THE EUROPEAN CONSTITUTION

WHITE PAPER

DEPARTMENT OF FOREIGN AFFAIRS
JUNE 2005

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Department of Foreign Affairs

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FOREWORD

In the wake of the French and Dutch referendum results, this White Paper on the European Constitution is being published in a context quite different from that for which it was originally intended.

It is unfortunate that the ratification of the Constitution has had to be delayed. This, however, provides the people of Europe with an opportunity to reflect on the enduring significance of the European Union, not least in the light of the domestic, regional and global challenges we face. These can best be addressed by a vigorous and united EU enjoying the support of a well-informed European public. It is essential that the Union should reflect the overlapping interests and aspirations of its citizens.

The June meeting of the European Heads of State and Government opted for a pause in the ratification process so as to allow time for reflection and debate in each Member State. The White Paper is part of our contribution to that process of reflection. We need to take full advantage of the coming period to enhance our people's knowledge of, and engagement with, the European Union, which is so vital to Ireland's future. It is important that we continue to build on the very valuable work of the National Forum for Europe in stimulating informed debate on, and enhanced awareness of, the key issues on the European agenda.

This White Paper on the European Constitution provides a fair and factual synopsis of the Constitution, as well as an account of the broad approach taken by the Government during the negotiations. The issues dealt with in the Constitution – such as the EU's founding principles, fundamental rights, the role of national Parliaments, the Union's institutions and its competences - retain their relevance for Ireland and for the EU as a whole.

The Constitution provides a blueprint for a more dynamic and effective EU, which is clearly in Ireland's interests. After all, it is undeniable that we have drawn enormous benefit from more than three decades of EU membership.

The Government continues to strongly support the European Constitution, which was negotiated during Ireland's EU Presidency, as something that is good for Ireland and good for Europe. We will play our full and constructive part in all future discussions about the Constitution.

Dermot Ahern, T.D.
Minister for Foreign Affairs
October 2005

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CHAPTER 1: INTRODUCTION

1. This White Paper describes the Treaty establishing a Constitution for Europe (the European Constitution). In addition to setting out the European Constitution's provisions, it seeks to explain how they were agreed, and describes the approach taken by the Government. It also tries to indicate the extent to which the Constitution changes the current EU Treaties.

2. The full title of the document (Treaty establishing a Constitution for Europe) indicates its dual nature. It is legally a Treaty between twenty-five sovereign States which must be ratified, and can only be amended in future, by all of them. However, it is also a Constitution inasmuch as it sets out and establishes the basic principles, values, objectives, powers and institutions of the European Union. The European Court of Justice has in the past held that the current Treaties in effect comprise a constitution for the Union.

NEGOTIATION AND SIGNATURE

3. The European Constitution was signed on behalf of the 25 Member States of the European Union at a ceremony in Rome on 29 October 2004. The Taoiseach, Mr Bertie Ahern TD, and the Minister for Foreign Affairs, Mr Dermot Ahern TD, signed on behalf of Ireland.

4. The European Constitution was largely prepared by the European Convention. This brought together representatives of Member State and candidate country Governments, national parliaments, the European Parliament and the European Commission under the chairmanship of the former French President, M. Valéry Giscard d'Estaing. It met from February 2002 to July 2003.

5. The European Convention's draft was the basis for the work of a subsequent Intergovernmental Conference (IGC). The IGC was initially chaired by Italy (October – December 2003) and then by Ireland until its successful conclusion in June 2004.

6. The IGC maintained the bulk of the Convention's text, but also made several significant changes, above all in relation to the Union's institutions; decision-making procedures in a number of sensitive areas; and security and defence.

RATIFICATION

7. As with all previous EU Treaties, the European Constitution can enter into force only following ratification by all Member States in accordance with their respective constitutional requirements. A target date of 1 November 2006 is set for entry into force.

8. The method of ratification in each case is for the Member State concerned to determine. In Ireland, it is legally required that a referendum be held to amend Bunreacht na hÉireann to allow for ratification.

9. Legally, the entry into force of the Constitution requires ratification by all Member States. The Constitution does not seek to anticipate in detail how the Union might respond politically to a situation in which one or more Member States fail to ratify. In a Declaration, the Intergovernmental Conference agreed that the European Council would consider the matter if after two years at least four-fifths of Member States have ratified and one or more have not.

EUROPEAN CONSTITUTION AND PREVIOUS EU TREATIES

10. The fundamental law of the European Union is contained in a range of previous Treaties, notably the Treaty establishing the European Community (the Treaty of Rome – 1957), the Single European Act (1986), the Treaty on European Union (the Maastricht Treaty - 1992), the Treaty of Amsterdam (1997) and the Treaty of Nice (2001). Each successive Treaty has added to and amended previous Treaties. Accession Treaties have set out specific arrangements for new Member States as they have joined.

11. The European Constitution will, if ratified, replace these previous Treaties, which will in that case be repealed. In legal terms, it will create a new European Union. However, this will be the successor to the European Union and European Community established by the current Treaties. All legal acts adopted under the current Treaties will remain in effect, as will all other components of the existing acquis until they are deleted or amended.

12. The European Constitution abolishes the current distinction between the European Community and the European Union, and the so-called "pillar structure". Under this most issues currently fall within the first, or Community, pillar, while the "second pillar" (Common Foreign and Security Policy) and the "third pillar" (judicial co-operation in criminal matters, and police co-operation) fall within the scope not of the Community but of the Union. The pillars will no longer exist under the Constitution. However, important distinctions between how some key policy areas are handled remain.

