement – the treaty does that. This raises the question of how 50(1) should be interpreted, which is ultimately a question for the ECJ. If Art 50(1) does not require this, then notification may be by prerogative, unless Parliament stipulated otherwise, which, as you note, it has not.

Reply

eleanor spaventa
June 28, 2016

Article 50(1) cannot require national parliaments to do anything – it would indeed be a constitutional revolution if it did. happy to elaborate if anyone interested,

Dan Law
June 28, 2016

Yes, please would you elaborate.

Article 50(1) states: "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements."

It is part of the UK's constitutional arrangement that laws and rights may not be dispensed with without consent of Parliament. For UK to give notice in accordance with Art 50 thus requires that consent. It is not Art 50(1) that set the UK

constitutional arrangement – the Bill of Rights 1689 does that. What Art 50(1) requires is that triggering this withdrawal process complies with the state's own constitutional arrangement e.g. Bill of Rights in the UK.

What meaning do you attach to the words "in accordance with its own constitutional requirements"?

Christian Agi
June 29, 2016

I think the words "in accordance with its own constitutional requirements" carry a very important meaning, because they set an "nation-internal" first step for any state wishing to leave the EU in regard to the validity of the request to leave: They have to determine to leave according to their own constitutional requirements and cannot be dragged out of the EU by a government gone wild. (Because, if I am not mistaken, if a notification in a matter of international public law has been made, nation-internal problems cannot usually be brought to challange its validity.)

But I don't think that this first step of withdrawal is open for judicial review at the ECJ, because the ECJ cannot adjudicate on the constution of the member states (if that would not be ultra vires, I could not think of anything that would).
If the "own constitutional requirements" are fulfilled, needs to be determined on the national level. Which, I suppose, is much more easy to determine in any of the 27 other EU member state, because they all have a written constitution with a defined set of competences for their government bodies and procedures to settle conflicts between these bodies.
In Germany, for example, if the Federal Government would try to do such a thing, they could be taken to the Constitutional Court, which would determine if the Basic Law has been adhered to and what needs to be done to satisfy the constitutional requirements for such a step.

But, as that step is followed by a second, "EU step", it poses some other problems on EU level, e.g. if a determination is made on the national level that the constitutional requirements are not met AFTER the notice of withdrawal is given, does

that void that notice? (I would think so, because if not, Art. 50(1) would have no real meaning and it could have been dispensed with.)
This "second step" would be the point on which – in my view – the ECJ comes into play, but, in its proceedings, has to accept as given the constitutional determinations made in the respective state.

Dan Law
June 29, 2016

There is also potentially the question of whether the constitutional attangements meet the requirement of 'legality' on the international plane, including compliance with EU Treaties and International Conventions (would Art 50 notice be valid if a state became a constitutional dictatorship overnight and withdrew from the EU based on decision taken by the dictator?). This may be framed in terms of estoppel in international law. Note also that ECA is part of the UKs own constitutional arrangement (or is it not for purposes of Art 50?).

But yes, the question is firstly one for national courts. However this is live question in terms of valid notice under Art 50, and the meaning of Art 50(1) is not entirely clear. Is the result of an advisory referendum a 'decision' for purposes of Art 50? If a minister gives notice of that result, does that trigger Art 50? I doubt it, but some read it that way. That is a matter of how to interpret Art 50, which of course follows 'teleological' principles taking into account purpose of treaties, equally authentic language versions etc.

Pingback: Kenneth Armstrong: Push Me, Pull You: Who's Hand on the Article 50 Trigger? | UK Constitutional Law Association

Carl Gardner (@carlgardner)
June 27, 2016

I agree with Greg Callus and Aileen McHarg.

As Aileen says, I think this is wishful thinking based on an over-reading of the FBU case. There's nothing in the ECA 1972 that ousts or limits the prerogative in the way the very particular way the commencement discretion did in the FBU case.

I very much want Parliament to stop article 50 notification, but that

can only be done by the political means of changing the government or imposing a new policy on it. There's no legal argument against it.

Reply

Peggy
June 27, 2016

This is very interesting thinking but seems to me a way of buying some time before starting the negotiation or trying to give the "hot potatoe" back to Parliament as we say in French (I guess the correct translation in English would be to pass the buck).
Please correct me if I am wrong but I was under the impression that triggering article 50 is a matter of prerogative. Parliament may be involved but I'd think at the end of the process of negotiation on the basis of the 2010 Act if the negotiation deal takes the form of a Treaty.
Triggering Article 50 does not repeal, per se, any Acts of Parliament although the process would eventually lead to Parliament having to repeal the EC Act 1972 and to amend the different devolution statutes.
As far as the judicial control of this prerogative is concerned, I doubt the case referred to is particularly relevant to our matter, in addition I would think that judges would consider the triggering of article 50 a non-justiciable issue.
I believe nothing prevents the government from requiring the consent of Parliament before triggering article 50. And nothing prevents Parliament, being sovereign, from ignoring the result of the referendum. But Parliament started to give referendum a new constitutional dimension with the EU Act 2011, therefore it seems difficult now to go backwards unless and until a new Parliament is elected on the basis of a manifesto pledging to stop the process of leaving the EU.

Reply

Robin E
June 27, 2016

Regardless of the actual legal position, as this discussion develops and the uncertainty, complexity, regret and downside becomes more evident the willingness of the new PM to trigger Art.50 without a parliamentary mandate will likely diminish.

Reply

Pingback: RT @karaspita: Here's a constitutional law argumen... » Personal blog of Peter "Sci" Turpin

Pingback: Nobody wants to push the Brexit Button – Will Bregret lead to Bremain? | itsveso

Pingback: What should the EU do now? – Financial Times – Darwin Survival

Lindsay Gasser
June 27, 2016

The author assumes there is a way to combine ;leaving the EU with protecting the national interests of the UK. Those who voted to remain will find this difficult to envisage. The other EU countries were quite clear beforehand and are so now: they preferred the UK to remain. But if we voted to leave, then this should be expedited. And of course the remaining members have the 'whip hand' in negotiations – how could it ever be otherwise? I continue to be amazed at the lack of analysis by those who campaigned for Brexit. Don't blame the voters, blame those who led them astray.

Reply

Pingback: Confused About Brexit? | Bora Laskin Law Library Reference Services Blog

Jack Roe
June 27, 2016

Your analysis is erroneous. A proper construction of the treaty is that, per s. 1 of art. 50, the UK has decided already "in accordance with its own constitutional requirements" by the referendum. The idea that a majority vote by all the commons of the UK, could be over-ruled by their appointed representatives in the House is absolutely ridiculous and anti-democratic.

It certainly is not the part of an unelected aristocracy like the House of Lords to countermand the commons-in-referendum as they have decided. The commons-by-representatives-in-parliament is clearly an inferior body to the commons-in-referendum. Elitists and aristocrats will, however, always try to maintain that democracy is not the order of the day in English synods.

At his point, the obvious ministerial duty of the representatives is to implement the will of their electors. The referendum is obviously an undertaking to clarify the way in which the representatives must act toward this file.

Your analysis is at best formally correct, and at that only on the basis of the peculiar understanding that statutes don't derive their ultimate force from the consent of the governed. So if the governed have, by voting in favor of a ballot, endorsed it, they have as much as enacted it as statute already. Legalistic and bureaucratic formalisms about enacting clauses have no place where millions of people have expressed their wills.

This is a constitutional moment for the UK, and the people must seize their power and recognize that they have already statuted and ordained the future of their nation—and even if in the end some have regrets, it is better that they know their power, rather than being enslaved to a foreign bureaucracy.

Everyone is equal, so the referendum is really like a super-statute voted on by 33,577,342 people. Seventeen million of them and change decided to support it, and only sixteen million and change were against, so it passed. I cannot fathom anyone with any sort of commitment to democracy denying the validity of seventeen million people assembled in synod by a much smaller synod of hundreds that these seventeen million have themselves appointed beforehand.

if I appoint a steward to manage an affair for me, I can always re-enter the premises and manage it for myself, tho I may still owe my servant wages even if I don't use him, depending on the customs concerning the wages of servants. The people have re-entered the issue of remaining in the European Union, and their servants must follow their will, that is simply how English law works, fides servanda est.

Reply

chrisharrison
June 27, 2016

"The commons-by-representatives-in-parliament is clearly an inferior body to the commons-in-referendum".

You're just making stuff up. What you're asserting has no basis in law, unless you're suggesting that this referendum vote by (your) proclamation trumps all established law and the constitution of the UK?

Reply

Jack Roe
June 28, 2016

I once heard a judge refer to parliament as a "grand jury." How much grander, then, is a jury composed of tens of millions of people? The real law in play here is that verdict of jurors are not reviewable, certainly not by parliament, which never was a court of law, anyway.

There is a greater constitutional issue here. Are you suggesting it is not established law and constitution that the majority rules? How, then, could a small jury of parliament men, appointed by the 32 million electors who participated in the referendum, possibly reverse the majority? They haven't got the numbers to have any authority.

This is part of the unwritten democratic

constitution of the United Kingdom, and of all democracies—if you disagree with this, you want some other form of Government, like aristocracy or oligarchy, which isn't an indefensible position, but I think that anyone attemtping to bracket or to suggest that the clear will of the electors can be ignored on the basis of an "established law," is quite threatened by democracy, and indeed believes that the law exists to frustrate democracy, reducing democracy to, basically, whatever the true ruling form decides is acceptable.

Finally, all law is made up, and it's not like we go by tradition these days, so what I make up is hardly any worse than what the EU supporters will make up. Certainly you get the gist of what I am saying—what sort of voter would ever countenance the idea that his vote could be reversed by parliament? You might as well say that the return of MPs is advisory, and that parliament could always simply vote to exclude an MP.

Tom Austin
June 28, 2016

Jack, fine – Let's look at this 'jury' notion.
What were the rules of evidence?
Who examined the witnesses:in 'chief' and in 'cross'?

Who is the 'judge' what is their role?

AS
June 29, 2016

No Jack, democracy does not mean majority rule. That's why we have a parliament which includes a variety of opinions not just one. I suggest you go and read a book to educate yourself on democracy. The dictionary would be a good start.

Prof Gavin Phillipson
June 28, 2016

Jack's argument is a purely political / normative one, and not rooted in the UK constitution, in which referendums have whatever legal force (or none) that Parliament chooses to give them. This is so because, In the UK, parliament, not the people are sovereign, as every first year law student is taught. In this case, the relevant legislation made the EU Ref advisory. As a matter of UK constitutional law, therefore, the referendum itself cannot

constitute a 'decision' ' in accordance with the UK's constitutional requirements'. I think that's fairly straightforward.

Reply

Dan Law
June 28, 2016

The question then is whether exercise of royal prerogative can constitute a decision "in accordance with the UK's constitutional requirements". Is there a valid notification under Art 50 without Parliamentary consent?

tiddk
July 1, 2016

The "commons-in-referendum" does not exist as such. A referendum is a very rare beast indeed, and the legal position of this one is that it is advisory only. "The-commons-by-representatives-in-parliament" is constitutionally underwritten by the Bill of Rights in the late 17th Century.

It matters not that the Government – which may or may not be composed of elected members of the Commons – passes statutes which are inimical to the very people who IN EFFECT created it by voting in a majority for a particular political party; that is the system we have, and the occasional referendum does not alter that fact. It is the collective political decision of the Cabinet to abide by the result of the referendum and subsequently enact it by statute, but that does not legalise that result in any way. Challenges to the process can and hopefully will be made.

Reply

Ed Miller
June 27, 2016

This all seems a bit silly to me – the most perfunctory of academic exercises. An Article 50 notice will be given by a government Minister through the exercise of a prerogative power, for which action the Minister will be accountable to Parliament.

If Parliament doesn't like the idea, it can pass a motion of no confidence in the government. All of this is very much in the political sphere. Judges should and will stay out of it. It is not as if this has been sprung upon an unsuspecting legislature; Parliament enacted the EU Referendum bill.

The notice itself will not deprive anyone of any rights, nor will it contravene any statutory measure. The subsequent negotiations will be the object of further scrutiny in Parliament, and may well be protracted, with the possibility that a General Election may

intervene.

Reply

Rosemary Mulley
June 27, 2016

The effect of the notice would be to deprive everyone of many rights. Once given, it would set the two-year period running. This could not be stopped by Parliament or by any further exercise of prerogative power. The effect of giving notice would be to take away or European Union citizenship, our rights to live and work, our rights to healthcare and to study. Any motion of no confidence would be impotent. It could not bring these rights back.

Of course, we would hope that in the process of negotiation at least some of what we had lost – by giving notice – might be clawed back. I am not sure however why the negotiation process should be overseen by Parliament but the notice itself could be given unilaterally by the executive.

Reply

Ed Miller
June 28, 2016

This is about politics, in the UK and in the EU. It is not about whether Boris as PM sneaks off to Brussels with a letter without letting on, the day before a no confidence motion. For goodness sake, we had a referendum. If MPs care to ignore it they have time to force a General Election. The EU would let us tear up a hasty letter. MPs will, if nitpicking lawyers have convinced them of the need, authorise the Article 50 notice.

Let's not get bogged down in this stuff. It is incredibly petty and an affront to the political process.

Pingback: Only a vote in parliament can trigger Article 50 say constitutional experts | The k2p blog

Utting Wolff
June 27, 2016

Reblogged this on Utting-Wolff Spouts and commented:
Brexit and Article 50.

Reply

Pingback: Here are 3 Crazy Scenarios In Which Brexit Doesn't Happen - Fortune

Eleanor Spaventa
June 27, 2016

Very interesting although I think though the UK should be very careful not to alienate its partners – remember it needs their agreement for any deal – protracted uncertainty (and its effect on the economy of the EU) might not be the best way to start with a strong negotiating position. Also you might be interested in a different perspective from the continent http://www.spiegel.de/international/europe/britain-exit-may-not-be-such-a-disaster-for-the-eu-a-1099797.html

Reply

Pingback: A Constitutional Solution to this Constitutional Crisis – Vinculum juris

Matt Leese
June 27, 2016

Are all you people completely off your heads? If this was a non-binding result then surely it should have been clearly stated and made to be understood by the 33 million people who voted?

If Parliament rejected the vote then someone could take them to court stating that the public had been misinformed and that the government must enact article 50 because 99.9% of the public thought this was a legally binding vote.

Reply

Tom Austin
June 28, 2016

I'd be interested to learn when and how you came by the notion that this referendum result was to be binding.

Reply

Robmod
June 28, 2016

The notion was come by via Cameron stating that the result would be determinative. The discussion here reveals that his position has no firm foundation and maybe ultra vires. Certainly the question should have been settled beforehand, yet shamefully there was scant scrutiny. Nevertheless, the uncontroversial position is that the referendum result does not create a legal obligation for the government to leave the EU because the enabling legislation did not specify such a thing. A PM's promise (if that is what it was) doesn't change that. Cameron could declare tomorrow that he's changed his mind, was ignoring the referendum result and that the UK

would not be leaving the EU. He has multiple grounds for doing so.

Doubtless there would be lots of shouting and the like but I doubt whether even a motion of no confidence would succeed, given the makeup of the Commons. Indeed if he called a snap General Election on the issue, the Conservative party would win, because it is clear that the real majority in the UK is strongly for Remain. And all those euro phobic conservatives including Johnson and Gove would be back at square 1 having to justify why they lied to the public about the reality of a Brexit in the first place. They would be neutered. And no questions of constitutionality would arise.

Tom Austin
June 28, 2016

Yes 'Rob', I was not in the dark as to those facts – I simply wished to know how somebody (anybody) could be so certain as to things being otherwise. 'Conservative' win – I do so enjoy a little drollery.

Gavin Phillipson
July 2, 2016

It's not legally binding and I doubt was ever said to be so. It is however, politically determinative. Some of the most important rules in the UK constitution (such as that the Queen's prerogative powers are exercised on her behalf by Ministers) do not have the force of law.

Reply

Solange Lebourg
July 6, 2016

In what sense is this politically determinative?

Bear in mind that only 37% of those eligible voted for it.

DNACowboy
June 27, 2016

They could try, but the message it would send around the world to despots and dictators would damage democracy for a hundred years, perhaps never to recover and for what, cheaper roaming charges? Have you no shame? If a single sitting UK mp was to try to counter the democratic will of the British people there will be carnage in the streets.

Reply

Robmod
June 28, 2016

What democratic will? It was 17,410,742 votes out of an electorate (not including 16 and 17 year olds who will be immediately affected as adults at the earliest time a Brexit can happen) of 46,500,501. That's 37.45%. And that my friend, is a tyranny of the minority. Indeed, when you drill down into the data, it becomes clear that the proposal to leave the EU is founded upon gerontocratic and not democratic principles.

Reply

Alistair
June 30, 2016

If shame doesn't convince you, then think on other consequences.

How far do you think this sophistry can be pushed before you get civil violence?

Pingback: What is sufficient to constitute an Article 50 notification to leave the EU? – Aberdeenunilaw

Alex
June 28, 2016

I'm a civilian so please excuse the probably stupid question.

Quote: "In our constitution, Parliament gets to make this decision, not the Prime Minister."

If Parliament does authorise the Article 50 process despite the (rapidly emerging fact that) "... the case for Brexit has not been made – or was gained under a false prospectus. As Edmund Burke taught us, ours is a representative, not a direct, democracy."

Would/could this be subject to a legal challenge in the courts.

Thanks in advance

Reply

Pingback: On Brexit (some more) - ***Dave Does the Blog | ***Dave Does the Blog

Joann Alsdorf
June 28, 2016

If Cameron, Johnson, Farrage and Corbyn were found to be in breach of the Code of Conduct for the House and the Ministerial Code, what does that do to the position?

Reply

tiddk

July 1, 2016

Since Farage is not an MP (thankfully) he could not (unfortunately) be found to be in breach.

Reply

Pingback: The Big Green Button Bill | Waiting for Godot

John Charlton
June 28, 2016

I'm not a lawyer, but it seems obvious to me that triggering an Article 50 notice inevitably leads to the UK exiting the EU. The fact that it takes two years doesn't change the result. If I poison someone slowly over 2 years I'm just as guilty of murder as if I point a gun at them and pull the trigger. The UK Parliament had to pass one or more bills to join the EU. The argument is simply whether the Executive can defeat the effect of that legislation by executive action, which an Article 50 notice would inevitably do, eventually. Unless the Executive can repeal legislation without the approval of Parliament (which appears doubtful), I fail to see how anyone can argue that the PM has the authority to issue the notice without an Act of Parliament.

Reply

Dan Law
June 28, 2016

I agree. The main argument seems to be that to argue that Parliament must approve this would be seen as an attempt to thwart the democratic will of the people and would lead to political backlash. That might sound like disregarding constitutional law and throwing the rule of law out of the window in face of popular sentiment, so the applicability/relevance/importance of this principle of our constitutional law is doubted. But this is not some esoteric legal technicality wrested out of some obscure case – it is fundamental constitutional principle as set down in the Bill of Rights 1689: "laws should not be dispensed with or suspended without the consent of Parliament".

I would be very uncomfortable if Parliament did not consent, but I would draw a red line at subverting the Bill of Rights.

Reply

Rosemary Mulley
June 28, 2016

Yes. We are subject to the rule of law. If that has now become an irrelevance and subordinate to politics, then there has been a revolution.

JNzuve
June 28, 2016

I think this is wishful thinking based on an over-reading of the FBU case

Reply

Dave
June 28, 2016

Constitutionally 1. You have an act of Parliament in place but that act really does not need to be repealed until we actually leave. 2. Recent convention for international events such as acts of war has been to have a motion and vote in Parliament – a lot quicker and simpler than an act of parliament. So knew scenario is that the new PM puts down a confidence motion on the proposal to accept the results of the referendum. This also gives a mechanism for the PM to lose the confidence vote as step 1 towards a General Election. 3. Include Brexit in the next Queens Speech of the new parliament. 4. Post Brexit and with the terms in place of a new treaty there would presumably be a new act of parliament repealing the European Communities Act. Just a thought but we could find ourself out of the EU and parliament refusing get to repeal the act so that we would be obligated by Parliament to canon time up to relate to the EU in a way that no treaty any longer requires us to.

Reply

Pingback: [LIVEBLOG] Plenaria del Parlamento Europeo su Brexit – hookii

Rosemary Mulley
June 28, 2016

Ed Miller

Any democratic or moral legitimacy of the referendum result is in any case undermined by the fact that it was obtained by fraud. But it was only ever advisory in the first place. Its existence should not shut down discussion of the extent of the prerogative and the power of the executive to repeal legislation.

The legislation which, it should be noted, was legitimised by the democratic mandate, as it is defined in our constitution.

We have not voted for a new constitution.

Reply

Ed Miller
June 28, 2016

The remedy is political.

If Parliament were willing to assert the right to vote against an Article 50 notification, then it would tell you something

about the politics of the situation that makes all of this discussion moot.

Reply

Rosemary Mulley
June 28, 2016

It would probably tell me that Parliament had realised that a premature article 50 notification would put the United Kingdom in a perilous position.

Rosemary Mulley
June 28, 2016

The trouble with giving effect to the referendum result is that it says very little. The aspiration to "leave" is unspecified and could mean any number of things. A vote to agree to give effect does not take us much further.

Reply

Cromwell's Ghost
June 28, 2016

But in opting out of various areas of EU Law that Parliament has not wished to be bound by, and presumably having used prerogative power to justify doing so, they have already used prerogative power to defeat statute. Section 2 of the ECA 1972 does not say "whichever bits of EU Law the Government of the day might fancy", it says "All such rights, powers, liabilities, obligations and restrictions...". So there is already precedent for overriding statute using prerogative power.

The reason the Constitution is not written down is in order to provide maximum wriggle room, should the need arise. And if we're talking about the Constitution, the 1972 Parliament was convened under the principle that "no Parliament might bind its successor" yet the European Communities Act does just that – a strict Diceyan view I know. Nevertheless, the issue remains. This principle, being oft quoted when it suits and swept aside when it doesn't, gives further weight to the idea that the Constitution is largely ineffective and exists as an absurdly flexible tool to justify whatever it is Parliament wishes to do today, no matter how much it might vary from previous practice.

Reply

Pingback: A Constitutional Solution to this Constitutional Crisis – LaPSe of Reason

Dan Law
June 28, 2016

One of the key documents of our constitution is the Bill of Rights 1689, and central to that is the provision that "laws should not be

dispensed with or suspended without the consent of Parliament".

The importance of that cannot be overstated.

Reply

Andrew Cook
June 28, 2016

Shouldn't all of thie been made explicitly clear as part of the referendum process?

Reply

Dan Law
June 28, 2016

This should have been explicitly clear as part of the education process – English Civil War, Glorious Revolution, Bill of Rights, constitutional monarchy and Parliamentary democracy. Ignorance of our constitution is no reason for now ignoring it.

Reply

Pingback: Dear Ben Bradshaw MP #Brexit – A Dartmoor and Devon blog

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Pingback: Does Brexit Require Legislation? | spinninghugo

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spinninghugo
June 28, 2016

i think the above is plainly wrong, and seek to explain in simple terms why here

https://spinninghugo.wordpress.com/2016/06/28/does-brexit-require-legislation/

Reply

Dan Law
June 28, 2016

I see the logic that repeal of ECA is not needed, and agree with that. As you say in your penultimate paragraph in the blog, there would be nothing left (and the authors here argue this too). That however means that triggering Art 50 would dispense with laws and rights. As a matter of constitutional law this requires consent of Parliament: Bill of Rights 1689. Notification of the decision to withdrawl in accordance with Art 50(1) thus requires Parliament's consent, otherwise it would not be in accordance with the Bill of Rights and the UK's constitutional arrangements.

Would you explain why you think Parliamentary consent is not needed for a valid Art 50 notification.

Reply

spinninghugo
June 28, 2016

it is no more needed than for any other change to EU law that reduces or changes the rights of persons as a matter of UK domestic law. The European Communities Act incorporates the law under the Treaties as it is from time to time. As it changes, so the law as incorporated into UK law changes.

Rob Kaye
June 28, 2016

I'm afraid this is all just wishful thinking.

1. I don't necessarily accept that the 1972 Act was intended to create rights which can only be extinguished by legislation. I think a better purposive interpretation would be that it was passed to give legal effect to the decision of the UK to join the EEC. While legislation may be needed as a consequence of a subsequent decision to leave, it does not follow that the legislation is a prerequisite.

2. To the extent that the 1972 Act did give legal effect to the rights in the Treaties, one of those rights is – as a result of the Lisbon Treaty – the right of the state to withdraw from the European Union. So the 1972 Act itself now contemplates the possibility of withdrawal.

3. To the extent that the 1972 Act creates an implied restraint on Ministers not to exercise prerogative powers other than in pursuance of the UK continued membership of the EU, I would suggest that the European Union Referendum Act 2015 has superceded that an implicitly gives Ministers a power (but not a duty) to act so as to facilitate the UK's withdrawal from the EU. The Act explicitly contemplates "WHETHER the UK should remain a member of the European Union". I don't argue that an implication in an Act would be sufficient to overcome an explicit statutory requirement; I do think it's enough to overcome an implicit restraint.

4. Ultimately, what are the chances of a court being willing to strike down a decision of the Prime Minister to invoke Article 50 following a clear (in the sense of uncontested) majority in a referendum? Even if you think that a judge would bend over backwards to allow a successful JR, would they do so following a vote in a referendum enabled by clear legislation which explicitly contemplated the UK leaving the EU? To those saying it may only be a 20% chance, I doubt it's as much as a 2% chance.

The only way this is going to be revoked is politically, if the new Government – or a new House of Commons – decides not to withdraw from the EU despite the referendum result. It won't

happen because there's some bit of legal woo that can stop it. If you think that, you're away with the Freemen on the Land.

Reply

Pingback: Brexit Crisis: how does the monarchy fit in? | Francis Young

JR
June 28, 2016

Another example of why we need a written constitution.

Reply

Rosemary Mulley
June 28, 2016

As the authors say, the constitution is written but not codified.

Reply

Pingback: So what is the truth on Brexit? The law and logic..... | lmoscovitch

Rivergate Nowinter
June 28, 2016

isn't a key point that the EU is itself bound, per Art 50, to look at whether the trigger is in fact in accordance with the member state's constitution? A referendum, which was explicitly stated to have no legal effect clearly is not enough. So it needs some legislative and or executive action. It seems perfectly rational, and European(?), for the response to the break up text from Dave to be "no you can't do that"- and for Angela to mean it...

Reply

Dan Law
June 28, 2016

It is an important question where responsibility for this lies. I would guess that if notification is from a minister, they would be presumed to have authority. If Art 50 was triggered without proper authority with rights under EU law breached because of an invalid withdrawal, who would be liable? It would be for ECJ to decide. I'd think UK would be found at fault e.g. taking into account Art 4 and 5.

Reply

stephen barker
June 28, 2016

66% of eligible voters did not vote to give up their rights under EU law. We do live in a representative democracy although the overall

conduct of the current set beggars belief. The Foreign Secretary, William Hague's written evidence to the Foreign Affairs Select Committee – implies the Prime Minister will renegotiate terms of the EU Treaties and put those to the electorate for acceptance. We did not get that question. For the legal eagles look at Germany 1933 for the steps to be taken to relieve the citizen of their rights through the courts. Once the Executive seems unchangeable and the process of erosion of the citizens constitutional rights has a veneer of legal authority all is lost. I took some comfort from the Supreme Court decision in Tesco Stores Ltd v Dundee City Council [2012] UKSC 13 which brought the dissenting judgement of Lord Atkin in Liversage v Anderson [1942] A.C. 206 forward as an authority. So the Executive and Prime Minister cannot make it up as they go along. Royal Prerogative could, in the hands of any Prime Minister or Minister easily be described as Humpty Dumpty as referred to by Lord Atkin.

Lord Atkin on the role of the judge; "In England, amidst the clash of arms, laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the executive, alert to see that any coercive action is justified in law" It seems to me Messrs Barber, Hickman and King make a plausible argument the Prime Minister is capable of being challenged on his intention to remove rights conferred on the majority of UK citizens who have not accepted or agreed to their loss which will occur if the UK withdraws from the EU.

Reply

Marty Caine
June 28, 2016

So because democracy returns a result that you disagree with, you want to ignore it and count the non-voters in with the leave to create the result you want?

I suppose using the same system I can say that the majority of people in Scotland did not vote to Remain because the total number of Leave voters + non voters would be far higher than the Remain count.

You appear to want to destroy the very democracy that the majority voted to keep.

The repeal of ECA Act 1972 is yet another nonsense desperation argument because there is no majority government that could implement that anyway.

Reply

Rosemary Mulley
June 28, 2016

The referendum was expressed by Parliament to be non-binding, advisory. We live in a representative democracy in which Parliament is supreme. Do you deny that this is still the constitutional law of the United Kingdom? Has any democratic process taken place which might have changed this law?

stephen barker
July 12, 2016

There is a significant difference between changing a persons current position of known circumstances and a vote to step into the unknown. Those who want to bring about peaceful change that affects the lives of everyone else should be in a clear majority of all persons affected. The referendum on membership of the EU did not achieve that with 34% of those eligible to vote.

The Scottish example is the opposite of what you say. Those who wanted to bring about peaceful change that affected all who live in Scotland did not obtain a majority and to calculate by how much they missed that target those who did not vote should be added to the remain group as clearly not voting to leave the UK.

You are a UKIP supporter and you have a clear objective of the UK leaving the EU club. I do not share that view. Neither do I want to destroy democracy. Quite the opposite I want effective representative democracy – not the kind of abdication of responsibility we have experienced on this topic. The UK Parliament is still the seat of government in the UK and has been during the UK's membership of the EU. It might have been convenient to some members of Parliament to divert domestic criticism towards the EU, but Parliament has been the place where most decisions affecting our lives have been made. That has been the case throughout our membership of the EU. Two examples of no involvement of the EU are the NHS which affects so many of us and is entirely with the UK Parliament. The waging of war is entirely with the UK Parliament. Are these policy areas mishandled? As far as the last major deployment of troops is concerned Chilcot says yes. As for the NHS it would collapse but for the

138,000 non UK citizens who work in it. We are still advertising worldwide to recruit additional staff. The UK continues to recruit non EU citizens on a 2 year programme to full citizenship scheme if they have skills the UK has set out the UK needs. Not unreasonably the UK allows dependents to enter after an initial period to join the person who initially arrives. This simply proves we have skills gap. The fault or lack of planning to improve that skills gap is with the UK not the EU.

Your last point on changing primary legislation is just plain wrong. Legislation is changed all the time involving the repeal of existing or earlier legislation. The idea is we improve and adapt our law to meet social circumstance through the process of representative government. The same thing happens in the EU even though the EU is not a sovereign state. It functions as a collective of Member States and in over 90% of decisions of the Council on Ministers from those Member States the UK has voted with the majority. So whatever the shortcomings of the EU in the last 40 years the UK has played its part.

As you might expect I think the shortcomings of the EU are over stated by those like yourself who simply have no enthusiasm for the UK membership continuing. We have forgotten the times when UK workers were going to the EU under the freedom of movement rights obtained by EU membership. So many were going it inspired a TV drama / comedy programme Auf Wiedersehen Pet (1983), to be made. Net migration from the UK was evidence of UK citizens voting with their feet.The general economic outlook was not good for the UK.

The UK has come along way since then. Being in the EU has made a significant contribution to that journey. To say it has not is plain wrong. I freely admit I am desperate in the sense – desperate (irretrievably) that the UK should not squander its gains on a 'project' of leaving the EU which has no detailed plan, no strategy, assumes full co-operation of the EU and the rest of the world to help the UK succeed. Why would they? Self interest is often the answer. That usually only applies when an economy is growing not when it

is contracting as the UK has begun to and will continue to. The contraction will gather momentum, the asset strippers will arrive to cherry pick the best and this time UK workers will not have the right of free movement to go and work in the EU. It is all so desperately unnecessary.

Jane Bigger
June 29, 2016

Ref Stephen Barker comments on " 66 % of eligible voters did not vote to give up their rights under EU law. "
Can I , as an EU citizen , or a group of us, then, challenge the PM on his intention to remove rights conferred on the majority of UK citizens who have not accepted or agreed to their loss which will occur if the UK withdraws from the EU.
Or can this be challenged in the EU court ?

Or can I make a challenge that misinformation in the Leave campaign will lead to loss of rights afforded to me as an EU citizen ?

Not a legal professional as you can tell but would very much appreciate your advice.

thank you

Ms J Bigger, Cambridge

Reply

Philip Wright
June 28, 2016

There are a lot of posts so excuse me if I have missed this already. The EU will eventually make Parliament and the Crown defunct with both having no real powers to defend the rights of the British people or the economy. Are there any laws that prohibit this happening and my even require the government to trigger article 50 as by doing it the sovereignty of the UK would be protected.

Reply

tiddk
July 1, 2016

"The EU will eventually make Parliament and the Crown defunct". Can you please quote me your sources for that statement? (The Daily Mail and The Sun newspapers I do not accept as valid sources of course.)

Reply

Richard
June 28, 2016

One thing that currently worries me is the thought of UKIP gaining

power. There is a vacuum in Westminster at the moment, and in a snap election voting may be split across the three parties. Some on the Far Right are concerned that there may be attempts to derail Article 50 and are encouraging their followers to vote UKIP in order that it be enacted. The gutter press may also stoke tension and blame all issues encountered on the delay in invoking Article 50.

If UKIP come to power then they will not only push the button but will metaphorically smash it with a large axe. They can also claim that it is their manifesto commitment to do so, which previous governments have used to take The Lords out of the equation. Very worrying indeed.

Reply

Mike Fearon
June 28, 2016

The Vote Leave leaders have already said the first task is to repeal the 1972 Act. If that is achieved other repeals or amendments are not urgent. If Parliament repeal yes Act, other repeals and amendments can wait. If the government cannot, or will not, get this repeal passed, that would be a reason, and the right time, to call an election. It is simpler and more sensible thanthisproposal, and there should be no serious legal or constitutional objective to theGovernmentgivibgnoticeubderArticle 50. Any views from the authors?

Reply

Marty Caine
June 28, 2016

As there is no majority government there can be no repeal of laws, you would need to have another election and hope that on party wins an overall majority, which is highly unlikely with the state of the parties at the moment, so we would end right back at square one, the only legal and sensible way we can leave the EU is via Article 50 and that needs invoking sooner rather than later.

I can't seem to find anything at all in the Referendum Bill that goes beyond the point of actually holding it, there doesn't seem to be anything about what happens after the result. Maybe I'm just brain fried ?

Reply

Mike Fearon
June 28, 2016

I think you are agreeing that if the government were to be unsuccessful in repealing the 1972 Act, there would be a need for an election, and a sufficient number of MPs would support a date prior to the end of the five year term. I think it premature to assume that there would be no

majority in theCommons for repealing the 1972 Act.

Dan Law
June 28, 2016

It's a pity that this legal question about whether Parliamentary consent is needed for valid withdrawal is seen in terms of an attempt to stop brexit (probably links e.g. from Guardian). It would be good to have a discussion focused on legal analysis of this question of constitutional law rather than political reactions to the possibility that this might be required.

If the UK is going leave the EU, there needs to be a valid withdrawal. If there isn't a valid withdrawal, the UK remains in the EU and may become liable for billions in compensation for breach of rights. It is essential to effect a proper legal withdrawal, and an important legal question has been raised about the process for this.

Reply

Robmod
June 28, 2016

I agree in principle but law is used adversarily and so it is unlikely that most people here making a case for one view or another aren't silently advocating for or against Brexit. Yet I imagine most lawyers could advance a contrary view if pushed to do so. I think it highly unlikely that anyone in the commission is going to make a judgement as to whether our "constitutional requirements" have been met after our then PM triggers Art 50, (if he or she actually does) whether he or she consults Parliament before the trigger or doesn't. (It has merely asked for notice). It seems clear that this question of constitutional legitimacy must be decided, practically, before such a trigger. But there does not appear to be any evidence that anyone in the legislature or the executive has even acknowledged that a question exists as to whether use of a prerogative is constitutional. Conversely, Geoffrey Robertson QC has raised the issue in the media differently. He is firmly of the opinion that your view is the correct one. But more than that, he seems to assume that the question is already decided and that of course it is true that the executive must and shall seek Parliamentary consent and cannot proceed without it.

Reply

Robin Evans
June 28, 2016

I note several references to 'calling an election'.Under fixed term parliaments is that not difficult to orchestrate?

Reply

Peggy
June 30, 2016

I believe under this Act, Parliament may vote a resolution calling for early election, or this can happen following a motion of no confidence, at the end of the 14-day period, in case no PM is found who can secure the confidence of the Commons.

Reply

Pingback: Pulling the Article 50 'trigger': Parliament's indispensable role

Pingback: I·CONnect – Pulling the Article 50 'Trigger': Parliament's Indispensable Role

Michael Lyon
June 28, 2016

One presumption made at the top of this discussion is that the trigger of Article 50 will be irrevocable (or at least subject o the consent of the EU Council). But is this so clear cut?

It would seem to rule out the possibility a genuine change of mind by the departing member state, which one could envisage in some circumstances as a reasonable – if annoying – consequence of the progress of the negotiations, or of a change of their will as democratically arrived at.

I would understand the purpose of Art 50 as being to provide some protections both to a member state and to the EU in the event of the member state wanting out. It ensures that the MS need not be strung along indefinitely; equally, it has sensible provisions as to how the EU negotiates that.

Now, of course, it would be naughty if the MS used Art 50 to extract concessions that it could not agree through the normal procedures; and it would be annoying if they flip-flopped in a irresolute way, letting everyone down. So one would be conscious that there could be abuse of Art 50, and therefore that MS's ought not be encouraged to use it lightly. But it would seem to be rather a strong jump to understand that Art 50 would actually outlaw these behaviours, the one mendacious and the other inconsiderate, if that also had the effect of preventing a genuine evolution of purpose. One might expect that other sanctions would be effective – damage to international reputation and so on. Moreover, the point of any negotiation is that it is the search for a form of agreement that all parties agree on, which will not be obvious ex ante, and cannot necessarily be presumed to be regarded as always as attractive as on outset. In other words, parties can walk away, or they can get talked out of it.

Reply

Robmod
June 29, 2016

According to Professor Derrick Wyatt QC in evidence given to The European Union Committee, the U.K. can change its mind freely AFTER invoking Article 50:

Can a Member State's decision to withdraw be reversed?

We asked our witnesses whether it was possible to reverse a decision to withdraw. Both agreed that a Member State could legally reverse a decision to withdraw from the EU at any point before the date on which the withdrawal agreement took effect. Once the withdrawal agreement had taken effect, however, withdrawal was final. Sir David told us: "It is absolutely clear that you cannot be forced to go through with it if you do not want to: for example, if there is a change of Government." Professor Wyatt supported this view with the following legal analysis:

"There is nothing in the wording to say that you cannot. It is in accord with the general aims of the Treaties that people stay in rather than rush out of the exit door. There is also the specific provision in Article 50 to the effect that, if a State withdraws, it has to apply to rejoin de novo. That only applies once you have left. If you could not change your mind after a year of thinking about it, but before you had withdrawn, you would then have to wait another year, withdraw and then apply to join again. That just does not make sense. Analysis of the text suggests that you are entitled to change your mind."

Para 10; pp 4/5

http://www.publications.parliament.uk/pa/ld201516/ldselect/ldeucom/138/138.pdf#Page=6

Reply

Eric Clive
June 28, 2016

This is an interesting and impressive debate. I suspect that in practice, and to avoid awkward questions like "Show me your constitution", a future Prime Minister would seek the authority of Parliament to trigger article 50. Parliament would be unlikely to refuse such authority unless it was a new Parliament with a clear mandate to do so. As UKIP would call "Foul" if an attempt was made to let a general election (on a different franchise and system) trump a referendum, the mandate to the new Parliament would have to be to refuse consent to an art 50 trigger only if that was authorised by a second referendum. So, for England and Wales it is difficult to see any alternative to exit other than a second referendum. For Scotland there is the option of an arrangement under article 50 which would allow a newly independent Scotland to remain in the EU. My question for international and constitutional lawyers is this. Would a unilateral declaration of independence suffice for this purpose, given that there would be prompt recognition by 27 States and a significant supra-national organisation?

Reply

tiddk
July 1, 2016

Sadly (for Scotland) the entire edifice of EU membership, laws and treaties applies to a single entity known as the "UK", of which Scotland is a part. A unilateral declaration of independence would in effect create a new nation as far as the EU was concerned – one which would have to apply for membership, however sympathetically that was received by the 27 member states.

One complication that would arise is that the citizens of the new state are also – for the time being – actual existing citizens of the EU who do not wish to leave it.

"Bag of worms" seems inadequate to describe the legal niceties involved.

Reply

Pingback: Write to your MP now to make sure Parliament decides Britain's future | The Chaos Chronicles

Pingback: Write to your MP now to make sure Parliament decides Britain's future | The Chaos Chronicles

Roger Panton
June 28, 2016

What is the Constitutional Requirement? Where can it be found?

Reply

Dan Law
June 28, 2016

http://www.legislation.gov.uk/aep/WillandMarSess2/1/2/introduction
see Dispensing Power under Subjects Rights.

Reply

nev knight
June 28, 2016

The people have spoken and have said leave,this is the answer of the majority and before you say its not legal,remember the 1917 Russian revolution,was that legal or the majority speaking out?

Reply

Robmod
June 28, 2016

Explain how you arrive at "the answer of the majority" from:

1) Population: 65,100,000
2) Electorate: 46,500,101
3) Leave vote: 17,410,742

Reply

Ted Hughes
August 3, 2016

Remain 16,000,000 ish
Not bothered 13,000,000 ish
So where do you put the not bothereds?
This happens in all elections the not bothereds are nearly always the majority, the referendum proved to be different

Tom Austin
August 5, 2016

Liberal (Representative) Democracy [LRD] is not Direct Democracy [DD] and DD is not LRD:There is a common difference between custard and gravy.
At [LRD] elections the majority is almost always the vote that did not win – and the 'not-bothered' are counted on the win side.

Tom Austin
June 29, 2016

Ah yes, the year 1917 – I'm pretty sure there was one Nev.
And a 1962, that was (approximately) the year I heard people being asked (when I was at school):
What is heavier;A ton of coal or a ton of feathers?
People spoke then too – quite a number plumped for 'coal', some for 'feathers'.
Man the barricades?

Reply

tiddk
July 1, 2016

"The people have spoken". Interesting. 17 million have spoken, though many have since said they would have voted the other way, having been fed clear lies by the Leave campaign. In any case, it's hardly a resounding clarion call.

Reply

Chris
June 28, 2016

Taking into consideration the apparent disregard for the Will of the People, it would be proper to try and find a constitutional mechanism that leaves triggering article 50 down to Oliver Cromwell.

Reply

Tom Austin
June 29, 2016

Chris, your rational works also for the actual abandonment of common sense (Clapham omnibus-wise), though I might drag Thomas Cromwell in to sort things out.
How could one invoke the will of anybody, after stupefying them?

Reply

Stefan
June 28, 2016

Many people are disagreeing on what the correct Article 50 procedure is. Let's assume that Britain attempts to give an Article 50 notice but that someone else thinks that the notice isn't valid and takes it to court. What would happen now?

First case: Britain attempts to give an Article 50 notice in 2016. Someone appeals, but the legal system is very slow, and the final instance doesn't make its ruling until 2020. What is the result?

If the 2020 ruling says that the 2016 notice was valid, does this then mean that Britain left the European Union in 2018? This would create a lot of disturbances between the exit date in 2018 and the date in 2020 when the ruling is made public as people wouldn't know whether Britain was a member of the European Union or not at that time. For example, it would be unknown if votes cast by British MEPs are valid or not, and whether British citizens would be able to vote in the European Parliament election in 2019.

Second case: Britain attempts to give an Article 50 notice in 2016, and leaves the EU in 2018. In 2019, someone in the UK or the EU argues that the United Kingdom still is a member of the European Union as no valid Article 50 notice has been given. This case goes through the legal system, and the highest instance finally rules that no valid Article 50 notice has been given. What happens now? Does it mean that the UK suddenly is back in the European Union, and that European Union treaties have to be retroactively applied? This would also create lots of disturbances.

Reply

Dr Frederick John Wilmot Taylor
June 28, 2016

I am not legally trained but I have been following this debate with interest and concern. I note the comment made under Pingback that people should write on this issue to their MP.

I have already written to my MP (text below), and would appreciate advice as to whether my letter is appropriate and indeed strong enough in relation to my belief that Parliament has the sovereign role in this matter.

Dr F J W Taylor

Text of letter:

Dear
>
> May I begin by expressing my great sadness at the outcome of the Referendum about membership of the EU. I am particularly concerned about its implications for the British economy and indeed for the future continuity of the United Kingdom.
>
> I hope that you and your colleague MPs will keep in mind that the Referendum result was really too close to form a basis for such a significant change that leaving the EU would entail. Thus I hope that this will lead to ways of negotiating an accommodation that can enable us to remain in the EU. This is not simply to set aside the outcome of the Referendum, but to reflect that any Referendum can only be advisory and that it is only Members of Parliament who can exercise the executive and sovereign authority to decide the future of our country.
>
> I believe there are always ways of achieving compromises that can meet the demands of all concerned. For example, on the free movement of labour I am sure that changes such as the requirement for those seeking to move to have a formal job offer before they are allowed to move. It would seem that Mrs Merkel and other EU leaders may well support such proposals.
>
> May I conclude by suggesting that before final decisions are made to enact Article 50 and to leave the EU that MPs seek a free vote in the Parliament to ensure that the sovereign decision of Parliament is properly stated.
>
> I look forward to receiving your views on these comments.
>
> Yours sincerely,
>
> F John W Taylor

Reply

tiddk
July 1, 2016

Looks good to me – have you thought of submitting the text of your letter to 38 Degrees so that many more can follow your example?

Reply

jnsm5
June 29, 2016

I too am not convinced by the authors' analysis.