STRUCTURE OF THE EUROPEAN CONSTITUTION

13. The European Constitution is divided into four main parts, preceded by a Preamble and followed by Protocols. Each Part is denoted by a Roman numeral (I, II, III, IV) with the Articles numbered consecutively throughout the whole text. Thus the first Article is I-1 and the last IV-448.

14. As with previous Treaties, the Constitution lists all of the languages in which its texts are legally valid. These include Irish.

Part I sets out the Union's basic principles, values and objectives; outlines its powers ; describes the composition and operation of its institutions; defines the legal acts it may adopt; makes arrangements for promoting the democratic life of the Union; lays down basic financial principles; and sets out the procedures by which a country can become a Member of the Union or can voluntarily leave it.

Part II is the Charter of Fundamental Rights, which is an integral part of the Constitution.

Part III defines in detail the exact scope of the powers given to the Union in each of the range of policy areas mentioned in Part I, and how decisions are to be taken in each of them. In many areas it essentially reproduces the current Treaties.

Part IV sets out how earlier Treaties are to be repealed, how the Constitution is to enter into force and how it may be amended in future.

The **Protocols** to the Constitution are legally-binding texts which either flesh out aspects of it in greater detail or concern issues of specific concern to one or more Member States. Some of the Protocols are new but others are carried forward from existing Treaties.

The IGC agreed or noted a number of **Declarations** relating to the Constitution. These are not legally-binding but carry political weight as an expression of the views or understandings of all or some Member States as to the meaning of certain Articles.

CHAPTER 2: NEGOTIATION OF THE EUROPEAN CONSTITUTION

1. The process which led to the negotiation of the Constitution began during 2000. Between February and December of that year, an Intergovernmental Conference (IGC) negotiated the Treaty of Nice, which made the institutional changes immediately necessary for enlargement. The Nice IGC was comparatively limited in scope. It was largely confined to the so-called "left-overs" unresolved by the Treaty of Amsterdam: these were chiefly the future size and composition of the Commission, and the definition and scope of qualified majority voting in the Council.

2. During 2000, however, a number of leading political personalities argued that the changing European and international context required a much more extensive and fundamental debate than was possible in the Nice negotiations. A particularly influential contribution was made by the German Foreign Minister, Joschka Fischer, in a speech to Humboldt University, Berlin in May 2000. FM Fischer called for the negotiation of a new "constituent treaty" for the Union. This sparked a series of interventions through the summer and autumn, including by French President Jacques Chirac and by British Prime Minister Tony Blair.

NICE DECLARATION (DECEMBER 2000)

3. At the final negotiating session on the Treaty of Nice in December 2000, a Declaration on the Future of the Union was agreed. It stated that the Treaty of Nice, when ratified, would open the way for enlargement, but called for a "deeper and wider debate about the future of the European Union." It recognised "the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States".

4. It was envisaged that, following a preparatory phase of consultations, the European Council at its December 2001 meeting in Laeken (Belgium) would decide how to carry the process forward. A fresh Intergovernmental Conference would be convened in 2004.

5. It was agreed that the following questions should inter alia be addressed:

- the delimitation of powers between the European Union and the Member States, reflecting the principle of subsidiarity;
- the status of the Charter of Fundamental Rights;
- simplification of the Treaties "without changing their meaning";
- the role of national parliaments in the European architecture.

6. These questions were non-exhaustive and did not exclude a broader debate. The issue of the delimitation of powers, while of interest to all Member States, had long been a particular concern of Germany and of its regional governments. The Charter of Fundamental Rights (see chapter 4) had been proclaimed as a political declaration at Nice but many Member States supported its being made legally binding. The idea of Treaty simplification had been previously considered in the Amsterdam Treaty negotiations, based on a report by the European University Institute in Florence. The role of national parliaments was accorded particular significance by several Governments.

LAEKEN DECLARATION (DECEMBER 2001)

7. The Swedish Presidency (January-June 2001) encouraged initial debate on the Future of Europe at Union level and in the Member States. The pace of work intensified under the subsequent Belgian Presidency. In the run up to the Laeken European Council in December 2001, two main sets of issues arose: the scope of the questions to be addressed by the process, and how that process should be structured.

8. The Declaration adopted at Laeken argued that the European Union, while an undoubted success story, stood "at a crossroads, a defining moment in its existence." It stressed both the pressing need for the Union to become closer to its citizens and more responsive to their needs and expectations, and the challenges posed by the "fast-changing, globalised world". The 11 September attacks in the US, which had taken place three months earlier, had brought issues of terrorism and international security to the top of the political agenda.

9. The Laeken Declaration then posed a lengthy series of questions under four headings:

- A better division and definition of competence;
- Simplification of the Union's instruments;
- More democracy, transparency and efficiency;

- Towards a Constitution for European citizens.

10. To debate these questions, the European Council decided to convene a Convention "composed of the main parties involved in the debate on the future of the Union". The Convention was to "pave the way as broadly and openly as possible" for the next Intergovernmental Conference, which would nonetheless "take the ultimate decisions."

11. During 2000, a Convention had been held to draw up the Charter of Fundamental Rights. However, a major Treaty negotiation had never before been prepared in this way. Recent IGCs had been preceded by groups of personal representatives of the Heads of State or Government.

THE EUROPEAN CONVENTION: COMPOSITION AND ORGANISATION

12. The Laeken Declaration specified that each Member State would have one Government representative and two from its national parliament. The European Commission would have two representatives and the European Parliament sixteen. For each member there would one alternate. The then candidate countries (the ten who eventually joined on 1 May 2004, together with Bulgaria, Romania and Turkey) were to be represented in the same way as Member States, "without being able to prevent any consensus which may emerge." With its President and two-Vice Presidents, the Convention had 105 full members, and 102 alternates. In practice, the distinctions between Member States and candidate countries, and to a large degree between members of the Convention and alternates, tended to disappear in the course of its work.

13. The Irish Government's representative at the Convention for most of its work was Dick Roche TD, then the Minister of State for European Affairs (he replaced the former Minister and Commissioner, Ray MacSharry). His alternate was Bobby McDonagh of the Department of Foreign Affairs. The Oireachtas was represented by John Bruton TD and Proinsias De Rossa MEP (their alternates were John Gormley TD and Pat Carey TD, replacing Martin Cullen TD).

14. The European Council appointed Valéry Giscard d'Estaing, the former President of France, as Chairman of the Convention, with Jean-Luc Dehaene and Giuliano Amato (former Prime Ministers of Belgium and Italy respectively) as Vice-Chairmen. They were assisted by a Praesidium, or steering group, made up of representatives of the different components of the Convention. John Bruton was elected by the fifty-six national parliamentarians as one of their two nominees. The Member States were represented by the three countries holding the Presidency during the life of the Convention (Spain, Denmark and Greece).

15. A Secretariat, made up mostly of staff seconded from the European institutions, and headed by Sir John Kerr, a former senior British diplomat, was appointed.

16. The European Ombudsman and nominees of the Economic and Social Committee and the Committee of the Regions were present as observers. Arrangements were also put in place for the views of social partner and civil society organisations to be fed into the Convention, and reports on national debates on Europe (in Ireland's case, chiefly the work of the National Forum on Europe) were also made.

17. The European Council stipulated that the Convention's discussions and all official documents be in the public domain. All plenary sessions were held in public and all documents, including contributions from members, were published on the Convention's website.

THE WORK OF THE CONVENTION

18. The Laeken Declaration indicated that the Convention should draw up a final document which could comprise either different options, indicating the degree of support they had achieved, or recommendations if consensus were achieved. From the outset of the Convention's work, President Giscard made clear his firm view that the Convention should aim to agree on a single text, a draft Constitutional Treaty. This was over time broadly accepted by the members of the Convention. It obliged them individually and collectively to pursue a balanced outcome, taking the range of views into account. It also almost certainly meant that their report was more influential than it would otherwise have been.

19. The Convention's rules of procedure specified that it was to operate by consensus. Assessing this inevitably involved a certain reliance on the judgement of President Giscard and the Praesidium. However, while from time to time some members of the Convention would look for votes or headcounts, there was generally a realisation that this could be very difficult to implement, given the different levels of representation of the various elements of the Convention (for example, there were 16 MEPs as against 2 Commission representatives).

20. The Convention met for the first time on 28 February 2002, and held a total of 26 Plenary sessions, concluding its work on 10 July 2003. Most of these plenary sessions were held over two days.

21. The work of the Convention can be divided into three main phases. Initially, up to the summer break in 2002, it held broad orientation debates on the major issues identified by the Laeken Declaration. A general sense emerged during this period that the Convention should for the most part avoid detailed re-examination of specific provisions in most of the main policy areas (eg agriculture, internal market). At Nice, it had been agreed that simplification of the Treaties "without changing their meaning" should be one topic for consideration. However, it became clear that there was a strong view that justice, foreign policy and some economic policy issues warranted more thorough examination.

22. The latter part of 2002 was mainly given over to more in-depth analysis of specific themes. Eleven working groups were established, dealing with:

- subsidiarity;
- the Charter of Fundamental Rights;
- the legal personality of the Union;
- the role of national parliaments;
- the Union's complementary competences;
- economic governance;
- external action;
- defence;
- simplification;
- freedom, security and justice;
- social Europe.

23. The Working Groups were chaired by Praesidium members (John Bruton was assigned that on freedom, security and justice) and Convention members and alternates were mostly assigned to them on the basis of preference. Despite requests by many Convention members, no Working Group was established on institutional issues. Later on, discussion circles were established on the Union budget and on the European Court of Justice.

24. In some cases the Working Groups were able to make clear-cut consensus recommendations (for instance, on legal personality), and in other cases they offered alternative views (for instance, on economic governance). However, their reports were invariably useful in further crystallising the issues at stake. The Convention held plenary debates on each of the Working Group reports.

25. The third phase of the Convention, which ran from January 2003 to the end of its work in July 2003, was devoted to the elaboration of a draft Constitutional Treaty. At the end of October 2002 the Praesidium had produced a draft outline, or "skeleton". From early 2003 it successively tabled draft Articles for different sections. Members submitted proposed amendments, and the Plenary then debated the different sections in turn. Most time was devoted to Part I (dealing with broad constitutional principles and the institutions) and to those policy areas where significant change was being proposed, such as defence and justice. As the Convention neared its end, the Praesidium presented redrafted overall texts, which continued to be debated and amended.

26. At the same time, legal experts drawn from the Union institutions prepared a technical redraft of existing Treaty provisions, aligning their wording with the new terminology being developed in the Convention, but without changing their substance. This work became the basis of most of Part III of the Constitution.

27. In addition to the formal proceedings of the Convention, important discussions were held in different informal formats. Members of various component groups (national parliamentarians, government representatives, MEPs) tended to meet in advance of plenary sessions. The main political groupings also met frequently. Various ad hoc groups also developed. For instance, Minister Roche was a leading member of the "Friends of the Community Method" group of smaller Member States, which took a particular interest in institutional issues.