An analogy to the present situation is the termination of war, which is a

matter that may be determined by the Crown, even though Parliament may have previously enacted legislation premised on there being a state of war.

For example, in the absence of statutory provision governing the matter, and in absence of a peace treaty, the last war with Germany was formally ended by notification on 9 July 1951 (https://www.thegazette.co.uk/London/issue/39279/supplement/3739).

By ratifying the Lisbon treaty in 2008, Parliament expressly approved and gave effect to the Article 50 withdrawal procedure; likewise, as others have pointed out, the EU Act 2011 does not purport to place any restriction on a notification being given (in stark contrast to the numerous specific restrictions that it does impose).

As a practical matter legislation would be needed sensibly to implement a withdrawal; but this does not mean there is any legal requirement for Parliament to be consulted before any notification is given under Article 50. There is no question of any affront to constitutional propriety, since Parliament expressly put the question before the electorate by enacting the 2015 Act without reserving to itself the right to be consulted before the giving of any notice to withdraw. Any practical difficulties would need to be resolved by political discussion and diplomacy.

Moreover, even if notification were given only after consulting Parliament, one might still have the case of a general election within the two year period, producing a subsequent Parliament being averse to withdrawal, and which refuses to enact legislation to implement it.

Reply

richard jarman
June 29, 2016

1. Parliament must decide to trigger Article 50 (A.50); by a full Act – this will have to pass both houses, the Parliament Acts may be invoked?

2. The Scottish self governing settlement imposed EU law on Scotland, it did this in the course of altering Scottish constitutional arrangements & altered the Act of Union; this was consensual but operates to divest parliament of sovereignty thereby. The UK has thus subrogated its sovereignty. At first glance grabbing back sovereignty using A.50 may appear to suffice. No; only if the mechanism (if any) allows Parliament to amend the devolution legislation. Otherwise there must be consent of the devolved administration.

3. In Northern Island the same applies. However, here there were intricate agreements involving the Eire government. Not only is UK sovereignty subrogated in the N. Ireland devolution settlement but also separate agreements operate with Eire. A. 50 cannot alter this. N Ireland & Dublin have to agree.

4. In the absence of agreement with Belfast & Dublin we have an open border between Eire & N. Ireland; but more to the point N Ireland remains part of the EU & the UK, we cannot have an internal border? Can we?

5. Dicey (the fount of constitutional theory) would say that changes of the magnitude envisaged by Brexit & the above would require a general election; so also in respect of any A.50, or replacement, treaty. MPs are representatives but the theory goes that although they are free to decide & are not delegates; profound & fundamental changes need an electoral opportunity?

Reply

John Nurick
June 29, 2016

Two questions that don't seem to have been addressed in this fascinating thread could perhaps make the question of Parliamentary authorisation moot.

Suppose HMG uses (or purports to use) the prerogative power to invoke Article 50:

1) Is the Council obliged – or even competent – to interrogate the notification to determine whether it accords with the UK's "own constitutional requirements"?

2) Who if anyone has standing to argue that the purported notification is ineffective because it does not so accord, and before which court?

Reply

Dan Law
June 29, 2016

Articles 4 and 5 TEU indicate that this is responsibility of the member state. If there was not valid notice and only purported withdrawal, we would still be in the EU and liability for breach of rights would almost certainly fall on UK. Ultimately, that would be for ECJ to decide.

The Commission may however have duty to interrogate the validity if the matter is raised e.g. by way of complaint or petition. This could follow the infringement procedure:

http://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/index_en.htm

The irony in this is that EU Commission, Council and Parliament have reacted as if there has already been a 'decision' in terms of Art 50 (not yet notified), when this is the issue in question (see Prof Phillipson above).

Others here would be better able to comment on court proceedings, but it might be that this could be done 'pre-

emptively' by application for declaratory relief in judicial review in UK High Court. If there is question as to meaning or application of Art 50, then unless the correct answer is beyond doubt, this should be referred to the European Court of Justice (see 'preliminary reference procedure'). Case C-213/89 (Factortame) supports making an application for interim relief to prevent a purported notification without Parliamentary approval predjucial to rights under EU law. If granted, this would mean that pending final judgment, Art 50 could not be triggered by the UK without Parliamentary consent. Even if expedited, there would not be a final judgment anytime soon, particularly as this might go to appeal, perhaps eventually to UK Supreme Court before reference to ECJ.

Such an outcome could give UK a stronger negotiating position and might not be entirely unwelcome by HMG.

However that is getting far ahead as the relevant legal questions are not yet clear (e.g. as I see it, issue is to do with the meaning of Art 50(1) and scope of ECA s.2(2) rather than royal prerogative). It is not yet even clear that this has any legs at all.

Reply

richard jarman
June 29, 2016

One reason why the prime minister looked so smug when at the dispatch box after the Brexit result must be that all these points have been on his desk for some time.

Will the Supreme Court judges have to forgo a summer vacation?

The Smiling Pilgrim
June 29, 2016

Amazing to see how Brexit is exploding the blogsphere.

On wordpress right now these kind of blogs and people that post on this subject are just exploding.

I just finished looking at one blog that usually had 3-4 comments on a post and went up to 1,060!

For someone who writes on Theology and Volunteering it is so far out of my expertise but I wish all the people of the UK the best.

I hope however it turns out that there isn't big job losses or pain felt in families.

There are some major political changes happening in the world right now and some themes that are deeply significant.

-TSP

Reply

Pingback: The Results of the European Council Meeting on Brexit | The Abnormal Distribution

Barbara Anderson
June 29, 2016

Sorry guys you can argue black is white till you are blue in the face, as you seem to be doing here but unless you respect the referendum result and thereby the people’s wishes you are advocating the end of democracy. So accept for once that you have lost and help this country to move forward, stop your squabbling and trust the fact that we will be strong as a country if we pull together and respect the wishes of the majority who do not have hidden private agendas.

Reply

Tom Austin
June 29, 2016

Again: Wither Democracy without the rule of law? And, what sort of democracy can we lay claim to that determines our future in a fact-free fashion?
In any case, I see no real difficulty in disappointing 52% than disappointing 48%.
When every general election yields total control to a Party that some 70% did not vote for.

Reply

Dan Law
June 29, 2016

Ascertaining the legal requirements for withdrawal from the EU under Art 50 is not ‘advocating the end of democracy’. It is about upholding the rule of law which is essential to democracy. The law also needs to be respected.

Reply

Anthony Smith
June 29, 2016

Here, here! Having wasted over an hour reading the comments of individuals who are obviously not in agreement with the countries majority decision, I really do wish that people should look more positively on our future rather than the glass half empty approach that I’m absolutely fed up with hearing every time I turn my radio or TV on.

Reply

AS
June 29, 2016

*hear hear

Robmod
June 29, 2016

I keep hearing about a majority decision. But it was a simple majority of votes cast with no threshold requirement in a referendum with advisory status where 13 million people did not give their opinion and where the result relied upon the opinions of the over 65 age group. There are legal, constitutional, moral and intellectual issues in play.

Solange Lebourg
June 30, 2016

Are you only talking about the wishes of people in England and Wales? Under our constitution, the wishes of the people in Scotland and Northern Ireland must be respected, too. Why would they wish to pull together if their majority votes are ignored? Do you trust the fact that we will be strong as a country if they feel that there has been an end to democracy for them?

Reply

tiddk
July 1, 2016

"So accept for once that you have lost". No, we have ALL lost and will continue to lose. The only difference is that those who voted for Brexit have yet to realise this.

Reply

Norman McIlwain (@NorMcI)
June 29, 2016

Since when did the democratic "advice" of the people become the "will" of the people?

There should be a legal challenge.

Reply

Dan Law
June 29, 2016

On reflection I think the argument put by Barber et al is misdirected.

I have no difficulty accepting that Art 50 cannot be invoked by exercise of royal prerogative: that would be contrary to the Bill of Rights (which is the basis for the principle in the Tin Council case). However it does not then simply follow that Parliament must now give its approval before triggering Art 50 as the authors suppose.

Instead the next question is whether this trigger is within the delegated authority in s2(2) ECA. Barber et al do not address this.

As I see it, the scope of delegated authority under s2(2) is the real question here and use of the royal prerogative is a red herring. While it certainly could be argued that an Art 50 trigger is within s2(2), taking the modern approach to statutory interpretation, I don't think the delegated authority extends to this. However until the s2(2) question is argued, I don't think one can safely reach a conclusion on this. In my view the proper starting point to such an argument is ascertaining the meaning of Art 50(1) (compare for example Prof Phillipson on this as in his post above, and which I believe persuasively supports the conclusion that a decision by Parliament is needed).

Reply

Francis de Aguilar
June 29, 2016

Reblogged this on the secret's out and commented:
A must read about the legal implications of triggering Article 50 and leaving the UK.

Reply

Pingback: Strategy and democracy – A Dartmoor and Devon blog

Anthony Tamburro
June 29, 2016

Proposition 1
Statute overrides royal prerogative
Proposition 2
Invoked article 50 can only lead to leaving the EU. There is no get-out clause
Proposition. 3
Leaving the EU will make changes to UK statutes
Proposition 4
Only parliament can make changes to statute and changes must be approved by parliament both commons and lords.

Therefore the prime minister cannot invoke article 50 without parliamentary approval of a bill.

What advice has the attorney general given to parliament?

Reply

Dan Law
June 29, 2016

Anthony – the conclusion does not follow from these propositions that you set out. This overlooks the question of whether a minister might invoke Art 50 not under royal prerogative, but pursuant to authority delegated by

Parliament in ECA s.2(2) (an important difference). I do not believe this is within scope of s.2(2), but it has yet to be shown.

I would consider the 'proper purpose principle' as in Padfield to be relevant. If Parliament had intended to confer such a power in s.2(2), it could have been expected to say so expressly. It would seem extraordinary for Parliament to make the reservations it does, yet confer a power which would render ECA nugatory. I don't think it could be seriously suggested that Parliament intended to delegate its power to decide whether to withdraw from the EU and that this has been a matter of ministerial discretion all along. (I also very much doubt whether such an arrangement would conform to requirements of EU law, which in turn effects the interpretation of s.2(2)).

If it is accepted that this power is not within s.2(2), and given that this was advisory referendum, there would then seem a sound argument that it is Parliament that must make the decision to withdraw and authorise invoking Art 50.

Hopefully some of the experts in constitutional law might give their views on whether s.50 can be invoked pursuant to delegated authority under s.2(2) ECA.

.

Reply

Pingback: InFacts No PM should invoke Article 50 without parliament's approval - InFacts

Joseph Crampin
June 29, 2016

I disagree with your analysis of the constitutional requirements under Art.50 in relation to the ECA. First, neither of the cases you cite are in any way factually similar to the statutory arrangements under the ECA. Second, you make much of Parliamentary intent, which you largely assert, without engaging with its function as part of our dualist legal system. Last, in no way does ECA affect the prerogative power in treaty making, a point made clear in s.1(3), which you do not mention, and supported by the express abrogation of the prerogative in defined areas in the 2002 Act, 2008 Act, and 2011 Act.

That said, I would be interested in your thoughts on the effect of the European Union Act 2011 on our ability to withdraw under Art.50.

Under s.2(1) of the 2011 Act, any replacement agreement of either the TEU or TFEU must be approved by Parliament prior to

ratification and, in certain circumstances defined in s.4, may also be subject to a referendum.

Clearly the Art.50 procedure envisages a divorce agreement and this agreement would replace both TEU and TFEU. Therefore prior to ratification of the divorce agreement the UK an Act of Parliament would be required.

In the first place, considering the 2 year timetable to agree a divorce agreement, this seems quite undesirable since Parliamentary squabbling within this period could result in Brexit without a divorce agreement. From a practical perspective, Parliamentary approval in advance of an Art.50 notification would seem sensible to me.

Second, I wonder whether the act of triggering Art.50 would constitute an amendment to TEU and TFEU as it applies to UK which would itself require an Act of Parliament?

Reply

Pingback: Could Brexit Be Canceled? Here's How Vote Might Be Reversed – NBCNews.com – G Email News

Pingback: Could Brexit Be Canceled? Here's How Vote Could Be Reversed – NBCNews.com | Everyday News Update

Robmod
June 29, 2016

On prop 1, is it really about prerogative or delegated authority?

On prop 2 the problem is that the European Union Committee has took evidence from Sir David Edward QC and Professor Derrick Wyatt QC that we can withdraw notice under Art 50 at any time before we sign a withdrawal agreement. It accepted this advice and published on May 4th.

"There is nothing in Article 50 formally to prevent a Member State from reversing its decision to withdraw in the course of the withdrawal negotiations. The political consequences of such a change of mind would, though, be substantial."

Reply

Dan
June 29, 2016

Robmod –

Re prop 1 – both prerogative and delegated authority need to be addressed.

Re prop 2 – how would the possibility of unilaterally

reversing the decision to withdraw present a challenge to the argument? (Is it suggested that royal prerogative may dispense with and suspend laws provided it is possible to reverse this before this takes effect?).

As an aside, in these circumstances, it would be perilous to rely on the possibility of unilaterally reversing this decision absent a decision from the ECJ that this is the correct interpretation. The clear wording of Art 50(3) is that the treaties shall cease to apply to the state 2 years after notification (absent a withdrawal agreement or unanimous decision by remaining member states to extend). If valid notice is given, then how can the action of a single state disapply the consequence stipulated in Art 50(3)? Such an interpretation is also questionable as it would be to the advantage of the withdrawing member, encourage states to try their hand with negotiating withdrawl terms with nothing to lose, and would be contrary to 'ever closer union'.

Reply

Pingback: Could Brexit Be Canceled? Here's How Vote Might Be Reversed – NBCNews.com | Stylish gadget shop

Karl Napp
June 29, 2016

If it turns out that parliamentary consent is not compulsory, Mr Cameron might have triggered §50 already.

Reply

Robin Evans
June 29, 2016

Please detail your logic? He has explicitly stated he did not intend to trigger Art.50.

Reply

Clay Withers
June 29, 2016

By calling for the referendum in the 1st place.

Sean Feeney
July 4, 2016

Indeed!
Article 50 cries for a non-literal, purposive, and

consequential interpretation given the stark asymmetry of rights in Article 50(4) between the member state that has made a decision to withdraw in accord with it's constitutional requirements and the other member states of the European Union; and given that extending the two-year negotiating period is not in the gift of the withdrawing member state. Only the Court of Justice of the Euopean Union has competence to give an interpretation under European and domestic law (see section 3(1) of the European Communities Act 1972), if theissue is not acte claire to a domestic court. This should be clear to the UK, the othe member states and EU officials, despite their public pronouncements to the contrary.

Reply

Anthony Arnull
July 4, 2016

If one thing is clear about Article 50, it is that it cannot be triggered by accident. The European Council has said that it requires a formal letter from the PM or a formal statement at a meeting of the European Council that is duly recorded in the minutes. This must be right, given the solemn and momentous nature of the step in question. It is for the departing Member State to decide when its constitutional requirements have been satisfied and when to launch the Article 50 process.

Sean Feeney
July 4, 2016

Professsor Arnull perhaps we can agree that the European Council does not have competence to authoratively interpret Article 50; and that “triggering” is disticnt from an act of notification of a decision of withdrawal. The threatened litigation suggests it is for the domestic courts to decide when the constitutional requirements have been met.

Anthony Arnull
July 4, 2016

Yes, I did not mean to suggest that the European Council was competent to give an authoritative interpretation of Article 50, but I do think its interpretation is correct. The step is significant and it must be clear beyond doubt that it has been taken. This is surely the view the ECJ would take. ‘Triggering’ I take to mean the notification by a Member State to the European Council pursuant

to Article 50(2) that it has decided to withdraw from the Union. I agree that it is ultimately for the domestic courts to decide when national constitutional requirements have been met.

steve
July 4, 2016

Except that the EUCJ may need to decide whether the EU Council can actually accept the article 50 notice that may not have been given in line with the constitution of the withdrawing country.

Mike Fearon
July 5, 2016

Assuming the 1972 Act is repealed somewhere in the process the views of the EUCJ will be irrelevant in domestic law. I think every serious participant in this discussion expects that repeal to happen if the UK is to leave the EU, either as a prelude to, or concomitant with, Notice under Article 50.

Anthony Arnull
July 5, 2016

For the UK to repeal the 1972 Act before or simultaneously with notification under Article 50 that it has decided to withdraw would be a breach of Union law and cast a shadow over the withdrawal negotiations and any future trade negotiations with third countries, as it would suggest that the UK could not be trusted to comply with its treaty obligations. The repeal of the 1972 Act cannot take effect until the EU Treaties have ceased to apply to the UK pursuant to Article 50(3).
That having been said, I do not think the ECJ would be minded to investigate whether the constitutional requirements of the UK had been met if a formal notification of its intention to withdraw had been accepted by the European Council.

Mike Fearon
July 6, 2016

The proposal made during the Leave campaign, certainly by Dr. Fox, was that the 1972 Act would be repealed early in the process of leaving, I.e. before the finalisation of an agreement on future relationships, or expiry of the notice period. The

expectation was that this would not change the direct effect of existing Directives in UK law, or of existing legislation to implement EU Directives in the UK. (The term "Directives" may be shorthand for a wider legal framework.). It would prevent new EU Directives (shorthand again) becoming effective in the UK during the "notice period".

Should this interpretation be valid, I am not convinced that this constitutes a breach of Union law, or casts any shadows. I am open to be convinced, but what is the breach?

Anthony Arnull
July 6, 2016

The ECA was enacted to give effect to the requirements of Union law in the UK. If it were repealed while we were still a Member State, we would still be bound by those requirements but they would not be recognised in UK law. Rules contained in the Treaties would not be respected, regulations (which do not require domestic implementation) would cease to have effect, there would be no legal basis for giving effect to unimplemented directives by which we are bound. There might even be an argument that existing national rules giving effect to directives would be rendered invalid unless preserved by new legislation. British courts would no longer be required to take account of the case law of the ECJ or to make references to it even when obliged by the TFEU to do so. So the result would be a comprehensive breach of our obligations under the Treaties. It would be likely further to antagonise the other Member States and make securing a good deal in the withdrawal negotiations even more difficult. In the long run, it might also affect our ability to agree good trade deals with third countries.

Stephen Laws
July 6, 2016

This discussion seems to be missing the point. There is a distinction between Parliament passing the Act to replace the rules in the 1972 Act – repeal is much too simple a description of what it would need to do – and the coming into force of that Act. The commencement of the Act, once it is on the statute book, could be on a date chosen by

the Government. The real question – which I believe to be only a political and constitutional one, rather than a legal one – is how far Parliament should be asked to get on with passing an Act providing for the required legal changes on exit before the Government takes an arguably irrevocable step, with the Art 50 notice, to commit itself to the exit that will make such an Act essential and maybe determine the form such an Act needs to take.

Anthony Arnull
July 6, 2016

Yes, my comment was based on the assumption (as I think Liam Fox intended, though I may be wrong) that the idea was that the ECA might be repealed immediately. If the commencement of the statute repealing it were to be postponed until the UK ceased to be a member, things might be different. However, there seems little point in passing such a statute now, as we do not know what the outcome of the Article 50 negotiations will be or even what we will be seeking to achieve.

Tom Austin
July 6, 2016

For what it is worth: I agree, the legality arguments centre around the advisory/determinant duality of the referendum. And Cameron's ill-timed alteration of the result's standing. Given that many votes would have already been cast prior to his announcement. And, rather obviously, what is 'arguably' one thing is also arguably the other.
As there is an 'out', post evocation of A50;can it be reasonable for any Government to resist involving Parliament until our unravelling is thought better of?

Mike Fearon
July 6, 2016

Please correct me if I am wrong, but is it not the case that the existing legislation would continue to apply to disputes arising prior to the date of repeal, and actioned after the date of the repeal. And is it not possible, if deemed advisable and necessary, to make the repeal effective from the date of withdrawal?

StephenLaws
July 9, 2016

Mike The default position on a repeal is broadly that set out in ss.15-17 to the Interpretation Act 1978 (principally s. 16). These substantially reverse the common law rule that you treat the repealed Act as never having been passed. But the default position can always be modified or supplemented by the repealing Act, and that is bound to be necessary and desirable in this case. So the position will be whatever Parliament says it will be subject only to the usual inhibitions on retrospection. All sorts of complex questions may arise. Some law originating in EU law is bound to need to be saved by the repealing Act for future operation, at least pending decisions on what to replace it with. So, for example, in the meantime should ECJ judgments remain relevant for construing it, or perhaps only Pre Brexit ones?

Mike Fearon
July 9, 2016

Apologies if I am missing something, but I think this answer addresses a different point. I am suggesting that, unless or until the 1972 Act is repealed or amended it remains extant. It continues to apply EU laws and Directives, and the general effect of existing Treaties. It, and other pertinent legislation, remains effective, irrespective of any notice given under Article 50, and even if the Treaties cease to apply under Article 50, until the effective date of any repeal or amendment. Therefore no conflict in terms of constitutional law arises from an Article 50 notice.

I have previously suggested that in legal terms the Article 50 notice is no different from the statements of intention in the Queen's speech. Any change to domestic law has of necessity to be approved by Parliament. Should Parliament refrain from repeal or amendment after notice expires or agreement is reached this would lead to a situation which would be absurd and confusing. In legal terms, however, there can be no objection to that. Parliament may legislate or not as it chooses. The Executive, if it has a power, may exercise it as it chooses.

The political dimension may be different.

Stephen Laws
July 9, 2016

Mike Agreed We seem to have been at cross purposes. I thought you were referring to a question about what survives repeal once the repeal has come into force. I also agree that the main issue is not a matter for law. But the political/pragmatic question is affected by the issue whether it is appropriate "constitutionally" – or wise – for the executive to pre-empt Parliament's consideration of the exit Bill by serving the Art 50 notice and so committing to exit on a particular date, and potentially on the default terms, without reference to Parliament and without some Parliamentary commitment to the legislation that will be needed. The Constitution Committee reported on the pre-emption of Parliament in a different context in 2013. And it's quite likely that the issue, if it is put in play, would complicate getting a Bill through and increase the risks attached to that process.

Mike Fearon
July 11, 2016

It seems to me that Robert Craig has a thorough and well reasoned analysis.

Stephen Laws
July 11, 2016

Yes – it's political and constitutional – in an unwritten, political constitution – but see my response of 29/6 to seething mead – expiry of Art 50 period does unimcorporate EU law.

Mike Fearon
July 12, 2016

Stephen (if I may), I think I understand what you are saying. However, I am not sure how the power to make implementing regulations derives from membership, particularly as the 1972 Act was passed (I believe) before membership. I have already been accused of sophistry, so perhaps I shouldn't make too much of that.

What I do agree is that there would be a potential for chaos if necessary appeals and amendments should prove difficult to achieve during or at the end of negotiations and notice expires and is not

extended. It may be a matter of judgement as to whether more chaos is likely to ensue if the government invites parliament to deliver legislation prior to giving notice. I agree that repeal is too simple a term to describe that legislation.