28. Moreover, in addition to proposing amendments to draft Praesidium texts, members of the Convention, individually and in groups, submitted papers on issues of concern. All of the Irish Convention members did so. Minister Roche made written proposals in regard to the institutional balance, the appointment of the Commission President, openness and good administration in the Union, taxation policy, and the Charter of Fundamental Rights.

29. At its session on 13 June 2003, the Convention agreed Part I of the draft Constitution. Five members submitted an alternative minority report. The remaining parts of the draft were the subject of consensus at the Convention's final session on 10 July 2003.

REACTION OF THE EUROPEAN COUNCIL

30. The Thessaloniki European Council met on 20 June 2003 (before the very last sessions of the Convention, but after it had agreed Part I). It welcomed the draft Constitutional Treaty as a historic step in the direction of furthering the objectives of European integration:

- bringing the Union closer to its citizens;
- strengthening the Union's democratic character;
- facilitating the Union's capacity to make decisions, especially after its enlargement;
- enhancing the Union's ability to act as a coherent and unified force in the international system and effectively deal with the challenges globalisation and interdependence create.

The European Council also felt that the Convention had proven its usefulness as a forum for democratic dialogue.

31. The European Council decided that the text of the Draft Constitutional Treaty was "a good basis for starting in the Intergovernmental Conference" and requested the incoming Italian Presidency to initiate the necessary procedures in order to allow the IGC to be convened in October 2003. The Conference should complete its work and agree the Constitutional Treaty as soon as possible and in time for it to become known to European citizens before the June 2004 elections for the European Parliament. The Intergovernmental

Conference was to be conducted by the Heads of State or Government, assisted by the members of the General Affairs and External Relations Council.

THE INTERGOVERNMENTAL CONFERENCE

October – December 2003

32. As mandated by the European Council, the Italian Presidency convened the first meeting of the IGC in Rome on 3 October 2003. There were five further meetings at Ministerial level, including a two-day "conclave" in Naples in late November, before Heads of State or Government met again in Brussels on 12/13 December. Senior officials met twice to discuss more technical issues.

33. While most delegations had some points of concern – some of which were of substantial significance – none queried the basic structure of the Convention text. Moreover, the great majority of its provisions were accepted with little or no change. The principal issues on which it became clear that there were still differences of view on:

- institutional questions, in particular the system of qualified majority voting, but also the composition of the Commission, the role of the Union Foreign Minister and the Presidency of the Council;
- security and defence;
- the extent to which unanimity should continue to apply to decisions in some policy areas;
- a range of economic governance issues.

A range of more technical points also remained to be resolved.

34. At the Ministerial-level meetings, the Italian Presidency made good headway on some of these issues, above all security and defence, where it brought forward substantially amended proposals which won widespread support. Solutions were also found to many of the more technical questions. Experts worked on the legal refinement of the text prepared by the Convention.

35. However, at the summit-level IGC in Brussels on 12/13 December 2003, it became evident that consensus would not be achieved. The most prominent issue was the system of qualified majority voting, but other questions also remained unresolved.

36. The European Council requested the incoming Irish Presidency "on the basis of consultations to make an assessment of the prospect for progress and to report to the European Council in March."

January-June 2004

37. As requested by the European Council, the Irish Presidency initially focussed on extensive consultations with partners. In the first part of the year, the Taoiseach met or spoke to all of his European Council colleagues. There was also considerable Ministerial-level contact, and bilateral meetings at official level. In public statements, the commitment of the Presidency to doing everything possible to reach agreement was stressed, but the need for general political will was also highlighted.

38. In its report to the European Council on 25/26 March 2004, the Presidency, after briefly reviewing the state of play on the main issues, concluded that "there is a strong case for bringing the Intergovernmental Conference to an early conclusion, and ...reason to believe that an overall agreement acceptable to all delegations is achievable if the necessary political will exists." On the basis of this recommendation, the European Council "requested the Presidency to continue its consultations and as soon as appropriate to arrange for the resumption of negotiations". It decided that agreement should be reached no later than the European Council of June 2004.

39. The Presidency, in addition to maintaining intensive bilateral contact with delegations, arranged three meetings of the Intergovernmental Conference at Ministerial level, chaired by the then Minister for Foreign Affairs, Brian Cowen TD, on 17/18 May, 24 May, and 14 June. There was one meeting at official level. During May and June, the Taoiseach met all of his opposite numbers on his pre-European Council tour of capitals.

40. While the principle that nothing was agreed until everything was agreed was unchallenged, the objective of the Presidency was effectively to resolve as many outstanding issues as possible, with a view to limiting those coming before Heads of State or Government to core questions. It also sought to identify possible compromises on key questions – largely related to institutions and the scope of QMV - and to encourage convergence towards them.

41. At the meeting of the Intergovernmental Conference in Brussels on 17/18 June, chaired by the Taoiseach, consensus was eventually achieved on Presidency compromise proposals as set out in IGC documents 81/04 and 85/04. These documents, with the Convention draft as amended by legal experts, constituted the outcome of the Intergovernmental Conference.

42. Legal and linguistic experts then worked to prepare the final texts of the Treaty establishing a Constitution for Europe in all twenty-one Treaty languages, including Irish. It was signed on behalf of all Member States in Rome on 29 October 2004.

Approach of Irish Government

The Government supported the principle of a wider debate on the Future of Europe. Its representatives played an active part in the Convention, participating fully in its plenary sessions, in relevant Working Groups, and in informal groupings. The Government strongly welcomed the report of the Convention, while pointing to a small number of issues (taxation; criminal law co-operation; security and defence; institutions) which it felt needed to be revisited in the IGC. In the opening phase of the IGC, it highlighted these concerns and made good progress in addressing them. As Presidency from January to June 2004, Ireland had the task of steering the negotiations to final agreement. It succeeded in doing so, while also being satisfied that its national concerns had been appropriately resolved.

CHAPTER 3: THE UNION'S FOUNDING PRINCIPLES

1. One of the principal objectives of the entire Future of Europe process was to describe, in a clear and concise manner, the nature of the European Union, its objectives and values, and the key principles underlying its activities. Considerable attention was therefore devoted to these questions at the Convention, and the texts it proposed represented a careful balance between diverse views upon them.

2. While the IGC made some changes to these aspects of the Convention draft, they did not significantly affect their substance.

Preamble to the European Constitution

The Member State Governments, in signing the Constitution, say that they are:

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,

BELIEVING that Europe, reunited after bitter experiences, intends to continue along the path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world

CONVINCED that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their former divisions and, united ever more closely, to forge a common destiny,

CONVINCED that, thus "United in diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope,

DETERMINED to continue the work accomplished within the framework of the Treaties establishing the European Communities and the Treaty on European Union, by ensuring the continuity of the Community acquis,

GRATEFUL to the members of the European Convention for having prepared the draft of this Constitution on behalf of the citizens and States of Europe.

PREAMBLE

3. The Preamble seeks to set the tone of the European Constitution and to encapsulate the spirit underpinning it. It looks back to Europe's heritage and describes the impulses which have driven and continue to drive the Union's construction. The Preamble summarises the Union's values and purposes, and looks forward to the future.

4. Most debate on the Preamble centred on whether the reference to Europe's heritage should make explicit reference to God or to Christianity (or, in some cases, to Europe's Judeo-Christian heritage). There were strong views on all sides of the argument. Those favouring such a reference tended to argue that the pervasive importance of Christianity in Europe's history warranted a factual reference. Others argued that this would be to question the secular nature of the Union's institutions, and could be seen as excluding people of other faiths, and those of no faith. It was pointed out that the proposed recognition of Europe's religious heritage was not paralleled in any previous EU Treaty.

5. The Government indicated that it supported the inclusion of such a reference, if a consensus could be found. However, this proved impossible. There is, however, a reference to Europe's "cultural, religious and humanist inheritance". Moreover, Article I-52 (see Chapter 9) recognises the particular status of the Churches and provides for structured dialogue between them and the Union.

6. Agreement was reached in the IGC on a certain shortening and simplification of the historical elements of the Preamble as it had been proposed by the Convention. A reference was also added to the "bitter experiences", understood to be of war and oppression, which helped to inspire both the original creation of the European Community and its enlargement to encompass the formerly communist countries of central and eastern Europe.

NATURE OF THE UNION

Article I-1.1 Establishment of the Union

Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise on a Community basis the competences they confer on it.

7. This Article formally confirms the establishment of the European Union as defined in the European Constitution. While the Union established by the Constitution legally replaces the existing European Union and European Community, it is made clear elsewhere that the Union's current laws and all other aspects of its acquis remain in force. The Convention overwhelmingly chose to keep the name of the Union unchanged. It is made clear that the Union's powers, or competences, are conferred on it by the Member States to achieve shared objectives.

8. The Union is to co-ordinate Member State policies aimed at those objectives and to exercise its competences on a "Community basis". This description replaced that originally proposed by the

Praesidium – "on a federal basis". The Convention believed that the revised wording better reflected the unique nature of the Union, both at present and in future, as neither a federation nor a confederation, but more than a conventional international organisation.

MEMBERSHIP OF THE UNION

9. Article I-1 of the European Constitution makes clear that the Union "shall be open to all European States which respect its values and are committed to promoting them together." There is no attempt to define the geographical limits of Europe. The values of the Union are defined in Article I-2 (see paragraphs 15-16 below). The application procedure for prospective new members is set out elsewhere, and is unchanged. Conditions and arrangements for admission to the Union are to be set out in an agreement between the Member States and the candidate State, which must be ratified by all in accordance with their respective constitutional arrangements. In Ireland's case, such enlargement agreements have been ratified following approval of their terms by the Oireachtas and the enactment of necessary implementing legislation.

10. A novelty is the inclusion for the first time of an Article which explicitly recognises the right of any Member State to "decide to withdraw from the Union in accordance with its own constitutional requirements." While some in the Convention questioned whether it was desirable to envisage such a possibility, given the legal and political complexity of arranging for withdrawal, the majority view was that it was useful to set out in clear terms what was already understood to be the case.

11. Should a Member State ever wish to withdraw, it is envisaged that the Union would negotiate an agreement with that State, setting out arrangements for its withdrawal and taking account of the framework for its future relationship with the Union. Such an agreement would be concluded by the Council, acting by qualified majority, and with the consent of the European Parliament. Clearly, it would be preferable for withdrawal to take place in an orderly and structured way. But it is made clear that, in the absence of agreement, it would proceed anyway two years after the State concerned had notified its intention to leave.

12. The Constitution also carries forward provisions, originally included in the Treaty of Nice, allowing for action in the case of the actual or threatened breach of the Union's values by a Member State. Where the Council determines, by a four-fifths majority of its members, and with the consent of the European Parliament acting by a two-thirds majority, that there is a clear risk of a serious breach, it may address recommendations to the State concerned.

13. The European Council may determine that a serious and persistent breach of the Union's values has in fact occurred. It may do so only by unanimity (the vote of the State concerned is not counted) and with the consent of the European Parliament acting by a two-thirds majority. In that case, the Council can by qualified majority decide to suspend certain of the State's rights, including its voting rights in the Council.