I have previously used the analogy of putting the cart before the horse. If parliament is tasked with backing the cart through the metaphorical gates to Article 50, I personally would expect a highly fraught journey. Perhaps this is one of those cases when it is quite helpful to have a political unwritten constitution.

Stephen Laws
July 12, 2016

Of course. I think we largely agree. It's a balance. You may need to ask for wider powers if you legislate first, but there are also political risks in waiting to legislate until you are asking for approval for a fait accompli. The point about the regs is that the power in s.2(2) is for the purpose of implementing EU obligations of the U.K., or for the purpose of enabling EU rights of the UK to be exercised. Once we are out, the U.K. Is no longer subject to any EU obligations or entitled to any EU rights: so the basis for exercising the power has been removed – and so too, for the future – on the basis of the normal rule – is anything made under it, eg to implement obligations that no longer exist.

Mike Fearon
July 12, 2016

Yes I think we do agree on the practicalities and the political difficulties. However, I remain genuinely uncertain whether it is "mere sophistry" as Richard Jarman suggested, to say that Parliament can, if it chooses, legislate to accept treaties which are no longer binding on the UK. I can't see that happening, but I do see a relevance if the argument being put is:

The 1972 Act is rendered nugatory, either at the point of giving notice, or of "leaving" (in shorthand) in accordance with the terms of Article 50

Therefore Parliament must authorise the notice

(and perhaps repeal (in shorthand) the Act) before notice is given.

I understand this to be the original premise in the Barber et al article. I originally argued that the notice does not render anything nugatory, although the nugation would occur at the point of "leaving". Subsequently I expressed an uncertainty that there is, of necessity, any nugation. I accept that it would be ridiculous and chaotic for the Statute to remain unaltered, but is it legally and constitutionally possible? I consider the possibility exists, and that the original article therefore draws a conclusion which may not be established from the legal position, however valid it may be (or not be) from a political perspective.

This might not turn out to be sophistry if a court takes it into account when considering a legal challenge to notice without Parliamentary approval. I believe courts have taken into account unlikely, but legally possible, courses of action before.

I suggest it is also possible to argue that should notice be given and chaos results, there remains the constitutional sanction of the ballot box. This would be an undesirable result, and the government may wish to find ways of avoiding it, but I am not convinced that the courts are the most appropriate route to avoidance. I think at least one contributor has also suggested that a court might well take the same view.

Dan Law
July 12, 2016

Mike – I don't see how the issue is to do with the effect on the statute itself. Isn't the real issue about how this use of the royal prerogative would effect laws in the UK?

The Bill of Rights 1688 concerns prohibition of the pretended power of dispensing with or suspending laws by royal prerogative without consent of Parliament. While ECA 1972 may remain on the books unaltered, invoking Art 50 so that the treaties would no longer apply to the UK would have far-reaching effect on laws in the UK. The text of the statute book might be unaltered, but laws in the UK would be dispended; laws

would be set-aside, made of no-effect and brought to an end. How is a pretended power of doing that without consent of Parliament lawful and in accordance with the UK's constitutional arrangements?

Mike Fearon
July 13, 2016

Dan I have posted a further reply to Stephen Laws, having realised I had not properly understood his comments on Section 2 of the 1972 Act. Yes it is about the extent to which prerogative overrides statute, but I agree with Stephen that it is a matter of balance. We cannot know in advance the extent to which existing rights and obligations under the statutes may be altered. Parliament and the executive have to make a judgement on the practical advantages of allowing the executive to lead in a process which may be too wide ranging and complex for Parliament to handle, as against the risk of Parliament getting railroaded.

Personally I am not convinced that referring this judgement to a court will help anyone.

Dan Law
July 13, 2016

Mike, I'm not clear on what you are suggesting. If Parliament makes a decision to let the executive give Art 50 notice and lead the process, how is this decision taken? If Parliament passes legislation giving the executive this authority, then Parliament consents in accordance with the Bill of Rights. Not too much of a constitutional issue with that.

But are you perhaps suggesting Parliament may be taken to have made this decision if it passively allows the executive to go ahead? Or is it that the executive may make this decision for Parliament? Or is it perhaps that the executive's decision to proceed without Parliamentary process may be pragmatically acceptable e.g. because command of majority in commons or nature of issue, circumstances etc. makes this consent a foregone conclusion? – and the executive may decide when Parliament 's consent may be presumed i.e when actual consent is not needed (or when the Bill of Rights may be suspended).

Mike Fearon
July 14, 2016

Dan I am trying to avoid suggesting anything. I completed the first year of a law degree nearly 50 years ago, and I am hoping to return to complete it later this year. I am interested in the debate, but not particularly qualified to make suggestions. I believe the arguments are well summed up in the note from Robert Craig of the LSE.
I have also seen (today) a succinct and pithy contribution from Kevin McAlpine which is worth many times its weight in legal debate.

As to the political front, my personal view, for what it may be worth, is that the 1972 Act and subsequent legislation transferred power from Parliament to the EU and UK Executives on a very large scale. I consider it indisputable, as Prof. Dougan of Liverpool University made clear to millions during the referendum campaign, that this was a sovereign decision by the UK parliament on behalf of the electorate, subsequently ratified by referendum. However, 40 years on, the majority of the electorate seem to have found the results of that transfer of power unpalatable, or even unacceptable, in one way or another.

The historic purpose of constitutions and legal constitutional frameworks (correct me if I am wrong) is to avoid excessive and unacceptable suppression of the will of the governed by the governors. Some would go further in this interpretation. It seems to me perverse to promote the suppression of the expressed view of the majority in this referendum through legal obstacles or parliamentary intervention. The perversity is emphasised when the objective is (as it appears to me to be) to prevent the executive from commencing the process of reversing the transfer of power effected by the 1972 Act and relevant Treaties.

Without offering suggestions, I personally hope that the Executive will take the view expressed by Kevin McAlpine, and issue notice under Article 50 without delay. The extent of involvement of Parliament in the implementation of the intention expressed by the Executive then remains for resolution by those constitutional entities,

hopefully without the need for interventions by the courts.

Mike Fearon
July 13, 2016

I didn't read your comments in the light of the wording of the 1972 Act. Having refreshed my memory of it I see that 2(1) clearly states that the Act gives legal effect in the UK to rights etc. arising from the treaties. I must agree then that once the uk is not a party to the treaties, no rights etc. arise from them. Therefore this part of the Act must cease to have effect and is nugated. I see what you mean now.

Where the UK has legislated under 2 (2) to implement those rights etc., there may be a continuing legal framework which may not be nugated. I think you may not agree on that but the issue may in any event be irrelevant. The original contention that the Act will, at least in part, be nugated when the Treaties cease to apply, is clearly valid. Apologies, I had not understood that.

That takes me back to my original position, which is that a statement of intention by the Executive which will eventually nugate an Act passed by Parliament may not in itself be "unconstitutional" until that point is reached, and the actual consequences are evident. These may be of less significance than the possible consequences, and Parliament may find them acceptable. The statement of the intention may in practice alter the balance of power, however, and that may be unacceptable in political or constitutional terms.

I remain of the view that this may be better led and resolved by political process, rather than through the Courts. Pesonally, I still don't relish the prospect of Parliament driving such a wide ranging and uncertain process, but this is essentially a value judgement. Others no doubt will think otherwise.

richard jarman
July 10, 2016

Mr Fearon's interpretation point:

Article 50 is not simply domestic law or treaty. It triggers a disengagement. Our treaties & consequent laws are thereby divested. In this case

effluxion of time with no intervening agreement abrogates treaties without the prerogative or parliament intervening. If our existing treaty partners are no longer engaged then our domestic law is altered simply because these partners are the opposite side of this divide.

Mt Fearon's point is mere sophistry:

My point is that our EU membership has altered our constitution and this point is illustrative; we disengage by an agreement that must be legislated by reason of the above observation. The treaty says that disengagement is entered into according to the domestic constitution; which must be the existing constitution not one which pertained before the treaties.

Changing domestic law is a parliamentary function, which must be undertaken by parliament.

Mike Fearon
July 11, 2016

It seems to me that the most thorough and best reasoned analysis is that by Robert Craig. Sophistry can be a subjective description, and applied to many arguments, including mine and your own.

Pingback: Could Brexit Be Canceled? Here's How Vote Might Be Reversed - NBCNews.com - The Cannabidiol Oils Domain

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Pingback: Adam Tucker: Triggering Brexit: A Decision for the Government, but under Parliamentary Scrutiny | UK Constitutional Law Association

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Pingback: Could Brexit Be Canceled? Here's How Vote Might Be Reversed – NBCNews.com | Phone Stuff Mart

Pingback: Leaving the EU – Lisbon Treaty, Article 50

James Brooke
June 29, 2016

What rights do we citizens have if a PM were to attempt to invoke Article 50, without an Act of Parliament? Could there be a legal challenge and if so how might this be mounted.

Reply

Nick
June 29, 2016

I'm a little surprised that this analysis doesn't deal with either the Constitutional Reform and Governance Act 2010 or the European Union Act 2011, both of which set out when Parliament has a role in relation to international relations/EU treaties, and neither of which requires Parliamentary endorsement of an article 50 decision. The fact that Parliament decided twice in quick succession (and again in the EU Referendum Act 2015) not to make article 50 subject to its approval is likely to weigh heavily in the court's mind.

Reply

Sean Feeney
July 6, 2016

Nick, schedule 1, part 1 of the European Union Act 2011 does appear to list "Article 50(3) (decision of European Council extending time during which treaties apply to state withdrawing from EU)" as one of the"Treaty provisions where amendment removing need for unanimity, consensus or common accord would attract referendum". (See sections 4 and 6 of the 2011 Act).

http://www.legislation.gov.uk/ukpga/2011/12/schedule/1

The omission from the schedule of Articles 50(1) and 50(2) is consistent with the statement in paragraph 5 of the explanatory notes (which "do not form part of the Act and have not been endorsed by Parliament") thart Part 1 of the 2011 Act makes provision for decisions "if these would transfer power or competence from the UK to the EU".

Articles 50(1) and 50(2) appear to be about removing power of competence from the EU by withdrawal and ending of current treaty obligations. Only at the stage of Article 50(3) would power or competence appear to be transferred to the EU, and then only on the "entry into force of the withdrawal agreement", if such an agreement is negotiated, and membership of the EU has not automatically ended after two years without agreement.

It's quite likely that the discretionary power of a Minister of

the Crown to ratify a treaty despite a Parliamentary vote against ratification, subject only to a duty to give reasons, in section 20(8) of the Constitutional Reform and Governance Act 2010 will be discussed in the claim now issued on behalf of Deir Dos Santos, if it proceeds to a hearing, and in the two other claims publicly known to be in preparation, if they are issued and proceed to a hearing:

“20(8)The treaty may be ratified if a Minister of the Crown has laid before Parliament a statement indicating that the Minister is of the opinion that the treaty should nevertheless be ratified and explaining why.”

http://www.legislation.gov.uk/ukpga/2010/25/section/20

Reply

0101010011010100101d
June 29, 2016

When did we vote to give a PM this kind of executive power?

Reply

Clay Withers
June 29, 2016

It would seem we are in a catch 22 situation. With a majority of MP’s not wanting to “leave nurse”. The majority decision of the people not being accepted by a Parliamentary vote would be a slap in the face to the majority that voted to leave. And there could be a whole new tranche of MP’s in place after the next general election. Our leaders who have signed us up into this Pandora's box (a legalalistic strait jacket); have departed scot-free(some in House of Lords!). This could lead to civil war, not that I would be an advocate of that, but given circumstances that may prevail, and I would have no say in the matter being as a voter, of no consequence to egotistical leaders, but I would of course be blamed. I was not able to vote in 1972, and of course the electorate had no idea what was really going on, I voted in 1975 under the deception that this was just a trading agreement, by the time of the Maastricht Treaty being signed by John Major's government, I was aware of what was going on, and called for a referendum, even protested outside Parliament, before I was kindly moved on by a sympathetic natured Policeman, after I was invited to join UKIP, which I declined, as I had already joined another party, the party of our Creator, whose signs through the prophets are already becoming evident. I will leave the commenting at this juncture as I feel I have said all I need to say. The genie is out of the bottle, can it be put back? Simply put, no.

Reply

01010100110101001010d
June 30, 2016

Democracy is far more than voting. The idea of voting in democracy is dead when the public are being grossly misinformed..

Reply

Pingback: 'Leave the UK, take back Control' – on a Remainer's obligation to Remain – louisbickler

Pingback: Are we there yet?

Mike McNutt
June 30, 2016

I do not have a serious appreciation of Constitutional Law, still I must question why this discussion seems not to have even begun within the Civil Service. I believe that it is critical that all of the UK remains a dynamic constituent of the EU. That we had the ground swell of voters looking for Brexit can only be a consequence of poor governance over many years, possibly beginning with Mrs Margaret Thatcher. That we should import cheap labour on so grand a scale without planning for the infrastructure to support that growth in our population was reckless. I support those of you who are actively looking to check the dangerous position we have now reached. I wish that challenge every success and will seek out and promote, amongst like minded friends any Crowd Funding initiative.

Reply

Pingback: Pannick on Brexit | spinninghugo

Adrian Chaffey
June 30, 2016

My constitution law studies were some time ago, but I was sceptical when I read about this article in the press. Having now read it and many of the comments on it, it looks like wishful thinking to me, as others have already said.

But I suspect it is also of marginal relevance. This is because triggering A50 is going to put the UK in a very weak negotiating position, and if anyone in the UK government has any sense [okay, I know) they won't be doing it any time soon.

What they will try to do, I think, is negotiate something outside A50, and then, if procedure requires it, give the A50 notice once they have got a deal.

I'm aware of course that EU leaders are saying they won't negotiate until an A50 notice has been given, but I suspect this is not a position they will hold to. There will be talks, because they will not

want things to run on indefinitely.

Reply

Littleislandsod
July 14, 2016

I think you are wrong. The EU are in the much stronger negotiating position. They can just wait it out until the UK sees the error of the decision and the negative impact it is having on the uk economy, and they can then dictate the terms of tell the uk to bugger off and be the little island on the backbenches of the world stage. The problem is too many older uk people still think of the U.K. As this major country in the world arena. It's not they died a long time ago – about 40 years ago or so.

Reply

It doesn't add up...
July 18, 2016

Alternatively, the UK can just wait until some of the political realities start to bite in the EU, beginning with the Austrian presidential election, Hungarian referendum on migrants, Bulgarian and Romanian elections, Geert Wilders' PVV becoming the largest party in the Dutch election next year as Rutte is consigned to the scrapheap, the French presidential and Assemblée elections, the German and Czech elections, the next stage of the Eurozone crisis in Italy and Greece (and Portugal and Spain), the aftermath of the Turkish failed coup, early elections in Italy, Ireland and Spain...

Pingback: Would it fly? A possible Article 50 route to a second referendum | British Politics and Policy at LSE

Christian Agi
June 30, 2016

David Pannick, QC seems to share – accordning to the Title and reports on twitter – the opinion of the authors in an article in today's Times (which is of course hidden behind a paywall so I couldn't read it): http://www.thetimes.co.uk/article/c8985886-3df9-11e6-a28b-4ed6c4bdada3

Reply

Constitutional Law Group
June 30, 2016

Yes, he endorses the key arguments on Article 50 and the incompatibility of the use of the prerogative to trigger Article 50 with the scheme in the ECA 1972.

Reply

Pingback: Why the Lib Dems aren't the answer to post-referendum blues – And the hippos were boiled in their tanks

Alistair
June 30, 2016

Is "very formalistic analysis" legal speak for "It's logical, but we don't like it?" I'd treat reasoning of this order more sympathetically if the authors remainer prejudices didn't shine through in every other sentence. Can't a treaty be made which allows for its own abnegation by executive prerogative? Of course it can, and many have been. [...] Oh, yeah, bring on a judicial review, if you can find a high court judge with a serious, some might say foolhardy, appetite for risk. Let us imagine how well received a court ruling will be that seems to defy the will of the British people in a referendum, no matter how finessed your arguments. I hope there are no lampposts on your way home, your honour.

Reply

Pingback: Clive Coleman: Can the law stop Brexit? | EuroMarket News

Pingback: Brexit | On why, as a matter of law, triggering Article 50 does not require Parliament to legislate – Public Law for Everyone

Pingback: Article 50: What is it? – azmodaisasylum

David Campbell
June 30, 2016

In the end, the question is who rules? It is unarguable that there are those, such as David Lammy MP, who believe that sovereignty of Parliament means that Parliament (or even MPs), not the electorate, is the political sovereign of the UK. One can understand the attractions of this for Mr Lammy. But is it now part of the most sophisticated constitutional law scholarship that Mr Lammy's views are fundamentally correct?

Reply

Pingback: Leonard Besselink: Beyond Notification: How to Leave the European Union without Using Article 50 TEU | UK Constitutional Law Association

Andrew
June 30, 2016

Very interesting reading (I love constitutional law). But the whole issue would "go away" if the PM were to submit a bill before parliament, and win it, that grants him/her the authority to issue a notification under Article 50. So why would a PM _not_ want to do that?

Reply

Dan
June 30, 2016

Good question – why not just get Parliament to authorise invoking Art 50? Perhaps because statements made by politicians and media gave many people the idea that the referendum was binding, and many would see 'giving' Parliament the power to decide as an attempt to subvert the referendum result. In short, they don't trust Parliament.

In this political train wreck, circumventing the constitutional democratic process and rule of law may thus seem politically expedient given potential for massive political backlash. If there is good colourable basis for invoking Art 50 without Parliament's involvement, this might well seem the way to go for the next PM (see for example Mark Elliot's blog which makes a skillful argument). Most (including EU) readily suppose that all that is now needed is for the PM to give formal notification of the referendum result and that Art 50 is being invoked. Hence there is every possibility that the first act of 'getting our sovereignty back' is an act of constitutional vandalism trampling over the Bill of Rights and undermining Parliamentary sovereignty.

In these circumstances, politically, and constitutionally, the best way forward is a legal challenge so that it is then the courts which decide whether Parliamentary approval is needed or not, with politicians thus avoiding having to take responsibility for this. This might not be entirely unwelcome as this might give HMG a better negotiating position with the EU. Better yet, it seems the matter could require reference to the Court of Justice of the EU, and so it might be left to the CJEU to decide that Parliamentary approval is needed to trigger Art 50. Then the EU can be scapegoated, Parliament can rise to the occasion, and, with any luck, we avoid a rabid populist constitutional reform movement that could pose a very serious threat to the UK's Parliamentary democracy.

Ordinarily what you suggest would be very sound and sensible and by far the best thing to do, but the politics of constitutional law need to be taken into account also

('public policy considerations').

Reply

Tom Austin
June 30, 2016

My apologies Dan, for sticking this here, but as you made mention of Mark Elliot's (erudite) blog...
Somewhat in passing ME says this...
"For all that the UK has experimented with direct democracy through the holding of a referendum on EU membership and on other constitutional matters, the UK remains, fundamentally, a parliamentary democracy, and it cannot plausibly be argued that the referendum substitutes for proper parliamentary involvement."

I am of the mind that the UK has made more than one 'sort' of experiment in Direct Democracy – none of which bear much relation to what occurs in the Western states of the US.
[There are two distinct varieties of DD experiment.]
-Consultative – opinion gathering.
-Decisive – policy setting.

If it was thought necessary to stipulate the distinction in the latter case; with the vote on AV. Why is it assumed to have been entirely unnecessary to do likewise in the recent EU referendum?

I have been arguing the toss about the EU referendum with diverse others for months. Conversation upon conversation took place with nobody voicing the least belief that the result would be policy setting.

I am 'unpleased' – I say in passing.

Pingback: Can the law stop Brexit? - Bigmond - Selección de ejecutivos y consultoría en RR.HH

Pingback: Clive Coleman | NEWS

steve
June 30, 2016

Crowd funding for intitial advice already met.
https://www.crowdjustice.co.uk/case/should-parliament-decide/

Reply

Richard Marks
June 30, 2016

Surely once the process has started then there can be no true negotiation – the EU can stall and play for time until the two years has elapsed. Our negotiating power is seemingly non-existent.

Reply

It doesn't add up...
July 8, 2016

According to Article 50 there is an obligation on the EU to negotiate and to conclude an exit treaty – something that cannot be achieved by stonewalling. The obligation persists even after the two year guillotine is applied – which has the effect of cutting off EU funding inter alia. In any event, it is not in the interests of EU countries not to come to an agreement – which is why they are wresting the negotiation away from the Commission.

Reply

Fenner Moeran QC
June 30, 2016

An excellent article and analysis, unsurprisingly given the authors.

However (and I say this with reluctance, as a RemaIN voter) I suspect it is fundamentally flawed.

The argument appears to rest on the following premise:
"The obvious intention of the Act is to provide for the UK's membership of the EU and for the EU Treaties to have effect in domestic law. The purpose of triggering Article 50 would be cut across the Act and render it nugatory. "

But section 2 of the 1972 Act expressly provides for
"All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed accordingly..."

Since art.50 specifically provides a power for leaving, that surely defeats the argument that triggering it renders the Act nugatory and is therefore outside the prerogative (even assuming that principle works). If the Treaties include within them the right to exit them (and the EU) and the 1972 Act is intended to give effect to them, then ultimately the 1972 Act encompasses and envisages such an exit. Which means that to do so would not run across the statute,

and therefore the Royal Prerogative is not (to this extent) limited/excluded.

That said, I would not expect the law to really be the answer to this. I would expect the courts to say "If the executive do this, and Parliament don't positively prevent them, then that's up to the executive and legislative bodies – not the judicial branch of goverment". And since Sumption would probably be sitting on this one when it reaches the SC, we know at least how 1 vote would go!

Reply

Mike Fearon
June 30, 2016

I have previously said that whilst the purpose may be to render the 1972 Act nugatory, the Act is not so rendered until the process of leaving is complete. By that time, one might reasonably assume, the 1972 Act will be repealed, possibly with an effective date of repeal prior to, or contemporaneous with the date of leaving. Other statute law which conflicts with leaving can be dealt with likewise. In the unlikely event that the government is unable or unwilling to carry the necessary repeals and amendments through Parliament, there could be a need for an election or a withdrawal from the Article 50 process. I would welcome your view on this.

Reply

Fenner Moeran QC
July 6, 2016

I think that's an interesting distinction, but I suspect one that doesn't assist. If (and I emphasise, 'if') the law says an action to render the 1972 Act defunct/nugatory is unlawful without another act of Parliament (or, to put it another way, the law says that the only power to do so has been removed from the Royal Prerogative and given to Parliament) then an action which will necessarily have the effect of doing so will be unlawful – regardless of whether this takes place immediately, or in 2 years.

Mike Fearon
July 6, 2016

There is an interesting post from Thomas Fairclough today which addresses the "if", in some detail. It is possible that the distinction could assist a court in determining whether "a Royal Prerogative power exists and, if it does, its scope and the extent to which it has been superseded by statute (as both Tucker and Barber, Hickman, and

King argue it has been for present purposes.)". Mr. Fairclough assumes that this would be the primary focus for the Court.