14. There are arrangements for the State concerned to put its case, for monitoring of the situation and for the restoration of the rights involved.

THE UNION'S VALUES

Article I-2: The Union's Values

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.

15. Article I-2 is a clear statement of the values of the Union and of its ethos. Of the values listed, human dignity and equality were added by the Convention to those already contained in the Treaty on European Union. The IGC added the reference to the rights of persons belonging to minorities, and, in the second sentence of the Article, to equality between women and men.

16. In addition to its significance as a declaration of core principles, the Article has, as outlined in paragraphs 9-14 above, a clear operational significance in relation to membership of the Union and the procedures for suspension.

THE UNION'S OBJECTIVES

ARTICLE I-3: The Union's Objectives

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, and an internal market where competition is free and undistorted.

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

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

17. Article 1-3, on the Union's objectives, was also the subject of careful consideration at the Convention. The aim was to set the objectives out in as brief and accessible a way as possible. The ensuing text is essentially self-explanatory. Particular attention was paid to achieving a balanced treatment of economic and social objectives (paragraph 3); compared to the existing Treaties, reference is now made to "full employment", rather than "a high level of employment". During the IGC a reference to "price stability" was added. Paragraph 4, on the Union's international objectives, includes a reference to the principles of the United Nations Charter, which was added at the proposal of the Government.

FUNDAMENTAL FREEDOMS AND NON-DISCRIMINATION

18. The next Article, I-4, confirms two basic principles of the Union which are instrinsic to its nature. In accordance with the Constitution, the four freedoms –the free movement within the Union of persons, services, goods and capital – are guaranteed, as is freedom of establishment. These are fundamental to the effective operation of the single internal market. In addition, within the scope of the Constitution, and without prejudice to any specific provisions, discrimination on grounds of nationality is prohibited. Discrimination on other grounds is prohibited elsewhere in the Constitution but it could be argued that non-discrimination on the basis of nationality has been of particular and specific significance since the foundation of the European Community in 1957.

19. Detailed provisions in Part III of the Constitution provide for the laying down of rules to prohibit discrimination on the grounds of nationality. As in the current Treaties, provision is also made for the Union to legislate, within the limits of the powers given to it, to combat discrimination on other grounds: sex, racial or ethnic origin, religion or belief, age or sexual orientation. Legislation in these cases requires the unanimous agreement of the Council – qualified majority voting applies in the case of discrimination by nationality. There is also provision for the Union to adopt incentive measures supporting action by Member States against discrimination.

RELATIONS BETWEEN THE UNION AND THE MEMBER STATES

ARTICLE I-5: Relations between the Union and the Member States

1. The Union shall respect the equality of Member States before the Constitution 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.

2. 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 Constitution. The Member States shall take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Constitution 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.

20. This Article should be read with Article I-1, on the establishment of the Union, and Article I-11, on the principles underlying the allocation and exercise of the Union's competences (see chapter 5). Together they make clear that the Union only enjoys those powers given it by the Member States, and that it cannot act in a way which damages or affects their basic character or fundamental interests.

21. Article I-5 makes clear that the Union must respect the national identities of the Member States and their essential State functions. The list of those functions is not intended to be exhaustive. The reference to the equality of Member States before the Constitution was added during the IGC.

22. The Article also carries over the principle of "loyal co-operation" from the existing Treaties. This requires the Member States to fulfil their obligations and to refrain from actions which could jeopardise achievement of the Union's objectives.

PRIMACY OF UNION LAW

23. Article I-6 states the principle of the primacy of Union law, according to which the Constitution and law adopted by the institutions of the Union in exercising competences conferred on it by the Member States have primacy over the law of the Member States.

24. An IGC Declaration notes that this reflects existing case law, confirming that this is an explicit formulation of the current situation, and not a new departure. The principle was initially stated in European Court of Justice rulings in the 1960s, before Ireland's entry to the European Communities in 1973. In the 1972 amendment of Bunreacht na hÉireann allowing for entry, a provision was inserted making clear that no provision of Bunreacht na hÉireann could invalidate any act or measure necessitated by membership of the Communities. This was expanded to refer to the European Union on its creation by the Treaty of Maastricht.

25. The principle of primacy reflects the general principle of international law, recognised by Article 29.3 of Bunreacht na hÉireann, that States must comply with international legal obligations freely undertaken by them in the exercise of their sovereignty. Its practical effect is that it offers certainty and clarity regarding the judicial interpretation of the Union's laws and of Member State obligations under them. It should be noted that it applies only in those areas where the Member States have conferred powers on the Union.

26. The primacy of Union law does not, however, mean that the European Constitution will replace the existing Constitutions of the Member States, including Bunreacht na hÉireann. Bunreacht na hÉireann will continue to be the basic legal document of the State and as a matter of Irish constitutional law, Bunreacht na hÉireann will continue to determine, in the final instance, the precise relationship between Irish and EU law. The ultimate locus of sovereignty will reside with the Member States rather than the Union. The new European Constitution will be the basic legal document of the European Union, setting out the powers it holds and how it may exercise them.

LEGAL PERSONALITY

27. Article I-7 states that the Union shall have legal personality. Legal personality means that an entity or organisation can be treated for some legal purposes as if it were an actual person. For example, it can have rights and duties, and can enter into contracts and agreements. At present, the European Community has an explicit legal personality; the European Union has not been conferred with explicit legal personality, but it arguably has implicit personality (eg it can already enter into international agreements with non-EU third countries and international organisations).