Sean Feeney
July 4, 2016

Indeed! The extensive Padfield-unlawfulness line of authority includes the doctrine of dominant purpose. The dominant purpose of the decisions revealed by the public statements of the Prime Minister, subsequently endorsed by the Cabinet, and his Chancellor and the Governmen's emerging policy of withdrawal from the EU, far from improper, appears to be an entirely lawful Treaty right "without further enactment".

The right of withdrawal codified under European law in article 50(1) appaers to be a right "provided for by or under the Treaties, as in accordance with the Treaties... without further enactment to be given legal effect" under domestic law insection 2 of the 1972 Act.

Reply

Pingback: Will Brexit Require An Act Of Parliament? | A Venerable Puzzle

Ralph Apel
June 30, 2016

Foreign Policy always was prerogative for the Crown could sign treaties without reference o Parliament but recent precedents are different for major foreign policy decisions: To go to war in Iraq or not was put to Parliament; to bomb or not Syria was put to Parliament. To say that the invocation or not of Art.50 is NOT a major Foreign Policy decision is a statement of Brexiteer veracity.

Reply

Peter Jones
June 30, 2016

My comment re the discussion:
Personally I wasn't happy with either choice, in or out. I'm one of the older generation who was bitterly opposed to us joining the EU in the first place. In the end I've come round to "better the devil you know" when you consider the might of the other trading blocks out there.

Having being a lifelong proud Englishman I've watched with sadness and despair the way our politicians have pushed us deeper and deeper into the floundering morass of the European superstate rather than simply keeping us in what was supposed to be just a "level playing field" super trading club. So if I chose remain I was eventually voting for the assimilation of my country into a single European state.

However the exit case was just as bad a choice. They painted no real plan for how/why/when/where we would trade and pay our way in the world. They were allowed to get away with blatant lies and nobody in their organisation blushed and recanted (until after the result). They seem to have failed to notice that much of what we had in 1972 in terms of industry, products for export, a workforce with a huge variety of skills and a set of readily available export markets etc was no longer there. There was no appreciation of our balance of trade deficit with Europe, nor any real plan on how all those eurobillions in grants/aid would be replaced by alternative funds (unless the mythical £350 million was going to prove to be unbelievably elastic in its generosity). Equally they failed to realise how savage is the new reality of British life with so much power and influence, corruption and the sometimes not so veiled threat of privatised violence, concentrated at the top of our society that holds its own ends as way more important than those little people who need "human rights" to protect them. Meantime the poster boys for this position posit views that seem to consist of the kind of slogans you find on tea towels in a tacky gift shop: keep calm and our problems will be gone! So if I voted exit I was exposing future generations to reality of life with the sharks.

Talk about a choice of between a rock and a hard place. In the end I reluctantly voted remain because 1972 can't be resurrected, dusted off and we all begin again.

Now onto the questions of whether this was democratic, whether the PM needs parliamentary authority to pull the Article 50 lever: I desperately hope that every legal and moral option is explored before that decision is made as its consequences for our future (and more importantly my children's and my grand-children's future) are seismic and possibly cataclysmic.

Let us leave aside the "Parliament or PM rules" question for the moment.
I apologise for the length of what follows, but I'm trying to paint a scene that puts the present dilemma in a more moral context. While we've got people picking and sometimes nit-picking over the possible meaning of democracy, law, clauses and treaties let us remember that eventually following a course of action which is legal but which has obvious and dangerous consequences is morally bankrupt. Just following orders was ruled no defence a long time ago.

Consider what follows in terms of Remain or Brexit and those people who feel this shambolically conducted referendum is somehow the glorious vindication of the democratic process in its purest form:

Country A for various reasons is not on the UK's Christmas list.

Relations have deteriorated with Country A very significantly over a period of many years.

Nevertheless the UK and Country A have a variety of treaties in force which confer both rights and obligations, benefits and disadvantages on both parties. Some of the later treaties have come about after much heated political wrangling and some of which can be painted to show they are not in the UK's best interests if you either play games with the truth/statistics in the right way at the right time or simply have an agenda that doesn't fit well with those treaties. Many "pundits" have vocally advocated for some form of referendum before such treaties are signed into law, but in general the call for referendum has only had lip service paid to it.

Relations between the government (and here I include as part of the "government" Her Majesty's loyal opposition too) and the governed in the UK have also deteriorated significantly over the same period of time leading to many who feel they have been disenfranchised whilst at the top of society, the "few", have used the situation to promote their own wealth-gathering and maximised their opportunities for obtaining influence to push views into law that are often at odds with "the people".

Into this mix in later years have come individuals of either great cunning and/or great power and influence who have been allowed to get way too close to our political representatives. Those self-same representatives who have shown themselves in the last few years to be more than adept at bending "rules/custom and practice" to their own advantage via such things as the expenses scandal etc.

Out on the fringe of this witches brew of trouble the voices of one or two individuals have grown stronger, aided and abetted by rabble-rousing in much of the press pronouncing that all our ills as a nation would be fixed if only we sorted out Country A once and for all. The main political parties have been in disarray over this, as whilst many of them quite understand (or believe, take your pick) that continued good relations with Country A are in everyone's long-term interests, nevertheless running with popularism and blaming Country A for our problems takes the heat off the parliamentary establishment in the short-term.

However things have now come to a head. With the rabble-rousers (both outside Parliament and within it) getting ever more vocal the PM takes a frightening gamble with the nation's future: confident in his knowledge of the real situation re Country A, confident that even the loyal opposition in general also are aware of the real situation that we and Country A need to learn to get along better, he decides to call the rabble-rousers bluff by giving them the yes/no referendum for which they are clamouring. They can decide yes/no re breaking off relations and tearing up treaties with Country A which could then lead to a declaration of war. Not some petty bit of

sabre rattling but out and out war involving the death of many on both sides and possibly the ruination of both, never mind who actually claims victory.

He and the loyal opposition are blithely unaware of the disconnect between themselves and many of the electorate both at the bottom of society and also with the "steady, stoic" middle-grounders of his own party. He is also arrogant enough to declare the result binding on his government (because he is confident of winning) even though no referendum (unless preceded by appropriate legislation) is binding on the government. Nobody is spelling out this non-binding reality because a) it would make the referendum look like what it is: a) a sop to quieten the masses and b) because he is blindly confident of winning anyway so he happily declares he will invoke treaty revocation etc and all its consequences if he loses.

In the run up to the referendum the "Remain with Country A" camp are so sure in their certainty that everyone realises the advantages of remaining that their advocacy of the case is poor, especially when those who are normally political opponents find themselves trying to sing from the same hymn sheet. The best they can do is to paint some sort of vague picture of what might happen if we don't remain. In many cases their arguments are (granted forced to be so, due to the nature of not being psychic) not planted in solid evidence and in some cases their proponents are playing at simple scare tactics.

On the other side the Exit outfit are wildly cheer-(jeer)-leading their case with similar scare stories and information regarding the damage that Country A is doing to us that is contestably incorrect (but appeals to a whole range of blinkered views about Country A) but the Remainers never get real traction on dealing with it thanks to their own complacency and a press that feeds its circulation figures off confrontation and headlines.

Cometh the referendum cometh home the pigeons.
The Exiters have won, though only narrowly. They are suddenly triumphant in the cause of democracy in its simplest and most dangerous form (where mob rule can override sense) that puts the choice of 17 million people into the frame as somehow being a landslide overpowering defeat of 16 million people, not even including the 12 million or so who didn't vote on it at all. We have some 37% of the population telling the rest what will be and we call it democracy when in fact it is the tyranny of the mob. In fact had we decided it on the simple toss of a coin the winning side could at least have claimed a 50% legitimacy!

Suddenly realising that the only thing that stands between them and total war is avoiding the point where the PM gives the finger to Country A, quite a few of the "Exiters" are having second thoughts, esp as their leaders are rowing back on many of the things they promised, many of the "facts" are turning out to be lies or half-

truths and many other people are suddenly realising that doing a protest vote at this time was a big mistake.

So let's summarise the position at that point:
We are one step away from the horrors of war because 37% of the population, for a variety of reasons, voted for it. When the rest of the voters point out that the remaining 63% either voted against or abstained they are spat on and called sore losers who would undermine democracy and prevent many people getting killed on the basis of a result based on significantly misleading (and in some cases blatantly untrue) information. They don't even have the contrition to acknowledge that the young, who will do the fighting and dying, voted heavily against the idea.

"Stuff the truth, sound the bugles!"

So tell me anybody who thinks this was a victory for democracy, esp as it was won to some extent on the basis of lies and misinformation, would you go to war or send your son/daughter to be killed on the basis of 37% voting for it under those circumstances?

Now go back and thank those people who are trying to make sure this shambles is given every possible hurdle to get over before it runs away with us.

Reply

Tom Austin
July 2, 2016

I feel for you Peter, and I mourn with you too.
I would say that the PM had only the 'confidence' of self – not of message. And is in any case unaffected by the Leave outcome, and his Party will stick to power however it can. Alas, it appears the 'only' hurdle likely will be the Law.

Reply

Paul
August 22, 2016

British people need a general elections , NOW!

Reply

Pingback: Things to do: Read the growing body of legal opinion – We want our EU back

Graham Senior-Milne
June 30, 2016

Did you squeal when Brown signed the Lisbon Treaty? No, because the power to negotiate treaties rests with the Crown. The 1972 Act merely incorporates EU law into UK law based on the signing of a

treaty, it has nothing to do whether there is a treaty in the first place, which is a matter for the Crown. Nice try but no cigar.

Reply

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Pingback: Alison L Young: Brexit, Article 50 and the 'joys' of a flexible, evolving, un-codified constitution | UK Constitutional Law Association

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Mike Fearon
July 1, 2016

I posted a reply to the Alison Young item suggesting this is putting the cart before the horse. Notifying intent to leave the EU does not cut across or render nugatory any Act of Parliament. It notifies an intention to do so. There is every reason to suppose that the government will put this intention into effect through normal political processes. Should it prove impossible to carry through the requisite legislation, there could be a need to notify the EU that the intention has changed. This might be preceded by a General Election.

There is a direct analogy in constitutional terms in the Queen's Speech. No-one expects the government to delay expressing its intentions until it has passed legislation to carry them out, or to make an Order in Council before asking the Queen to express them. It is universally accepted that it is the Government's prerogative to express its intentions in this manner.

The only difference with a notification of intent under Article 50 is that some of the electorate, and perhaps the Government, are more frightened of the potentially embarrassing consequences should Parliament subsequently prove itself unwilling to deliver the stated intention. There is no reason in constitutional law, however, why the Government cannot treat this statement of intent in exactly the

same way as the Queen's Speech, if it is brave enough to state its intentions to an audience of EU member states.

Any comments from the authors would be appreciated.

Reply

tiddk
July 1, 2016

One thing has been overlooked. The decision to join the EEC in 1972 was not subject to a referendum or "democratic mandate". It was a political decision taken by the elected Government of the day. The same is true of our membership of NATO, and of the UN. This is how our democracy works. We elect a Government and leave it to them to make the important decisions affecting our nation's future.

The decision to hold a referendum on EU membership was a populist one taken by the Tory Party who sought re-election in 2015. The original move for a referendum was made by UKIP who had steadily increased their power base in the country and were taking votes from both Tory and Labour Parties, but especially the Tories. It was hoped that a promise of a referendum would stem the tide of defection to UKIP.

This is the background to the referendum, which perhaps should be reflected on by those who shout out "The people have spoken!". Well, actually, the people have spoken after being led up the garden path mainly by anti-European media, newspapers in particular, and an anti-European political party. Democracy? A sad version of it perhaps.

Reply

Mike Barnard
July 1, 2016

Hats off to the authors for such a well-considered article, in particular their considerations of the validity of pre-referendum messaging and the crucial need to balance 'democracy' with 'national interest'.

The basis of our justice system requires the swearing of an oath (with criminal penalties for perjury) that truth will be told, before a trained and competent judge. Yet the 'democratic' referendum process imposes no obligations for truth, and places an untrained electorate in the position of judge.

Thus while we apply correct legal process to fine a person £50 for littering, by proceeding with Brexit we would risk allowing the UK to sink into recession and do untold harm to Europe (and the world?) to show that we are upholding 'democracy'.

Surely national interest and the UK's wider obligations must win out in order to stop the madness that is Brexit.

Reply

apbaxter94
July 3, 2016

It was a referendum in which both sides lied and propagated their own side of the story. That's politics. We don't re-run general elections because people fib. But the result is in, and if the politicians we elect do not act of that, they will sink even lower in the public's opinion.

I would also disagree that leaving the EU will do 'untold damage'.

Reply

Tom Austin
July 3, 2016

There's none so blind as...
We had a taste of the threatened disaster, and we've not moved an inch since the referendum. The Leave lies were all owned up to on the 24th. But, what the hey...we get a re-run in five years... oh wait.

simple-touriste
July 4, 2016

Which lies, specifically?

Tom Austin
July 4, 2016

All of them;specifically.

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Rule of Law
July 2, 2016

There is a very simple answer to all of this. It has nothing to do with the prerogative, the 2011 European Union Act or the (non-binding) EU referendum. It all comes down to the fundamental constitutional principle of Parliamentary sovereignty.

1. Article 50 is not engaged at all unless a decision has been taken by the relevant Member State to withdraw. That decision must be in accordance with the State's own constitutional requirements (Art 50.1). If no such decision has been made, no notification under 50.2 can be made.

2. The U.K. joined what is now the EU under the European Communities Act 1972. The decision to join was that of Parliament. The 1972 Act imports the Treaties etc into UK domestic law.

3. Under the doctrine of Parliamentary sovereignty, only Parliament can repeal the 1972 Act. This is clear from the Bill of Rights and subsequent case law.

4. Prior to the Lisbon Treaty, the only way the UK could withdraw from the EU was by repealing the 1972 Act. There was no other way. Therefore prior to Lisbon the decision to withdraw could ONLY be taken by Parliament.

5. When Parliament was considering the Lisbon Treaty before its incorporation into UK domestic law, Parliament received evidence from the FCO that what is now Article 50 of the Lisbon Treaty had no effect on the UK's doctrine of Parliamentary sovereignty. The Select Committee concluded that after Lisbon the UK could only withdraw from the EU if PARLIAMENT so decided and at a time of Parliament's choosing. This accords with the pre-Lisbon position. So nothing had changed.

6. Article 50 did not give the UK a new power to withdraw. It simply confirmed in Art 50.1 that Member States could unilaterally withdraw in accordance with their own existing constitutional requirements and that IF they took that decision, then Article 50.2 and 50.3 would kick into to regulate the mechanics of the withdrawal.

7. For the purposes of Article 50.1 the UK's constitutional requirements are such that only Parliament can take the decision to leave. See 3-5 above. This has not been changed by Lisbon. Parliament has not taken the decision to withdraw (yet). Therefore Art 50 is not engaged at all. So there is no power to give notification under Art 50.2. Any such notification would be ultra vires absent a

decision by Parliament to withdraw.

So there is no need to worry about notification or the prerogative or anything else. It is a simple, straightforward application of basic UK constitutional principles. It is the enforcement of the rule of law. No decision by Parliament, no Article 50.2 notification of withdrawal.

The High Court is currently seized of an application for Judicial Review where this point is being argued. The papers were lodged last week. The Court has already ordered HMG to respond on an expedited basis and has observed that the matter raises issues of constitutional importance. These issues require to be determined and will be decided over the course of the next few weeks. An injunction has been applied for to prevent any Art 50.2 notification being given absent a decision by Parliament to withdraw. That will require a vote in Parliament where Parliamentarians can vote with their consciences, which is what they were elected to do in the first place. The referendum was a side show and irrelevant.

Reply

Mike Fearon
July 3, 2016

The British government decided to join the EEC prior to signing the accession treaty, and the decision was ratified by Parliament subsequently. There appears to be every reason to follow a similar process in relation to leaving the EU, with the Government making the decision and notifying an intention, with the process effectively ratified by Parliament repealing or amending relevant legislation. It is understandable that those who wish to remain in the EU prefer a different process, but I anticipate the Court will determine that this procedural precedent may be applied in reverse.

Comments?

Reply

Rule of Law
July 3, 2016

The 1972 Act was the instrument which gave effect to the UK's membership of the EU as a matter of UK domestic law. The Treaties have legal force in the UK under the 1972 Act. If the Treaties have no legal force under domestic law the UK could not remain a member of the EU. The UK's membership of the EU will by definition cease when the Treaties cease to apply to the UK, which they will under Art 50.3. Art 50.3 means that the Treaties will no longer be enforceable under domestic law. That result can only properly be achieved by Parliament, which gave the Treaties

the force of law domestically in the first place. On the international level the decision to join and withdraw is just one part of the story. There is also the domestic level to consider, which is equally important to the question of the decision to join and withdraw. International and domestic cannot be separated. On the domestic plane Parliament is sovereign. For the purposes of withdrawal, the Government cannot properly act on the international plane without taking account of the consequences under domestic law, one of which will be to cause the Treaties to cease to apply domestically when Parliament has already taken the sovereign decision that the Treaties should apply domestically. Therefore only Parliament can take the decision that the Treaties should no longer apply domestically.

Mike Fearon
July 3, 2016

I don't think that conflicts with my comment. My point is the order of events on joining the EEC. The government made the decision, and signed the Treaty. The Treaty came into effect just under a year later, subject to ratification by Belgium, Ireland, Norway and the UK. The UK parliament ratified the decision by passing into Law the 1972 Act. (The Norwegian government held a referendum and did not ratify as a result of that.) There is nothing in Article 50 to prevent the process being followed in reverse. The Government makes the decision, and notifies the EU that it has made the decision. If it wishes to do so, and deems it necessary or appropriate to do so, it can clarify that the decision is dependent on ratification.

The ratification may or may not happen. Parliament could refuse to repeal, or amend as necessary existing legislation including the 1972 Act. The important point, although many people may not like it, is that it demonstrates that the Government is committed to the policy of withdrawal, and puts the onus on Parliament to frustrate the Government's intention, and the majority vote in the referendum. Alternatively it puts the onus on the Government to frustrate the majority referendum vote by deciding not to give notice of an intention to withdraw. Then it is quite

clear where our politicians stand. I keep saying that the horse and the cart perform best in the correct order. The horse has to do its job as the leader, or it could push the cart anywhere.

Many people will dislike that approach, but it seems to me to better to say so, and elaborate on the reasons for disliking the approach, than to argue that it is in some way unconstitutional. It clearly was not found to be unconstitutional in 1972, and is an established precedent.

Stephen Laws
July 3, 2016

The reason the analogy does not work is because it seems to be clear that serving the Art 50 notice irrevocably determines both that exit will take place at the end of the notice period and the terms – or lack of them – on which that exit will take place (subject only to the ability of the UK government to negotiate something different with the 27 in the meantime). The effect of the notice is not contingent in international law on any subsequent ratification. Its service would therefore, for practical purposes, pre-empt numerous decisions relating to the terms of exit and the timing of its occurrence which are not mandated in political terms by the referendum, and so are decisions Parliament might legitimately feel to be its duty to consider in the course of passing the implementing legislation.

The extent to which the executive may use its undoubted legal powers to anticipate or pre-empt Parliamentary decisions on legislation is not a legal question but it is a question of what is or is not constitutional. That constitutional question already arises and is sometimes controversial in a number of other contexts. In this case, it would be sensible not, unnecessarily, to add that question to the other but unavoidable complexities of the process.

01010100110101001010d
July 3, 2016

Good to hear of such action being taken.

Reply

Mike Fearon
July 3, 2016

I don’t think the theory that there are inevitable consequences is valid, even if it is in fact an obstacle. There is the practical possibility that the Member States could decide that a decision subject to ratification is not a decision. They could allow a notification to be withdrawn irrespective of specific provision for this. There is also the opportunity for the period during which the Treaties continue to apply being extended indefinitely under 50.3. Consequences may be likely without being inevitable.

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Pingback: Can the regulation cease Brexit?Bonews World Wide News Network | Bonews World Wide News Network

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europeanbritblog
July 3, 2016

Reblogged this on European Brit and commented:
Here is an interesting article by the UK Constitutional Law Association posted on June 27 2016:

Reply

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hdan
July 3, 2016

It is true that the Prime Minister has never been granted lawful authority to issue a declaration under article 50 of the Lisbon Treaty. However, the Privy Council _has_ been granted that authority: under section 2(2)(a) of the European Communities Act, the Privy Council by Order has power to exercise any of the UK's rights under the EU treaties [*], and under section 2(4) of the same Act, the Privy Council may also take any action consequent on the exercise of those rights that Parliament would be able to take (including amending or repealing primary legislation). These powers (unlike more recent Henry VIII clauses) are subject neither to an affirmative resolution procedure nor to a negative resolution procedure in Parliament.

If it's really vital for the Prime Minister to feel important, then the Privy Council could, alternatively, (under the last paragraph of section 2(2) of the same Act) declare the Prime Minister to be the "designated minister" for the purposes of issuing article-50 declarations, in which case the Prime Minister would be able to do the deed him/herself; although the PC has _not_ done this yet, so the Prime Minister is definitely not the "designated minister" at present.

[*] I note Dan Law's point, above, that 'If Parliament had intended

to confer such a power in s.2(2), it could have been expected to say so expressly.' The phrase 'enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised' definitely appears to me to be Parliament "saying so expressly": but as I said, conferring the power on the Privy Council, not on the Prime Minister.

Reply

Dan Law
July 4, 2016

hdan – s.2(2) gives delegated authority to the executive to implement EU obligations into domestic law by means of statutory instruments. It gives authority to act in the domestic plane, not on the international plane. Keep in mind 'noscitur a sociis' when reading s.2(2) and the need to read the act as a whole. Applying the 'proper purpose principle' / Padfield, one would conclude that while invoking Art 50 might appear to be within the scope of s.2(2) if one gives a very literal reading to words taken out of context, Parliament did not intend to authorise this. It is scarcely credible that Parliament would intend to delegate such a far-reaching decision to lie within the executive's discretion. If Parliament intended to delegate authority to the executive to withdraw from the EU, it could have been expected to say so expressly (making specific reference to Art 50).

Five years ago, I doubt anyone would have accepted the notion that pursuant to s.2(2) ECA, the Privy Council could, at any time, by Order in Council effect the UK's withdrawal from the EU, without need for consent from Parliament or any kind of referendum. Statutory interpretation has not changed, just the political context.

Reply

John Moss
July 3, 2016

Principle of Estoppel applies.

By passing the Referendum Act in 2015, Parliament is estopped from disallowing its result

Reply

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jnsm5
July 4, 2016

If this is really going to be litigated, then, given the pre-emptive nature of any challenge, the likelihood of further appeals (if fought in the ordinary courts), and the clear-cut and constitutional nature of the question, might a possibility be for the prospective litigants to ask the government to use the power under s4 of the Judicial Committee Act 1833 to refer the matter directly to the JCPC? Given that Supreme Court judges would then decide it, the Board's opinion would essentially be a final judgment on the matter and there would be no procedural issues.

Reply

Marty Caine
July 4, 2016

There way I see it, as the Referendum Bill was actually so ill thought out that it never included anything past the actual referendum result coming in, there is not British law in place on how to proceed with the Referendum vote to leave. If there is I certainly cannot find it.

If I am correct the only applicable law in this is in fact the Lisbon Treaty which as members we are obliged to abide by. This would mean simply notifying the EU of our referendum result and that notification would invoke Article 50.

Should government decide to do a u-turn on the result they would then be in breach of the Lisbon Treaty and international law, same would apply if they repealed ECA Act 1972, which rather ironically could then be forced before the European Courts who would have no option other than to stand by their own democratic standards for EU Citizens and force the invoking of Article 50.

Parliament must be in chaos over this because they are on a lose/lose no matter what they do, even if they ignore the people and disregarded that majority decision they know full well that will result in handing 17.4 million votes to UKIP at the next General Election. If the Referendum had been a General Election the end result would have given Leave the highest majority in the history of British politics.

I do know that the delaying of invoking Article 50 is an extremely precarious gamble as the EU can still hit us with any bills that it feels like hitting us with whilst we are in this limbo situation.

Reply

Tom Austin
July 4, 2016

Let's not kid ourselves. The sole detriment of negating the referendum result would rest upon the Conservative Party – it would bring them back to the time when they first came up with the 'wizard wheeze' of offering the referendum in the first place.
-Many of the 'Brexit' votes would never now go to UKIP;other than the may-be conservative votes.

Reply

Pingback: BREXIT: A Non-Partisan Guide to a Wacky Political Pantomime... | the burning blogger of bedlam

Auguste
July 4, 2016

Hi – I am interested by the phrase 'false prospectus' in the piece. Given the discussion, prominence and subsequent withdrawals regarding the '£350M to the EU per week' and the related commitments to direct this to the NHS would this be a good argument to question the entire validity of the referendum?

Reply

Tom Austin
July 4, 2016

Unfortunately, the 'entire validity of the referendum' has been realized – We still 'enjoy' a Conservative Government. There is a petition doing the rounds calling for an independent 'truth' verifier. Alas, lies are the corner-stone of the British Establishment.

Reply

Dan Law
July 4, 2016

Auguste – very surprisingly, I believe there would be. More accurately, a reasonably good argument can be made that under EU law the UK has legal obligation to nullify and rerun the referendum. Moreover following from this it may be further argued that the UK could not validly invoke Article 50 on the basis of the 23 June referendum result even if Parliament approved this. Ultimately that would of course be for the CJEU to determine; in the meantime interim relief might be sought. I intend to submit a post on this website which will elaborate, and don't wish to sidetrack this discussion from debate of the arguments presented by Barber et al. in this post.

Reply

Robmod
July 5, 2016

I can only encourage you with such a post examining a false prospectus based legal challenge. It seems novel. But that it maybe supportive of a conscience vote in Parliament is clear.

simple-touriste
July 4, 2016

"subsequent withdrawals regarding the '£350M to the EU per week'"

Can you please indicate when these withdrawals occurred?

Reply

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Richard B. Jones, Jones Law, Canada
July 4, 2016

Fine and very sound piece of work. Three comments.

1. It would be useful to examine the multitude of Acts of Parliament dealing with the EU treaties. Those Acts approve and implement the treaties and exercise in ways specific to the United Kingdom some permissive or optional powers under them. I notice that the European Union (Amendment) Act 2008, which implemented the Lisbon Treaty including Article 50, has provisions requiring consent of Parliament by an Act to any future amendments in a number of specific matters. Since a termination of the treaty is surely an amendment by deleting all of its provisions, surely there is already a statutory requirement for the advice and consent of Parliament. Does this not bring the matter directly within the Case of Proclamations and the FireBrigades decision?

2. The "false prospectus" comment opens an important legal as well as political issue. Has anyone analyzed the extensive provisions in the schedules to the European Union Referendum Act 2015 concerning campaigning? The Leave campaign complained about Mark Carney and the Bank of England and claimed that his statements were breaches of the statute. Now we see that material statements in the Leave campaign advertisements and flyers were false or misleading or are now rescinded as "a mistake".

3. The paper addresses the basic character of representative democracy and the power of Parliament to act on the basis of the facts as then known to the members. So far as it appears, the voters during the campaign were never told that there was no power for the United Kingdom to condition its departure upon the advertised

post state of free trade and no freedom of movement obligations. The voters, again so far as it appears were never told that the decision to leave might include the cost of dismembering the United Kingdom. The Scottish and the Northern Ireland possibilities are clearly material changes and should be a price too high to pay.

Reply

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simple-touriste
July 4, 2016

"As some of the core claims made by the leave campaign unravel"

Not listing those claims makes your case extremely weak.

Reply

Solange Lebourg
July 6, 2016

Perhaps further repetition would be tedious. Are you unfamiliar with these claims?

Reply

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Surrey Highlander
July 4, 2016

Surely the UK joined the European Communities by signing a treaty of accession in Brussels on 22 January 1972 and the decision of the then Council of the European Communities of the same date (as specified in section 1 of the European Communities Act 1972). The European Communities Act 1972 simply incorporated EU law into UK law, rather than being the mechanism by which the UK joined.

If the UK could enter the European Communities by means of a treaty then the corollary is that it can leave by the same method.

Therefore if the UK Parliament didn't repeal the European Communities Act 1972 it wouldn't affect whether the UK was a member or not of the EU, but whether UK courts have to apply EU legislation. This would mean the UK could leave the EU but would still be bound by EU law. Not exactly a situation anyone would wish?

Reply

Mike Fearon
July 4, 2016

I have commented previously in a similar vein, but the

Treaty was subject to ratification. Norway did not ratify, following a referendum. The UK did, and in the meantime passed the 1972 EC Act. Exactly what form the ratification took, and whether the EC Act was, or was part of, the requisite ratification I don’t know.

Reply

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Pingback: Can UK trigger Brexit without asking MPs? | The Daily News Wire

Sean Feeney
July 5, 2016

The Guardian newspaper has reported today online that "Dominic Chambers QC of Maitland Chambers in London, an expert in international and commercial law, is acting for a British citizen,

Deir Dos Santos. Other legal claims making a similar point are also being prepared by the law firm Mishcon de Reya.":

Deadline approaches for government response to Brexit legal challenge

Ministers must respond to legal claim that only parliament can authorise decision to trigger article 50 of Lisbon treaty

http://www.theguardian.com/politics/2016/jul/05/deadline-approaches-government-response-brexit-legal-challenge-article-50

Reply

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Sean Feeney
July 8, 2016

The Guardian has reported that "high court judge, Mr Justice Cranston, has set 19 July for a preliminary hearing of the judicial review challenge brought on behalf of the British citizen Deir Dos Santos." .The claim, which the High Court has acknowledged raises issue of constitutuonal importance, will be heard by two judges of the Divisional Court.

The claim challenges as ulta vires a decision is the Prime Minister's resignation speech according to the Guardian: ""The extract from the prime minister's resignation speech ... makes it clear that [the government] is of the view that the prime minister of the day has the power under article 50 (2) of the Lisbon treaty to trigger article 50 without reference to parliament."

Reply

Sean Feeney
July 8, 2016

The Guardian report "First legal attempt to prevent Brexit set for preliminary hearing" is at this link:

http://www.theguardian.com/politics/2016/jul/08/legal-attempt-prevent-brexit-preliminary-hearing-article-50

Maitland Chambers have posted the following statement, which confirms the defendant is the Rt Hon Oliver Letwin MP, who is heading the implementation of Brexit for the Governmant:

The most important constitutional law case in living memory

08 July 2016

Dominic Chambers QC has been instructed by David Greene, Senior Partner and Head of Group Action Litigation at Edwin Coe LLP, to represent the Claimant in the case of Santos v Chancellor for the Duchy of Lancaster in the Divisional Court. In the case, which has been described as the most important constitutional law case in living memory, the Claimant seeks to prevent the Government from triggering Article 50 of the Treaty of Lisbon without the prior authorisation of Parliament. The case concerns the central constitutional principle of the sovereignty of Parliament and the upholding of the rule of law. This is the first Article 50 claim to have been issued in Court.

http://www.maitlandchambers.com/information/news-article/the-most-important-constitutional-law-case-in-living-memory

Reply

Sean Feeney
July 14, 2016

The Defendant in the Santos claim is the Chancellor of the Duchy of Lancaster.

The Rt Hon Oliver Letwin MP has been removed from his office as Chancellor of the Duchy of Lancaster, in the reshuffle on 14 July, and "The Queen has been pleased to approve the appointment of Rt Hon Patrick McLoughlin MP as Conservative Party Chairman and Chancellor of the Duchy of Lancaster", according to two press releases from the Prime Minister's Office, 10 Downing Street:

https://www.gov.uk/government/news/ministerial-departures-july-2016

https://www.gov.uk/government/news/ministerial-appointment-july-2016-conservative-party-chairman-and-chancellor-of-the-duchy-of-lancaster

Reply

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Pingback: A Saturday without Gove | Brexit Issues

grahamwood32
July 11, 2016

I find it difficult to understand why the "invoke Article 50 of the LT" is accepted as the only option, and I believe that an alternative is waiting to be acknowledged and adopted.
That is to argue the case that the UK should formally leave the EU by invoking the Vienna Convention on Treaties (Article 62), on the grounds that a material, or substantial change of circumstances has occurred as a result of the Brexit referendum, ushering in a completely new political and constitutional situation. These circumstances are:
:
1. A complete re-appraisal of all government policies for the future in a new non-EU framework including de-coupling from EU treaties and new negotiations with the EU Commission and other member states.

2. Resignation of the UK Prime Minister who had publicly supported and campaigned for a 'remain' position, using a variety of government resources to do so. Advent of a new Prime Minister and Cabinet.

3. Rejection by the British electorate of EU hegemony over the UK after 43 years with implied rejection of all treaties entered into from Rome to Lisbon by the UK..

4. Recognition of the Brexit vote internationally and uncontested by the EU itself or any member state of the new political reality.

5. Brexit referendum effected peacefully and legally in "accordance with the UK's constitutional requirements." (a point specifically referred to in Article 50 of the EU Lisbon Treaty, and in accordance with the British government's own Referendum Bill in parliament)

6. The significance of the Brexit vote conceded by the outgoing prime Minister, Mr Cameron as being "an instruction to the

government” by the people

7. Post Brexit trade deals immediately sought by a number of countries with the UK government, recognising the sovereign right of the UK to enter such bi-lateral agreements with these, and signalling a fundamental change in trading policy by the UK formerly undertaken corporately by the EU on behalf of member states. (Countries which have so far signalled they would like to open trade talks with the UK include the USA; China; India; Norway, Switzerland, Greenland; Australia, New Zealand, South Korea, Canada, Mexico; Ghana, and Germany.)

8. Such trade deals if entered into would immediately question the status of the UK and its obligations to the EU under existing treaties (see Article 62 (2) above and such obligations would then indeed be transformed.

Taken together these factors do indeed represent a substantial change of circumstances for the UK government and people, reversing over four decades of EU membership and political domination by the EU from what was popularly understood, and presented by the government at the time of accession, to be primarily a trading and economic arrangement with the six nations of the then European Economic Community.

Reply

Marty Caine
July 11, 2016

The VCLT is for individual countries not intergovernmental organisations like the European Union, this is why the 1986 extension (VCLTIO) was added but as far as I am aware as not yet been ratified so is not in force and cannot be used.

The only legal, sensible and logical move is to invoke Article 50, should the negotiation prove too negative then these backdoor methods will still be readily available but at least we can hold our heads high knowing we did try the correct procedure initially.

Reply

grahamwood32
July 11, 2016

Marty. The UK is an “individual country” . The EU acts as a representative for its 28 member states collectively and recognises the validity of the VCT. Britain as a signatory had the right, and under the new constitutional and political reality brought in by the referendum vote, an obligation to invoke Article 26 as well as other Articles relevant to our accession.

Anthony Arnull
July 11, 2016

It seems to me doubtful that the circumstances in which the UK finds itself have changed fundamentally for the purposes of Article 62 VCLT as they are expressly contemplated by Article 50 TEU, which makes it possible for any Member State to withdraw. Once triggered, the procedure is a fairly rapid one. However, it is widely accepted that the UK will want some sort of continuing relationship with the EU after withdrawal. It would not be sensible to invoke Article 50 until we have worked out precisely what we want to achieve from the ensuing negotiations with the other Member States. Nor would it be sensible not to follow the procedure set out in Article 50, to which we agreed when we ratified the Treaty of Lisbon. Failure on our part to respect the procedure would undermine our status as reliable partners, not just with our soon to be erstwhile EU partners, but also with the many countries around the world with whom we will soon be seeking to conclude trade agreements.

Dan Law
July 11, 2016

Termination by invoking Art 62 VCLT on basis of the referendum result would also run up against 62(2)(b).

Grace brand
July 11, 2016

The government is elected to represent the people of Britain the vote was to leave and that is what has to be carried out. Rules can't be changed to suit as you go along. Remain lost and will have to get on with it .

Reply

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grahamwood32
July 11, 2016

Dan Law. I think you probably mean Article 1B of Article 62 of the VCT which states
“the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.”, and not 62 (2) (b) ?

The result of the referendum does indeed entail a comprehensive and fundamental change of circumstances in and of itself, and would once implemented by legally repealing the ECA 72, certainly entail a “transformation of our obligations” under the EU treaties) of which this Article speaks.

Reply

Dan Law
July 11, 2016

Graham, I do mean 62(2)(b). i.e. an attempt to terminate under Art. 62 could fail given 62(2)(b) if the referendum result is relied on as the fundamental change of circumstances:-

2. A fundamental change of circumstances may not be invoked as a ground
for terminating or withdrawing from a treaty:
....
(b) If the fundamental change is the result of a breach by the party invoking it either of an obligation under the treaty or of any other international obligation owed to any other party to the treaty.

Reply

Marty Caine
July 12, 2016

Can any legal beagle please explain to me why the VCLTIO extension of VCLT was ever drawn up in 1986, if VCLT is applicable to International organisations or isuch as the EU?

Surely the fact it was drawn up in the first place clearly shows that VCLT does not apply in the current situation with the EU and the UK and the fact that VCLTIO is open to signatures but not yet ratified means it cannot be used because it is simply not in force.

It all makes as much sense as all this legal nonsense about who should invoke Article 50, does the PM have the power to do so or does it require parliament, when in fact no one invokes it, that is actually done automatically once our

government officially notifies the EU of the referendum result, something that according to the Lisbon Treaty they have a legal obligation to do.

This delay is totally unnecessary and is putting Britain at great risk of being hit with massive bailout charges, should the Eurozone collapse before we leave and it will. Lawyers trying to find loop holes to pervert a democratically made decision should be ashamed and to say they are justified because the leave campaigned lied is simply stupidity at its best, its like saying we should just walk away because the Government lied in 1975.

It maybe wise for those legal beagles who seem so desperate to overturn a democratic decision to contemplate just what kind of advertisement they are displaying at the moment.

Reply

richard jarman
July 13, 2016

It's called the rule of law; often with a capital R & L. As in any other endevour if there is doubt about a rule, principle, prognosis, diagnosis, or prognosis there is a scheme enabling a decision, maybe a compromise, maybe a fair result, in this case the legal system is the arbiter. Don't blame the players – (but cut the costs!).
If the legal process could overturn Brexit (what fun) then those who formulated the Brext process simply made a bad or incomplete law. That is certainly niether uncommon nor unusual; tabloids. bad journalsists and poor legislators will try evade responsibility. Politicians in Guildford will declasre UDI (?)

grahamwood32
July 12, 2016

Dan. What more "fundamental change" would you consider to warrant an appeal to Art.62 of the VCT? Riots on the streets? Martial law? Of course not!
The referendum vote by the people and the result was the highest form of democratic expression there is, and has resulted in unprecedented results.
I listed in another post what these were, and repeat for emphasis: (point 8 is particularly important as other countries are now 'knocking on our door' for trade deals)

1. A complete re-appraisal of all government policies for the future in a new non-EU framework including de-coupling from EU treaties and new negotiations with the EU Commission and other member

states.
2. Resignation of the UK Prime Minister who had publicly supported and campaigned for a 'remain' position, using a variety of government resources to do so, and the advent of a new Prime Minister and Cabinet.
3. Rejection by the British electorate of EU hegemony over the UK after 43 years with implied rejection of all treaties entered into from Rome to Lisbon by the UK.
4. Recognition of the Brexit vote internationally and uncontested by the EU itself or any member state of the new political reality.
5. Brexit referendum effected peacefully and legally in "accordance with the UK's constitutional requirements." (a point specifically referred to in Article 50 of the EU Lisbon Treaty, and in accordance with the British government's own Referendum Bill in parliament)
6. The significance of the Brexit vote conceded by the outgoing prime Minister, Mr Cameron as being "an instruction to the government" by the people
7. Post Brexit trade deals immediately sought by a number of countries with the UK government, recognising the sovereign right of the UK to enter such bi-lateral agreements with these, and signalling a fundamental change in trading policy by the UK formerly undertaken corporately by the EU on behalf of member states. (Countries which have so far signalled they would like to open trade talks with the UK include the USA; China; India; Norway, Switzerland, Greenland; Australia, New Zealand, South Korea, Canada, Mexico; Ghana, and Germany.)
8. Such trade deals if entered into would immediately question the status of the UK and its obligations to the EU under existing treaties (see Article 62 (2) above and such obligations would then indeed be transformed.
.

Reply

Dan Law
July 12, 2016

Graham – my point does not concern whether or not there has been 'fundamental change of circumstances' within meaning of Art 62 VCLT. It is that, even if the referendum result is considered such, it still may not be possible to invoke Art 62 because of 62(2)(b).

To put it the other way, there may well be good argument that the 'fundamental change of circumstances' relied on (the referendum result) was the result of a breach of obligations the UK has under the EU Treaties and other international obligations owed to parties to the EU Treaties. If this is shown, then Art 62 could not be invoked, even if it is accepted that the referendum result is 'a fundamental change of circumstances' of the kind required

by Art 62 (which I am very doubtful about).

Reply

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Kevin McAlpine
July 13, 2016

Parliament passed a bill to hold a referendum. Not to hold an opinion poll.
It is clear to everyone voting on that bill, that if the country votes to leave, it will leave. There was no ambiguity. They voted to let the country DECIDE whether to go or stay.
It follows from the passing of that bill by Parliament, that Parliament has ALREADY approved leaving, if the referendum goes that way.
It has therefor already given it's consent to the invoking of article 50, by passing the referendum bill.
A second vote is not required. That decision was taken in the original referendum bill.

Reply

Dan Law
July 14, 2016

Kevin, I would really like to understand your views better. Your comments highlights a key difficulty of the situation, with a gap between public perceptions and the constitutional and legal considerations being discussed here. The views you express are important because a major challenge the country faces is how this political-legal divide can be bridged.

This is about much more than the EU. The UK now faces the prospect of a political tempest which threatens the constitution and even the rule of law. As I will try to show, once opinions about the popular will have greater force than constituted power, the country will have defeated itself and democratic government.

In a democratic system of government, courts have the role of interpreting legislation and deciding what effect this is to have. In doing so, they follow various rules and principles. Parliament knows this and pays attention to these rules when it legislates. So to understand what Parliament decided when it enacted the referendum bill means reading what was enacted in according to those rules. Otherwise it

is not about what Parliament decided, but what someone else likes to think Parliament decided.

Kevin, you have a view about what Parliament decided when it enacted the referendum bill and an opinion about what was clear to everyone. But who should get to decide on what Parliament intended when it voted to enact the referendum bill? You? Press barons? The prime minister? And what's to stop them from effectively re-writing the legislation as they see fit?

There is every reason to feel angry and to feel misled about the referendum having a decisive legal effect. This was 'bigged up' and sensationalised by the media and opportunistic politicians and shamefully misrepresented to the public. There is also every reason to feel betrayed if that decision is not respected and treated as binding without anything further. However it appears that many people are directing that anger at the constitution and anyone who appears to be trying to put that in the way of what the public was sold. There is no doubt that there was a betrayal of the public's right to be properly informed. Nevertheless I still believe that laws should be made by a democratically elected legislature and interpreted and given effect by the courts, not by those responsible for that betrayal.

A decision to abandon our constitution is far more significant than a decision to leave the EU. Did you vote for that?

Reply

Sean Feeney
July 14, 2016

This contribution by Dan Laws prejudges constitutional issues which may arise in the Divisional Court hearing on 19 July convened by order of the High Court in Santos v the Duchy of the Chancellor of Lancaster; and in other judicial review claims.

The Guardian has reported the claim refers to an "extract" from the Prime Minister's resignation statement. The extract was not given.

The Prime Minister stated "the decision has been made to leave"; this is denied by "rule of law" above.

Mr Cameron's resignation stated:

"The will of the British people is an instruction that must be delivered. It was not a decision that

was taken lightly, not least because so many things were said by so many different organizations about the significance of this decision.
"So there can be no doubt about the result....

"Now the decision has been made to leave, we need to find the best way, and I will do everything I can to help."

https://www.gov.uk/government/speeches/eu-referendum-outcome-pm-statement-24-june-2016

Claimants may argue, if permission is given for judicial review, that the Prime Minister's speech is evidence of an unlawful misdirection ("an instruction that must be delivered") by a decision-maker or an unlawful reason. The response may be be that this is just political rhetoric and not part of the formal decision.

Naming the defendant in the claim as the Chancellor of the Duchy of Lancaster suggests the decision-taker in the decision (or decisions) being challenged in the claim issued by the High Court is not the Prime Minister; as might have been expected by official statements before the referendum.

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Pingback: Last night's UCL event—Brexit: Legal & Constitutional Requirements | Head of Legal

Pingback: UCL Laws Event: "Brexit: Legal & Constitutional Requirements" (13 July 2016) | UCL UCL Journal of Law and Jurisprudence Blog

Donald Rennie
July 14, 2016

As has been correctly identified, Article 50 of the Lisbon Treaty provides that "Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

The reference to "constitutional requirements" is intended primarily to relate to states that have a written constitution. In the United Kingdom we are fortunate not to have a written constitution so that our "constitutional requirements" can vary flexibly to meet changing political circumstances.

The classical argument is that the enforcement of treaties or their repudiation is a matter for the royal prerogative but that the United Kingdom's membership of the E.U.was achieved by the European Communities Act 1972. An Act of Parliament trumps the royal prerogative and therefore another Act of Parliament is required before Article 50 can be triggered.

But legislation is already in place to allow notice under Article 50 to be given. The legislative authority for the referendum to have taken place is the European Union Referendum Act 2015.

Section 1(1) of that Act provides, "A referendum is to be held on whether the United Kingdom should remain a member of the European Union."

Nothing is said in the Act that to suggest that the Referendum is advisory only. The clear meaning of the Act is that Parliament has legislated that direct instead of representative democracy would decide whether the UK would remain in the Union or would leave it.

The people voted by a majority of over a million to leave the EU. From this it follows that the Government has received a mandate from the people to give notice under Article 50 and no further legislative action is required.

The European Communities Act 1972 and much subsequent legislation will require to be repealed but that is nuts and bolts and does not affect the fundamental principle that the people have decided in accordance with the delegation to them enshrined in legislation

Reply

Pingback: The EU referendum and some paradoxes of democratic legitimacy : Democratic Audit UK

richard jarman
July 15, 2016

Northern Ireland's new secretary of state has said there should be no border controls between the UK and the Republic of Ireland.