28. In the view of the Convention Working Group on Legal Personality, the principal effects, and benefits, of giving the Union legal personality would be to ensure legal certainty, and to enhance the Union's transparency and profile vis-à-vis both third countries and its citizens. It would also pave the way for the simplification of the Treaties, to the abolition of the confusing "three pillar" structure, and to simpler procedures regarding the negotiation of international agreements. In the latter stages of the Convention and the IGC, these objectives were all facilitated by the early agreement reached on legal personality.

29. The Working Group also emphasised that, while the Union would thus become a subject of international law, this would be alongside the Member States, and without jeopardising their independent status as subjects of international law.

30. Moreover, "explicit conferral of a single legal personality on the Union does not per se entail any amendment...to the current allocation of competences between the Union and the Member States."

THE UNION'S SYMBOLS

Article 1.8 - The symbols of the Union

The flag of the Union shall be a circle of twelve golden stars on a blue background.

The anthem of the Union shall be based on the "Ode to Joy" from the Ninth Symphony by Ludwig van Beethoven.

The motto of the Union shall be: "United in diversity".

The currency of the Union shall be the euro.

Europe day shall be celebrated on 9 May throughout the Union

31. Other than in regard to the motto "United in diversity", this Article simply formalises existing practice in regard to the flag, anthem and Europe day.

32. The history of the flag goes back to 1955, when it was adopted by the Council of Europe. In various traditions, twelve is a symbolic number representing perfection. The circle is, among other things, a symbol of unity. In 1985, the flag was adopted as the official emblem of the European Communities. All European institutions have been using it since the beginning of 1986.

33. For the final movement of his Ninth Symphony, composed in 1823, Beethoven set to music the "Ode to Joy" written in 1785 by Friedrich von Schiller. This poem expresses Schiller's idealistic vision of human brotherhood - a vision Beethoven shared. The use of the "Ode to Joy" theme as a European anthem originated with the Council of Europe, in 1972. In 1985, this music was adopted as the official anthem of the European Union.

34. "Europe Day" marks the fact that on 9 May 1950, the French Foreign Minister, Robert Schuman, presented his proposal for the creation of an organised Europe. This proposal, known as the "Schuman declaration", is considered to be the beginning of the creation of what is now the European Union.

35. Detailed provisions on the euro are contained in Part III of the European Constitution.

Approach of Irish Government

The Government attached particular importance to ensuring that the opening Articles and Preamble described in a clear and balanced way the unique nature of the European Union, its relationship with the Member States, and its values and objectives. It was satisfied that the Convention text, as endorsed by the IGC, did so. In particular, it was pleased that the description of the Union's external objectives was closely based on a proposal by its representative. The Government also saw advantages in the conferral of a single legal personality on the Union, so long as this did not necessarily imply that all policy matters be dealt with in a uniform fashion. It recognised the Article on the primacy of Union law as a statement of the current legal position. The Government was in favour of an explicit reference to God or to Christianity in the Preamble, if a consensus could be reached. However, it came to accept that no such consensus was possible. It noted that the reference to the Union's cultural, religious and humanist inheritance has no parallel in the current Treaties.

CHAPTER 4: FUNDAMENTAL RIGHTS AND UNION CITIZENSHIP

1. The European Constitution's treatment of fundamental rights marks a significant development of the situation under the current Treaties. The legally-binding incorporation of the Charter of Fundamental Rights, which forms Part II of the Constitution, is particularly notable. Also important is the proposed accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

CHARTER OF FUNDAMENTAL RIGHTS

Background

2. At its meeting in June 1999, the European Council decided that "at the present stage of development of the European Union, the fundamental rights applicable at Union level should be consolidated in a Charter and thereby made more evident". A Convention, similar in composition to that which agreed the draft of the European Constitution in 2003, was established to prepare the Charter. The Irish Government representative was Michael O'Kennedy TD, with the Oireachtas being represented by Des O'Malley TD and Bernard Durkan TD.

3. The Charter Convention completed its work in October 2000. Its draft was approved by the European Council meeting in Biarritz in that month and the Charter was then formally proclaimed by the Council, the European Parliament and the Commission. However, it was at that stage a political declaration in character, and was not legally binding. A number of Member States, including Ireland, felt that its scope and application had not at that stage been defined with the precision necessary in a legal text. Many other Member States would have preferred to give it immediate legal standing.

4. The future status of the Charter was one of the issues listed for consideration in the initial Nice Declaration of December 2000 on the Future of the Union, and it also figured in the Laeken Declaration of December 2001.

5. The issues of incorporation of the Charter and of accession to the ECHR were considered by a Working Group of the Convention, which made a number of significant recommendations which were agreed by the Convention as a whole and which made it possible for all Member States to support accession. Some important further adjustments to the Convention text were made by the Intergovernmental Conference.

CONTENTS OF CHARTER

6. The Charter consists of a preamble and fifty-four articles, which are divided into seven sections, or "titles". The task given to its drafters was to consolidate the fundamental rights applicable at the Union level and make them more visible. Therefore, in each case, the rights listed are derived from existing international conventions, from the Union's own law, or from the common constitutional traditions of the Member States. This was made clear in a set of Explanations prepared by the Charter Convention's steering committee (see paragraphs 18-19 below).

Title I, "Dignity", has five articles, relating to (a) human dignity (b) the right to life (c) the right to integrity of the person (d) the prohibition of torture and inhuman or degrading treatment or punishment, and (e) the prohibition of slavery and forced labour.