Reply

Pingback: The EU referendum and some paradoxes of democratic legitimacy - Democratic Audit UK - Brexit Article 50

Pingback: ARTICLE 50 AND LEGAL ARGUMENTS ABOUT THE PROCESS OF BREXIT | brexitlawlinks

Pingback: The Article 50 Litigation – Why the UK Parliament Still Needs to Vote for (or against) Brexit – Public Law & Regulation

Pingback: Stephen Laws: Article 50 and the political constitution | UK Constitutional Law Association

Sean Feeney
July 18, 2016

A two-judge Divisional Court consisting of the President of the Queen's Bench Division, Sir Brian Levenson, and a former Member of Parliament and Solicitor General, Mr Justice Cranston, will hear Brexit "application(s)" on Tuesday 19 July 2016.

It is unclear from the RCJ cause list if any claimants other than Deir Dos Santos will apply to join the issued Santos claim.

It is also unclear if the hearing will determine, or hear an application to set aside if already granted, the interim injunction which "rule of law" states, above, has already been applied for.

COURT 3
Before SIR BRIAN LEVESON PQBD and MR JUSTICE CRANSTON
Tuesday 19 July, 2016
At 10 o'clock
APPLICATION(s)
CO/3281/2016 The Queen on the application of Santos v Chancellor For The Duchy Lancaster

https://www.justice.gov.uk/courts/court-lists/list-cause-rcj

For official descriptions of the judges, see:

https://www.judiciary.gov.uk/publications/mr-justice-cranston/

and

https://www.judiciary.gov.uk/publications/president-of-the-queens-bench-division-sir-brian-leveson/

Reply

Dmitri Bontoft
July 20, 2016

Can someone give me a simple response to the following argument:

1) European Communities Act brings EU Law into UK Law
2) Article 50 is part of EU Law
3) Article 50 provides the power in council to withdraw from EU
4) Therefore in passing the European Communities Act parliament authorised use of Article 50 in council
5) Actions in council are performed by the executive as part of royal perogative
6) Therefore notification under article 50 using the royal perogative has already been authorised by the UK parliament

?

Reply

Rule of Law
July 20, 2016

3 is wrong. Article 50 does not provide the "power in council" to withdraw (whatever that may mean). Article 50.1 says UK can withdraw in accordance with its constitutional requirements. Those requirements do not include "power in council".

Reply

Robmod
July 20, 2016

Well, for what it's worth, my immediate response is... therefore...the Prime Minister wakes up one morning having consumed some bad foie gras the night before; she thinks badly of the French because of it. Her mood darkens as the day goes on; Germany has recently beaten England at football and her constituents are complaining about a new Polish bakery. This is the straw that breaks the camel's back. "It's all Europe's fault", she says to herself and so, unbeknownst to anyone else, she telephones Tusk and triggers Article 50. So, no referendum, no vote, no Act of Parliament, no cabinet meeting, no consultation required... apparently. Just a bad day at the office and a conniption.

My second response is to refer the writer to the noble Lord Davies' shrewd question, which appears to have stunned the government into reflection:

"Is it not inconceivable that the royal prerogative should be used to withdraw statutory rights? Is that not what we had an argument with Charles I about in the 17th century?"

Reply

Constitutional Law Group
July 21, 2016

Dimitri – please see the argument of Adam Tucker on this blog for a more refined version of this argument, and Mark Elliot's riposte to him on his blog, Public Law for Everyone.

Reply

simple-touriste
July 20, 2016

We are being bombarded with lies and pseudo-scientific doom prophecies about run away CAGW everyday by the BBC. These lies are pro-EU, anti-UKIP and anti-brexit.

These lies are much worst than the few brexit lies.

By your own argument, any "remain" result should have been cancelled, too.

Reply

Pingback: The EU referendum and some paradoxes of democratic legitimacy | The Constitution Unit Blog

Pingback: The people have voted on what they don't want. Nobody has voted on what we do next. A general election must be called before Article 50 is triggered. – Progressive Brexit

Pingback: Blue Rinse Revolution – Progressive Brexit

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Pingback: The Article 50 Brexit challenge needs to be successful, here's why - Legal Cheek (blog) - Brexit Article 50

Pingback: Brexit: article 50 and all that - Law Gazette - Brexit Article 50

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Pingback: The EU referendum and some paradoxes of democratic legitimacy – Britain & Europe

Pingback: The need for Parliament's consent to trigger Art 50 is a matter of EU Law

Marco Mangiabene
August 16, 2016

This is an excellent analysis. I agree.

Reply

grahamwood32
August 26, 2016

Marco (and Cons. Law Group).
I disagree and suggest the facts are entirely otherwise. When we joined the European Union with the Accession Treaty in 1972 – and incrementally added to our powerlessness through other Treaties over the years – those treaties were signed under Crown Prerogative powers granted by the Queen to Ministers WITHOUT ANY INVOLVEMENT OF PARLIAMENT.

When Douglas Hurd the then Foreign Secretary laid the Maastricht Treaty before Parliament it was a fait accompli and he – rightly – said that "Parliament cannot overturn the Maastricht Treaty" (or any other treaty for that matter) and MPs had not been involved in its approval or signing. The same was true of the EU (EEC) Accession Treaty of 1972.

Although a few patriots argued at the time that this was an unprecedented and illegal use of the Crown Prerogative, it was accepted by all concerned with our constitutional surrender to the EU. The people were not asked whether they approved of the removal of their sovereignty.

Therefore, on the same logic and precedent, Ministers, are similarly empowered today but this time by a clearly expressed will of the people (and without reference to Parliament)

Reply

grahamwood32
August 27, 2016

Marco.
Do have a look at Gerald Warner’s excellent analysis publoished on the Sun newspaper and now widely distributed elsewhere. Sound, simple, and minus the arcane complications constructed by so called “constitutionalists”

Reply

Pingback: Jein – eine fehlende Variante bei dem Brexit-Referendum | Verfassungsblog

Peter Sain ley Berry
August 26, 2016

If an Article 50 notification were accepted as revocable – this would surely help both sides. Would it not be possible to obtain ECJ advice on this? If Article 50 were revocable negotiations for withdrawal could then proceed. A second referendum or General Election could then decide whether this withdrawal treaty was preferable to staying in the EU or not. If not Article 50 could be withdrawn.

Reply

Anthony Arnull
August 31, 2016

It is possible that a reference for a preliminary ruling on the meaning of Article 50 will be made by a UK court in the course of the legal proceedings on this issue initiated earlier in the summer. There may also be a reference on Article 50 in the Irish case involving a European Arrest Warrant issued in the UK.

Reply

Pingback: Kenneth Campbell QC: Constitutional Discourse Post-referendum: Where Are We, and Where Are We Going Next? | UK Constitutional Law Association

Pingback: Can UK trigger Brexit without asking MPs? | The USA Times

Pingback: Does Theresa May Know What She’s Doing With Brexit? – Diashmond

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Pingback: Nick Barber, Tom Hickman and Jeff King: Pulling the Article 50 'Trigger': Parliament's Indispensable Role | UK Constitutional Law Association | It Is Not A Mandate

Pingback: Brexits First Legal Challenge – Brexit in Spain

Pingback: Trigger | Purathrive

Sean Feeney
September 24, 2016

An "urgent" public-interest application to allow publication in full of the case of People's Challenge, a crowd-funded intervener in the Brexit litigation, and the Government's defence was lodged in the High Court on Friday 23 September 2016 according to the Guardian.

https://www.theguardian.com/politics/2016/sep/23/anti-brexit-group-mounts-legal-challenge-over-article-50-proposal

Publication, according to the Government spokesperson quoted by the Guardian, is prevented by an existing confidentiality order of the court issued "for reasons including the threats received by some claimants." Various court documents have been redacted.

Publication of the court papers, particularly the skeleton arguments, should reveal how these parties deal with the ratio decidendi of R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg [1993] EWHC Admin 4.

The Guardian report clarifies that the issue for these interveners is who, in law, is the decision-maker for the United Kingdom's decision to leave the EU and that these interveners have conceded that Ministers have the power to notify such a decision once the decision has been lawfully made (the lawfulness of decisions is still in issue), and that the relief they are seeking is a declaration of the UK's "constitutional requirements":

"The redacted version of the skeleton argument submitted by the People's Challenge invites the court 'to declare that the UK's constitutional arrangements mean that only parliament can lawfully 'decide' to leave the EU for the purposes of article 50 TEU; and that [David Davis] may only 'notify' such a decision to the European Council under Article 50(2) TEU once he has been properly authorised to do so by an act of parliament.'

"It also quotes approvingly from the 1689 Bill of Rights – a piece of legislation revered by Eurosceptics – that it 'expressly prohibits the use of the prerogative in circumstances where its exercise would 'suspend' or 'dispense' statutory law.'
"

The aplication was "drafted by Helen Mountfield QC [of Matrix Chambers], John Halford, a solicitor partner at Bindmans, and other lawyers"

Matrix Chambers published a series of legal articles before the referendum
https://www.matrixlaw.co.uk/brexit/

Reply

Sean Feeney
September 28, 2016

The Irish Times has reported that a government application that Northern Ireland Brexit litigation be stayed and dealt with at the High Court in London has been rejected on 27 September because 'issues specific to Northern Ireland could "fall between the cracks" – by Northern Ireland High Court Judge Mr Justice Maguire.

A further hearing is expected in Belfast next week: 'In their legal challenge, the MLAs [Member of the Legislative Assembly] argue that legislation would have to be passed by the Commons, with the consent of the Northern Ireland Assembly, before Article 50 could be triggered.' according to the Irish Times.

http://www.irishtimes.com/news/crime-and-law/legal-challenge-to-ask-if-belfast-agreement-may-trump-brexit-1.2807742

A "notice of devolution"was subsequently served on Northern Ireland Attorney General John Larkin QC and the Office of the First Minister and deputy First Minister, who may now intervene at the hearing on 4-5 October, according to Irish Legal News.
http://www.irishlegal.com/5386/notice-of-devolution-served-in-brexit-cases/

Reply

Sean Feeney
September 28, 2016

Jolyon Maugham QC (who initiated crowd funding) has published the Government's Grounds for Resisting the Article 50 challenge, The People's Challenge Skeleton, and the application to allow publication, following the granting of this application by Mr Justice Cranston [on 28 September?] as reported by the Guardian.

https://waitingfortax.com/author/jolyonmaugham/
https://www.theguardian.com/politics/2016/sep/28/government-must-disclose-legal-arguments-article-50-procedure-peoples-challenge

A "a complete version...along with the government's written defence" may be published by the People's challenge in the next few days

Reply

Sean Feeney
September 28, 2016

The Government's defence to the claim by Miller and others v the Secretary of State for Exiting the European Union

Paragraph numbers in square brackets are references to the paragraphs in the detailed grounds of resistance (Government's Grounds for Resisting the Article 50 challenge)
https://waitingfortax.com/author/jolyonmaugham/

1. Article 50(2) notification pursuant to the prerogative is domestically non-justiciable because it is an administrative act in international lwaw not domestic law [5(1)].
2. The UK's decision to leave the UK was "articulated" in the "referendum result" [5(2)].
3. The claim conflates notification (under article 50(2)) with the decision to be notified (under article 50(1)) [5(2)].
4. It is constitutionally proper to give effect to the referendum result by prerogative powers [5(2)].
5. It was clearly understood the Government would give effect to the referendum result.
6 This is what the 2015 Act provided [5(2)]. [This appears to bes either a contention that the referendum result was the UK's statutory decision to leave the EU or that it is a mandatory consideration fettering the Crown's disretion. If so, a precise submission on this crucial point should be made in the Government's skeleton.]
7. The decision to withdraw from the EU is not justiciable [5(3)].
8. Such a decision is of the highest policy reserved to the Crown [5(3)].
9. The Court's lack the expertise of the Crown to make this decision [5(3)]..
10 It is a constitutionally impermissible breach of Parliamentary privilige to grant the relief the claimant's seek – compelling the Secetary of State to introduce legislation in Parliament to give effect to the referendum [5(4)].
11. If the claim is justiciable, exercise of the Crown prerogative would be domestically constitutionally permissible [5(5)].
12. Commencement of withdrwaing from the EU does not of itself change statute, the common law, or the customs of the realm [constitutional conventions?] [5(5)].
13 Any such changes are matters fror future negotiations. Parliamentary scrutiny and impementation by legislation [5(5)].
14 Devolution does not impact the lawfulness of the prerogative as there is no devolved competence in foreign affairs [5(6)].

Reply

Pingback: The Government's case in the Article 50 litigation: A critique – Professor Mark Elliott | Public Law for Everyone

Sean Feeney
September 30, 2016

I think I have mischaracterised the defence in my explanatory comment in square brackets at 6 above.

The defence appears to be pleaded on two alternative bases: (1) the claims are nonjusticiable; and (2) the claims are justiciable.

Adopting, pro tem, the legal fiction of the first basis, implementation of the referendum result by the Royal prerogative simply becomes a legally unreviewable high-policy decision to which reviewable concepts of law, such as a material considerations, are irrelevant.

(My strong view is that the courts have a duty, and not a discretion, to find the claims are justiciable because determination of these claims – which the courts have already found raise matters of constitutional importance – demands statutory construction, which, crucially, is an exclusive jurisdiction of the courts under our constitution. I also believe the claims have no substantive merit because a Pepper v Hart reading on the, I believe, probatively determinant evidence of Government proposer Philip Hammond's statements at second reading in the Commons would, in my view, lead the courts to the invevitable construction that the European Union Referendum Act 2015 provided for a statutory decision on the referendum question.)

However, uncertainties arising from this crucial part of the defence have also been picked up in the interested party's skeleton signalled by the words "appears to be common ground" (raising the question in my mind of whether the defence has been pleaded on an inconsistent basis):

"16. ...It is clear from the terms of the European Referendum Act 2015 that the referendum was consultative and the result did not itself constitute a decision to withdraw from the EU in domestic law terms.[footnote10] This appears to be common ground. [footnote 11] On this point, the People's Challenge IPs adopt the submissions in the Dos Santos skeleton, §§37-44."

The interested party here relies on Parliamentary evidence of, I believe, arguably very dubious probative value since it is not a clear statement to Parliament by a Government proposer of the Bill (see the ratio of Pepper v Hart), namely, House of Commons Library Briefing Paper (No. 07212, 3 June 2015):

"[Footnote] 10 This was well known to Parliament before the Bill was enacted. In a House of Commons Library Briefing Paper (No. 07212, 3 June 2015) it is said, at p. 25: "[The Bill] does not contain any requirement for the UK Government to implement the results of the referendum, nor set a time limit by which a vote to leave the EU should be implemented. Instead, this is a type of referendum known as pre-legislative or consultative, which enables the electorate to voice an opinion which then influences the Government in its policy decisions... The UK does not have constitutional provisions which would require the results of a referendum to be implemented." It is telling that this assumes that the implementation of the referendum would need legislation."

Footnote 11 expressly states the defence is "ambiguous" on this crucial point:

[Footnote] 11 See the Secretary of State's Detailed Grounds, §12(2)-(3), although §5(2) of the Detailed Grounds is ambiguous, referring to the decision to leave the UK being "articulated" in the referendum result.

In essence, I believe the interested party are here anticipating the defence that I have proposed (that the 2015 Act provided for a statutory decision on the referendum question on a Pepper v Hart reading) but which has not yet been made by the defendant in its 2 September 2016 "Detailed grounds of resistance on behalf of the Secretary of State".

The interested party appears not to refer to the relevant authority, namely, Pepper v Hart, although this line of authority will of course be very well known to the President of the Queens Bench Division, who will preside over the Divisional Court that hears the case.

The defence's skeleton argument does not yet appear to be in the public domain. Cranston; J's order merely clarifies that parties can publish their own skeletons.

Reply

Richard Allen
October 3, 2016

The only comparable referendum is the 1975 referendum which was fully accepted as advisory and which was followed by a free vote. See Hansard where Mrs Thatcher gives an excellent explanation as to why a referendum is advisory. It would be somewhat inconsistent to apply a different understanding to the current situation.
http://hansard.millbanksystems.com/commons/1975/mar/11/eec-membership-referendum

Reply

Richard Allen
October 3, 2016

Essential reading for anyone who has posted here. The 1975 Referendum debate from Hansard. The referendum was seen as advisory and was followed by a free vote. Mrs Thatcher makes a very good case as to why referendums should not be used for such matters and whyt Parliament is sovereign. Rather ironic http://hansard.millbanksystems.com/commons/1975/mar/11/eec-membership-referendum

Reply

Pingback: The Brexit Great Repeal Bill – actually a rather cunning ploy | AL's LAW

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Press release

New ministerial appointment July 2016: Secretary of State for Exiting the European Union

From: Prime Minister's Office, 10 Downing Street and Department for Exiting the European Union
First published: 13 July 2016
Part of: Ministerial appointments: July 2016 and Government transparency and accountability

David Davis is the new Secretary of State for Exiting the European Union following Theresa May's appointment as Prime Minister.

The Queen has been pleased to approve the appointment of Rt Hon David Davis MP as Secretary of State for Exiting the European Union.

Further ministerial appointments will be announced this evening.

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Published:

13 July 2016

From:

Prime Minister's Office, 10 Downing Street

Department for Exiting the European Union

Part of:

Ministerial appointments: July 2016

Government transparency and accountability

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Northern Ireland could veto Brexit, lawyers argue

PUBLISHED
04/10/2016

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Raymond McCord, whose son was murdered by loyalists, is among those backing the legal challenge to Brexit amid fears that European peace money for Troubles victims may be stopped

Northern Ireland could veto its withdrawal from the EU, lawyers opposed to Brexit have argued.

A barrister said the country had control over its own constitutional change following the 1998 Good Friday Agreement which largely ended republican and loyalist violence.

Ronan Lavery QC said leaving the EU would have a catastrophic effect on the peace process during a legal challenge by a cross-community group of politicians and human rights campaigners to the Prime Minister's plan to trigger Article 50 negotiations on an exit.

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Mr Lavery told Belfast's High Court: "Sovereignty over constitutional affairs has been ceded. It is not the relationship, as it might once have been, between a dominant partner in a relationship and a submissive partner in a relationship.

"The people of Northern Ireland have control over constitutional change, it cannot be imposed upon the people of Northern Ireland.

"If that means that Northern Ireland could exercise a veto over withdrawal then I am (asserting) that is what Britain and Ireland signed up to when they signed the Good Friday Agreement."

Some 56% of Northern Irish voters backed Remain in the June 23 referendum but some unionist-dominated parts supported Leave. The country's largest party, the Democratic Unionists, campaigned for Leave.

Theresa May plans to begin negotiations with the EU by next March.

Northern Ireland shares the UK's only land border with an EU state, the Republic of Ireland, and the British and Irish Governments have said they are keen to ensure there is no return to the hard borders of the past.

If the UK leaves the customs union, the EU could demand a hard border in Ireland to prevent goods flowing in and out of the EU from Northern Ireland without paying required tariffs or facing checks on rules of origin.

Mr Lavery warned that after Brexit any move to create a United Ireland would be subject to the permission of the other EU member states that Northern Ireland should join the EU - rather than the will of people who live there.

"That is a practical and illegal impediment to the nationalist aspiration for a United Ireland."

He said the referendum result had implications for unionists.

"What this upheaval has also caused is the nationalists' call for a border poll and a very real threat to the Union as it exists."

He warned: "Withdrawal from the EU could have a catastrophic effect on the peace process and that delicate constitutional balance which we have reached."

David Scoffield QC, who represents politicians opposed to the triggering of Article 50, said Brexit would cut across the operation of North/South all Ireland and East/West ministerial links with Great Britain.

The lawyer said parliament should have the final say on whether negotiations are triggered, legislative consent from the Northern Ireland Assembly should be sought and if the court rejected that, then constraints must be imposed on the power of the Government to begin the negotiations and the Northern Ireland Secretary should assess the impact of Brexit on those who live in Northern Ireland.

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Tributes have been paid to the young woman killed in a road crash in Co Tyrone, Northern Ireland.

Raids on KPMG partners' homes carried out to coincide with tax evasion crackdown...

Raids on the homes of four partners at Belfast accountancy firm KPMG were improperly carried out to coincide with the British Chancellor's announcement of a crackdown on tax evasion, it was claimed on Friday.

Ivor Bell's bail conditions varied to allow him to go to Donegal for wedding anniversary

A veteran republican accused of involvement in the IRA murder of Disappeared victim Jean McConville had his bail conditions varied on Friday to allow him to go to Donegal to celebrate his wedding anniversary.

Ivor Bell's bail relaxed to accommodate holiday ahead of McConville trial

A veteran republican charged in connection with the IRA murder of a mother-of-10 has had his bail conditions relaxed so he can celebrate his wedding anniversary.

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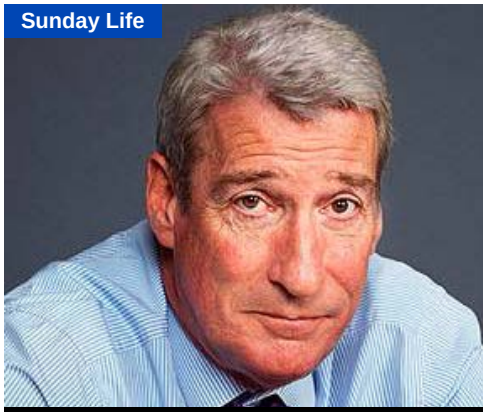

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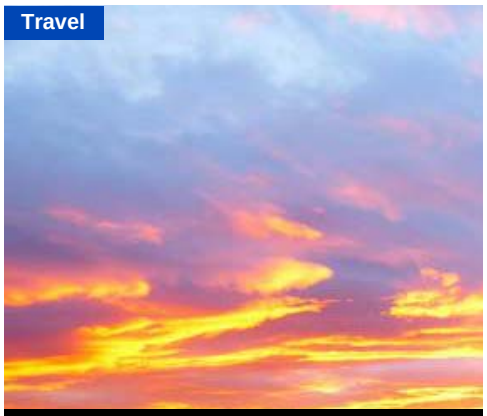

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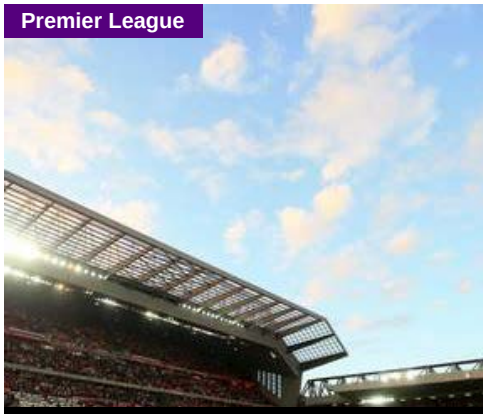

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Victims campaigner launches legal challenge to Brexit

11 August 2016 | Northern Ireland

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Mr McCord is a campaigner for victims of the Troubles

The father of a man murdered by loyalist paramilitaries has launched a legal challenge to Brexit.

Raymond McCord is seeking a judicial review and lodged the papers at the High Court in Belfast on Thursday.

Mr McCord became involved with the rights of victims of the Troubles after his son was murdered.

His legal team claim it would be unlawful to begin the formal process of the UK leaving the EU without a parliamentary vote.

They also claim it could undermine the UK's treaty obligations under the **1998 Good Friday Agreement** and the peace process.

It is the first challenge of its kind in Northern Ireland.

- **All you need to know about Brexit**

With similar legal action already under way in England, efforts are being made to secure an initial court hearing in Belfast next week.

Mr McCord's son Raymond Jr was beaten to death by the Ulster Volunteer Force in north Belfast in 1997. His body was dumped in a quarry.

Mr McCord's son Raymond Jr was beaten to death in north Belfast in 1997

Mr McCord is concerned that money from the European Union, which goes towards victims of the Troubles, may be discontinued.

His lawyer said there are fears that Brexit could impact on Mr McCord's fundamental rights.

"As a victim of the most recent conflict in Northern Ireland, Mr McCord is very concerned about the profoundly damaging effect that a unilateral withdrawal of the UK from the EU will have upon the ongoing relative stability in Northern Ireland," he said.

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Raymond McCord calls for public inquiry into son's death

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Leaving the European Union: Should Parliament decide?

By **Jolyon Maugham QC**

Politics

Who gets to decide whether we leave the EU: the Prime Minister or must Parliament vote to adopt a new law?

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This case has hit its target and contributions are now closed. If you'd like to receive email updates about the case, click here.

The country has fought a referendum and it has produced a result: that the United Kingdom should leave the European Union. However, in setting up the referendum, the Government decided that it should only be 'advisory'. But advise who? Does it advise the Prime Minister so that she or he gets to decide whether we leave the European Union? Or must Parliament make this momentous decision for our country?

We are presently crowd-funding for two steps. First, to take advice from the leading public lawyers in the country: John Halford of Bindmans LLP instructing leading Queen's Counsel and Junior barrister specialising in constitutional law. And, second, to write to the Government to discover its position.

This could well be the most important public law case in living memory. Because of its public interest, each of

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the highly sought after lawyers has agreed to act for significantly below their normal market rate. And because everyone has an interest in its outcome, we would like everyone to have the opportunity to fund it.

Donations to this case are capped at £100.

About the claimant

My name is Jolyon Maugham QC. I am organising the litigation. I do not know whether the case will be brought in my name. I litigate tax cases for a living - but I also write extensively about how tax policy affects the lives of real people. You can find out more about me at www.waitingfortax.com

Fast facts

Who gets to decide whether we leave the European Union: the Prime Minister or Parliament?

We expect to take advice and write to the Government next week.

We have retained the leading firm Bindmans LLP who will instruct a specialist Queen's Counsel and Junior.

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Date: 03 July 2016

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Article 50 process on Brexit faces legal challenge to ensure parliamentary involvement

Legal steps have been taken to ensure the UK Government will not trigger the procedure for withdrawal from the EU without an Act of Parliament. The case is being brought by leading law firm, Mishcon de Reya, on behalf of a group of clients. Following publication of articles on the subject this week Mishcon de Reya has retained Baron David Pannick QC and Tom Hickman to act as counsel in this action, along with Rhodri Thompson QC and Anneli Howard.

The Referendum held on 23 June was an exercise to obtain the views of UK citizens, the majority of whom expressed a desire to leave the EU. But the decision to trigger Article 50 of the Treaty of

European Union, the legal process for withdrawal from the EU, rests with the representatives of the people under the UK Constitution.

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The Government however, has suggested that it has sufficient legal authority. Mishcon de Reya has been in correspondence with the Government lawyers since 27 June 2016 on behalf of its clients to seek assurances that the Government will uphold the UK constitution and protect the sovereignty of Parliament in invoking Article 50.

If the correct constitutional process of parliamentary scrutiny and approval is not followed then the notice to withdraw from the EU would be unlawful, negatively impacting the withdrawal negotiations and our future political and economic relationships with the EU and its 27 Member States, and open to legal challenge. This legal action seeks to ensure that the Article 50 notification process is lawful.

Kasra Nouroozi, Partner, Mishcon de Reya said:

“We must ensure that the Government follows the correct process to have legal certainty and protect the UK Constitution and the sovereignty of Parliament in these unprecedented circumstances. The result of the Referendum is not in doubt, but we need a process that follows UK law to enact it. The outcome of the Referendum itself is not legally binding and for the current or future Prime Minister to invoke Article 50 without the approval of Parliament is unlawful.”

“We must make sure this is done properly for the benefit of all UK citizens. Article 50 simply cannot be invoked without a full debate and vote in Parliament. Everyone in Britain needs the Government to apply the correct constitutional process and allow Parliament to fulfil its democratic duty which is to take into account the results of the Referendum along with other factors and make the ultimate decision.”

Anyone wishing to support the action to ensure that the UK Constitution is upheld in this process should email Article50@mishcon.com.

If you have an enquiry please visit www.mishcon.com/50 or read our Q&As here.

To read more about this from the Financial Times, please click here. Please note this is a subscription based website.

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Mishcon de Reya LLP is an alternative business structure. It became a limited liability partnership on 9 October 2015.
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EU referendum and Brexit

Theresa May does not intend to trigger article 50 this year, court told

Government lawyers at first legal challenge to process of Brexit suggest case is likely to end up in supreme court

Theresa May is not aiming to push the exit button until next year at the earliest, the high court was told. Photograph: Andrew Parsons/AFP/Getty Images

Owen Bowcott Legal affairs correspondent
@owenbowcott

Tuesday 19 July 2016 12.17 BST

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This article is **3 months old**

Theresa May will not trigger article 50 of the Lisbon treaty initiating the UK's departure from the European Union before the end of 2016, the high court has been told.

At the opening of the first legal challenge to the process of Brexit, government lawyers conceded that the politically sensitive case was likely to be appealed up to the supreme court.

At least seven private actions – arguing that only parliament and not the prime minister has the authority to invoke article 50 – have been identified to the court.

Confirming that ministers are not aiming to push the exit button until next year at the earliest, Jason Coppel QC, for the government, conceded that there was nonetheless

"some urgency" to the issue.

"Notification [triggering] article 50 will not occur before the end of 2016," Coppel told the court. Should anything change, he promised, the court would be given advance notice.

That timetable is broadly in line with recent comments from the new government frontbench. The defendant appointed to resist the action is David Davis, whose formal title is secretary of state for exiting the European Union.

In an article for the Sun last week, the newly appointed Davis said the process of consulting "should be completed to allow triggering of article 50 before or by the start of next year". There have been reports that civil servants were working on a deadline of Christmas this year while Theresa May has indicated that she wants to secure the support of the SNP leader, Nicola Sturgeon, before beginning the exit process.

What is article 50?

This is a clause in the Lisbon treaty that sets out the legal process for a country notifiying the European Union it intends to withdraw. Once notification is given, negotiations must be concluded within two years – any extension needs the agreement of all EU members.

During the process, the UK remains a member of the EU, but if talks are not concluded after two years, and not extended, Britain reverts to world trade

No question of whether the court has jurisdiction to decide the arcane constitutional issue was raised at the opening of the hearing. Sir Brian Leveson, one of two judges in charge of the directions hearing, said the full trial would take place in October.

So many lawyers participated in the first stage of the legal challenge that proceedings were moved to the lord chief justice's expansive, Gothic wood-panelled courtroom, the largest in the Royal Courts

upon the "bewildering array of legal talent"
natter of great constitutional importance. The
dd, is due to hear the substantive case in the

The lead case for the legal challenge will be that brought by an investment manager and philanthropist , Gina Miller, 51, who lives in London. Her claim is being coordinated by the law firm

Mishcon de Reya.

She attended the hearing and afterwards said: “We believe in a fair society. This is very much along the lines of my belief [as a remain voter] ... This case is all about the sovereignty of parliament. It is very important that the (article 50) issues are dealt with in a serious and grown-up way. We are making sure that happens.”

What is article 50?

Lord Pannick QC, who is instructed by Mishcon de Reya, said the law firm had already been subjected to racist and antisemitic abuse.

“The publicity that has accompanied notification of the legal issue has provoked a large quantity of abuse directed at my solicitors, Mishcon de Reya,” Pannick said.

“It’s racist abuse, it’s antisemitic abuse and it’s objectionable. It’s contempt of court for people to make threats [in relation to live proceedings]. We have asked that the names of those people who are making the [additional] claims should be redacted. People have been deterred from [making legal claims] by the abuse. It’s a very serious criminal matter for people to make threats.”

Leveson said that interfering with the course of justice by making threats was “an extremely serious matter”. He added: “Apart from the commission of a criminal offence, there’s a real risk that behaviour of this type is a contempt of court.”

Brexit supporters staged a demonstration outside Mishcon de Reya’s London office earlier this month with a banner and placards declaring: “Invoke article 50 now” and “Uphold the Brexit vote”.

One of the challenges has been brought by Deir Dos Santos, a British citizen who works as a hairdresser. He has also been abused online since his involvement was revealed. His claim will be heard alongside Miller’s though he may drop back to become an interested party depending on whether he obtains a protected costs order. Dos Santos was not in court on Tuesday.

The Dos Santos claim argues: “The result of the referendum is not legally binding in the sense that it is advisory only and there is no obligation [on the government] to give effect to the referendum decision.

“However, the [previous] prime minister has stated on numerous occasions that it is his intention to give effect to the referendum decision and organise the United Kingdom’s withdrawal from the European Union.

Pro-Brexit supporters urge Theresa May to invoke article 50 on her appointment as Britain's new prime minister. Photograph: Jack Taylor/Getty Images

"The extract from [Cameron's] resignation speech ... makes it clear that [the government] is of the view that the prime minister of the day has the power under article 50 (2) of the Lisbon treaty to trigger article 50 without reference to parliament."

The government says its powers are based on the royal prerogative.

That approach, Santos's lawyers maintain, is "ultra vires" – beyond the legitimate powers of the government – because under the UK's constitutional requirements, notification to the EU council of withdrawal "can only be given with the prior authorisation of the UK parliament".

Dominic Chambers QC, an expert in international and commercial law from Maitland Chambers in London, and Jessica Simor QC, of Matrix Chambers, are acting for Dos Santos. The London law firm Edwin Coe is coordinating the Dos Santos case.

Deadline approaches for government response to Brexit legal challenge

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Lawyers representing Britons living in France are also expected to join the case.

The legal exchanges were permeated with reluctant references to working through the summer holidays to meet legal deadlines for exchanges of documents. Helen Mountfield QC, who represented some of the unidentified claimants, observed: "It's buckets and

spades down". Leveson, smiling, replied: "August is always a good month to work in."

The majority of MPs at Westminster are in favour of Britain remaining inside the EU. Moves to hand parliament ultimate authority over article 50 have been criticised as a devious and underhand means of frustrating Brexit.

Lawyers for the claimants insist the legal challenge is concerned with the constitutional principle of parliamentary sovereignty rather than being engineered for a particular political outcome.

Whether the majority of MPs who support remaining in the EU may now feel morally bound to vote in favour of Brexit if the issue comes to parliament is another question.

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Read in full: Theresa May's Conservative conference speech on Brexit

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Written by: Josh May 10/2/2016

Theresa May addressing the 2016 Conservative conference

Theresa May addressing the 2016 Conservative conference

Credit:

Ben Birchall/PA Wire

Read the full transcript of Theresa May's speech on 'Britain after Brexit: A Vision of a Global Britain' to the Conservative conference.

81 days ago, I stood in front of Ten Downing Street for the first time as Prime Minister, and I made a promise to the country.

I said that the Government I lead will be driven not by the interests of a privileged few, but by the interests of ordinary, working-class families. People who have a job, but don't always have job security. People who own their own home, but worry about paying the mortgage. People who can just about manage, but worry about the cost of living and getting their kids into a good school. And this week, we're going to show the country that we mean business.

Britain is going to leave the European Union

But first, today, we're going to talk about Global Britain, our ambitious vision for Britain after Brexit. Because 100 days ago, that is what the country voted for. We're going to talk about Britain in which we are close friends, allies and trading partners with our European neighbours. But a Britain in which we pass our own laws and govern ourselves. In which we look beyond our continent and to the opportunities in the wider world. In which we win trade agreements with old friends and new partners. In which Britain is always the most passionate, most consistent, most convincing advocate for free trade. In which we play our full part in promoting peace and prosperity around the world. And in which we – with our brilliant armed forces and intelligence services – protect our national interests, our national security, and the security of our allies.

So today we're going to be hearing from David Davis, Priti Patel and Boris Johnson as we start to explain our plan for Brexit. And the country will see that the Conservative Party is united in our determination to deliver that plan.

Because even now, some politicians – democratically-elected politicians – say that the referendum isn't valid, that we need to have a second vote.

Others say they don't like the result, and they'll challenge any attempt to leave the European Union through the courts.

But come on. The referendum result was clear. It was legitimate. It was the biggest vote for change this country has ever known. Brexit means Brexit – and we're going to make a success of it.

Now of course, we wouldn't have had a referendum at all had it not been for the Conservative Party – and had it not been for David Cameron. And I want to take a moment to pay tribute to David.

I served in his Shadow Cabinet for nearly five years, and in his Cabinet for six more. I saw first-hand his

commitment to public service, to social justice, and his deep love for our country. He led the rescue mission that brought confidence back to the British economy. He made sure that people on the lowest wages paid no income tax at all. And he won the right for two people who love one another – regardless of their sexuality – to marry. He has a legacy of which he – and our whole Party – can be proud. And to those who claim he was mistaken in calling the referendum, we know there is no finer accolade than to say David Cameron put his trust in the British people.

And trust the people we will. Because Britain is going to leave the European Union.

Now I know there is a lot of speculation about what that is going to mean, about the nature of our relationship with Europe in future, and about the terms on which British and European businesses will trade with one another. I understand that. And we will give clarity – as we did with farm payments and university funding – whenever possible and as quickly as possible.

But we will not be able to give a running commentary or a blow-by-blow account of the negotiations. Because we all know that isn't how they work. But history is littered with negotiations that failed when the interlocutors predicted the outcome in detail and in advance.

Every stray word and every hyped up media report is going to make it harder for us to get the right deal for Britain. So we have to stay patient. But when there are things to say – as there are today – we will keep the public informed and up to date.

So I want to use today to tell you more about the Government's plan for Brexit, and in particular I want to tell you about three important things. The timing, the process – and the Government's vision for Britain after Brexit.

The timing for triggering Article Fifty

First, everything we do as we leave the EU will be consistent with the law and our treaty obligations, and we must give as much certainty as possible to employers and investors. That means there can be no sudden and unilateral withdrawal: we must leave in the way agreed in law by Britain and other member states, and that means invoking Article Fifty of the Lisbon Treaty.

There was a good reason why I said – immediately after the referendum – that we should not invoke Article Fifty before the end of this year. That decision means we have the time to develop our negotiating strategy and avoid setting the clock ticking until our objectives are clear and agreed. And it has also meant that we have given some certainty to businesses and investors. Consumer confidence has remained steady. Foreign investment in Britain has continued. Employment is at a record high, and wages are on the up. There is still some uncertainty, but the sky has not fallen in, as some predicted it would: our economy remains strong.

So it was right to wait before triggering Article Fifty. But it is also right that we should not let things drag on too long. Having voted to leave, I know that the public will soon expect to see, on the horizon, the point at which Britain does formally leave the European Union. So let me be absolutely clear. There will be no unnecessary delays in invoking Article Fifty. We will invoke it when we are ready. And we will be ready soon. We will invoke Article Fifty no later than the end of March next year.

The process for triggering Article Fifty

Now I want to tell you a little more about the process for triggering Article Fifty.

The first thing to say is that it is not up to the House of Commons to invoke Article Fifty, and it is not up to the House of Lords. It is up to the Government to trigger Article Fifty and the Government alone.

When it legislated to establish the referendum, Parliament put the decision to leave or remain inside the EU in

the hands of the people. And the people gave their answer with emphatic clarity. So now it is up to the Government not to question, quibble or backslide on what we have been instructed to do, but to get on with the job.

Because those people who argue that Article Fifty can only be triggered after agreement in both Houses of Parliament are not standing up for democracy, they're trying to subvert it. They're not trying to get Brexit right, they're trying to kill it by delaying it. They are insulting the intelligence of the British people. That is why, next week, I can tell you that the Attorney General himself, Jeremy Wright, will act for the Government and resist them in the courts.

Likewise, the negotiations between the United Kingdom and the European Union are the responsibility of the Government and nobody else. I have already said that we will consult and work with the devolved administrations for Scotland, Wales and Northern Ireland, because we want Brexit to work in the interests of the whole country. And we will do the same with business and municipal leaders across the land.

But the job of negotiating our new relationship is the job of the Government. Because we voted in the referendum as one United Kingdom, we will negotiate as one United Kingdom, and we will leave the European Union as one United Kingdom. There is no opt-out from Brexit. And I will never allow divisive nationalists to undermine the precious Union between the four nations of our United Kingdom.

The final thing I want to say about the process of withdrawal is the most important. And that is that we will soon put before Parliament a Great Repeal Bill, which will remove from the statute book – once and for all – the European Communities Act.

This historic Bill – which will be included in the next Queen's Speech – will mean that the 1972 Act, the legislation that gives direct effect to all EU law in Britain, will no longer apply from the date upon which we formally leave the European Union. And its effect will be clear. Our laws will be made not in Brussels but in Westminster. The judges interpreting those laws will sit not in Luxembourg but in courts in this country. The authority of EU law in Britain will end.

As we repeal the European Communities Act, we will convert the 'acquis' – that is, the body of existing EU law – into British law. When the Great Repeal Bill is given Royal Assent, Parliament will be free – subject to international agreements and treaties with other countries and the EU on matters such as trade – to amend, repeal and improve any law it chooses. But by converting the acquis into British law, we will give businesses and workers maximum certainty as we leave the European Union. The same rules and laws will apply to them after Brexit as they did before. Any changes in the law will have to be subject to full scrutiny and proper Parliamentary debate. And let me be absolutely clear: existing workers' legal rights will continue to be guaranteed in law – and they will be guaranteed as long as I am Prime Minister.

And in fact, as we announced yesterday, under this Government, we're going see workers' rights not eroded, and not just protected, but enhanced under this Government. Because the Conservative Party is the true workers' party, the only party dedicated to making Britain a country that works, not just for the privileged few, but for every single one of us.

Our vision for Britain after Brexit

So that is what I want to say about the process. But I want to talk to you about the Government's vision of Britain after Brexit, our vision of a truly Global Britain. And I want to start with our vision for the future relationship we will have with the European Union.

Because, in this respect, I believe there is a lot of muddled thinking and several arguments about the future that need to be laid to rest. For example, there is no such thing as a choice between "soft Brexit" and "hard Brexit". This line of argument – in which "soft Brexit" amounts to some form of continued EU membership and "hard Brexit" is a conscious decision to reject trade with Europe – is simply a false dichotomy. And it is one that is too

often propagated by people who, I am afraid to say, have still not accepted the result of the referendum.

Because the truth is that too many people are letting their thinking about our future relationship with the EU be defined by the way the relationship has worked in the past. That is understandable. We have been members of the EU for more than forty years. We have just been through a renegotiation, during which we remained members of the EU and the Government sought to keep us members of the EU.

But what we are now talking about is very different. Whether people like it or not, the country voted to leave the EU. And that means we are going to leave the EU. We are going to be a fully-independent, sovereign country, a country that is no longer part of a political union with supranational institutions that can override national parliaments and courts. And that means we are going, once more, to have the freedom to make our own decisions on a whole host of different matters, from how we label our food to the way in which we choose to control immigration.

So the process we are about to begin is not about negotiating all of our sovereignty away again. It is not going to be about any of those matters over which the country has just voted to regain control. It is not, therefore, a negotiation to establish a relationship anything like the one we have had for the last forty years or more. So it is not going to a "Norway model". It's not going to be a "Switzerland model". It is going to be an agreement between an independent, sovereign United Kingdom and the European Union.

I know some people ask about the "trade-off" between controlling immigration and trading with Europe. But that is the wrong way of looking at things. We have voted to leave the European Union and become a fully-independent, sovereign country. We will do what independent, sovereign countries do. We will decide for ourselves how we control immigration. And we will be free to pass our own laws.

But we will seek the best deal possible as we negotiate a new agreement with the European Union. I want that deal to reflect the kind of mature, cooperative relationship that close friends and allies enjoy. I want it to include cooperation on law enforcement and counter-terrorism work. I want it to involve free trade, in goods and services. I want it to give British companies the maximum freedom to trade with and operate in the Single Market – and let European businesses do the same here. But let me be clear. We are not leaving the European Union only to give up control of immigration again. And we are not leaving only to return to the jurisdiction of the European Court of Justice.

As ever with international talks, it will be a negotiation, it will require some give and take, and while there will always be pressure to give a running commentary on the state of the talks, it will not be in our best interests as a country to do that. But make no mistake: this is going to be a deal that works for Britain.

Global Britain is in sight

But Brexit should not just prompt us to think about our new relationship with the European Union. It should make us think about our role in the wider world. It should make us think of Global Britain, a country with the self-confidence and the freedom to look beyond the continent of Europe and to the economic and diplomatic opportunities of the wider world. Because we know that the referendum was not a vote to turn in ourselves, to cut ourselves off from the world. It was a vote for Britain to stand tall, to believe in ourselves, to forge an ambitious and optimistic new role in the world.

And there is already abundant evidence that we will be able to do just that. Important foreign businesses – like Siemens and Apple – have committed to long-term investments in this country. With the Japanese purchase of ARM for £24 billion, we have seen the biggest-ever Asian investment in Britain. Countries including Canada, China, India, Mexico, Singapore and South Korea have already told us they would welcome talks on future free trade agreements. And we have already agreed to start scoping discussions on trade agreements with Australia and New Zealand.

A truly Global Britain is possible, and it is in sight. And it should be no surprise that it is. Because we are the fifth

biggest economy in the world. Since 2010 we have grown faster than any economy in the G7. And we attract a fifth of all foreign investment in the EU. We are the biggest foreign investor in the United States. We have more Nobel Laureates than any country outside America. We have the best intelligence services in the world, a military that can project its power around the globe, and friendships, partnerships and alliances in every continent. We have the greatest soft power in the world, we sit in exactly the right time zone for global trade, and our language is the language of the world.

We don't need – as I sometimes hear people say – to "punch above our weight". Because our weight is substantial enough already. So let's ignore the pessimists, let's have the confidence in ourselves to go out into the world, securing trade deals, winning contracts, generating wealth and creating jobs. And let's get behind the team of ministers – David Davis, Liam Fox, Priti Patel and Boris Johnson – who are working on our plan for Brexit, who know we're going to make a success of it and who will make a reality of Global Britain.

So let's have a great week here in Birmingham this conference. Let's get this plan for Brexit right. Let's show the country we mean business. And let's keep working to make Britain a country that works not for a privileged few but for everyone in this great country.