Title II, "Freedoms", has fourteen articles, relating to (a) the right to liberty and security (b) respect for private and family life (c) the protection of personal data (d) the right to marry and found a family (e) freedom of thought, conscience and religion (f) freedom of expression and information (g) freedom of assembly and association (h) freedom of the arts and sciences (i) the right to education (j) the freedom to choose an occupation and the right to engage in work (k) the freedom to conduct a business (l) the right to property (m) the right to asylum and (n) protection in the event of removal, expulsion or extradition.

Title III, "Equality", has seven articles, relating to (a) equality before the law (b) non-discrimination (c) cultural, religious and linguistic diversity (d) equality between women and men (e) the rights of the child (f) the rights of the elderly (g) the integration of persons with disabilities.

Title IV, "Solidarity", has twelve articles, relating to (a) workers' rights to information and consultation within the undertaking (b) the right of collective bargaining and action (c) the right of access to placement services (d) protection in the event of unjustified dismissal (e) fair and just working conditions (f) the prohibition of child labour and the protection of young people at work (g) family and professional life (h) social security and social assistance (i) health care (j) access to services of general economic interest (k) environmental protection and (l) consumer protection.

Title V, "Citizens' Rights", has eight articles, relating to (a) the right to vote and to stand as a candidate at elections to the European Parliament (b) the right to vote and to stand as a candidate at municipal (local) elections (c) the right to good administration (d) the right of access to documents (e) the European Ombudsman (f) the right to petition the European Parliament (g) freedom of movement and residence and (h) diplomatic and consular protection.

Title VI, "Justice", has four articles, relating to (a) the right to an effective remedy and to a fair trial (b) the presumption of innocence and the right of defence (c) the principles of the legality and proportionality of criminal offences and penalties and (d) the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

7. Title VII differs from the first six Titles in that it contains not substantive rights but general provisions governing the interpretation and application of the Charter.

INTERPRETATION AND APPLICATION OF THE CHARTER

8. The Convention and the IGC both accepted that the substantive articles of the Charter did not need to be changed. They therefore focussed on its interpretation and application. Several Member States would have been happy to see the incorporation of the Charter with no amendment of any of its provisions; others, including Ireland, argued that there was a need for greater legal clarity and certainty about its scope and application.

9. It was possible to reach agreement on a number of changes to the so-called "horizontal clauses" which made it possible for all Member States to accept the incorporation of the Charter.

10. Accordingly, Article I-9.1 of the Constitution states that "The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights", which itself is Part II of the Constitution.

11. As regards the field of application of the Charter, its provisions "are addressed to the institutions, bodies, offices and agencies of the Union....and to the Member States only when they are implementing Union law". In this, the Charter reflects the existing jurisprudence of the Court of Justice, whereby the Court will only review for compatibility with Union law, including fundamental rights standards, the actions of the Member States falling within the scope of Union law: eg where Irish Government officials are enforcing EU equal pay rules or imposing restrictions on free movement of food-stuffs on public health grounds, or where the Oireachtas is enacting legislation to give effect to a European framework law in the field of environmental protection.

12. It is made clear that 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 defined in the other Parts of the Constitution." Accordingly, existing Court of Justice jurisprudence, whereby the Court refuses to look at matters falling within the exclusive competence of the Member States, will be retained: eg where purely domestic legal matters are concerned, the Court of Justice may not deal with fundamental rights issues that may arise: these issues may only dealt with by the Irish courts and the European Court of Human Rights.

13. Any limitation on the exercise of the rights and freedoms recognised in the Charter must be provided for by law, must respect the essence of those rights and freedoms, must be necessary to meet objectives of general interest or to protect the rights and freedoms of others.

14. Rights recognised in the Charter which derive from, respectively, other provisions of the Constitution, the European

Convention on Human Rights, or the constitutional traditions of the Member States, shall be understood and interpreted and, as appropriate, exercised strictly in line with their meaning in those sources.

15. An important distinction is made between rights and principles. Principles are not directly justiciable – they may be implemented either by the Union or by the Member States in their legislative or executive acts, and only become significant to the courts, or "judicially cognisable", when such acts come to be interpreted or reviewed. In the absence of such acts the Court of Justice may not exercise jurisdiction with respect to principles. Examples of Articles containing principles are those relating to the rights of the elderly, the integration of persons with disabilities, and environmental protection.

16. Rights are of course justiciable at Union level only if the Union has a competence in the relevant field and the Charter may not be used as a basis for extending the scope of the Court of Justice's competence.

17. It is made clear that full account must be taken of national laws and practices as specified in the Charter. Many of the Articles under the Solidarity heading – for example those relating to industrial relations or social security – indicate that the rights concerned must be exercised in accordance with Union law and national laws and practices.

18. An important additional element is represented by the Explanations drawn up as a way of providing guidance in the interpretation of the Charter. The Explanations are in the form of an annotated version of the Charter. For each Article, the sources and basis of its wording are set out in some detail.

19. The Explanations, which are set out in a Declaration, are to be given "due regard by the courts of the Union and of the Member States."

20. It is also made clear that nothing in the Charter shall be interpreted as restricting or adversely affecting human rights or fundamental freedoms as recognised by Union law, international law, or by Member States' constitutions.

ACCESSION TO EUROPEAN CONVENTION ON HUMAN RIGHTS

21. The existing Treaties already require the Union to respect fundamental rights as guaranteed by the ECHR. Under the Constitution, the Union "shall accede" to the ECHR. In the words of the Convention Working Group, this is intended to "give a strong political signal of the coherence between the Union and the "greater Europe" reflected in the Council of Europe and its pan-European human rights system". It will "give citizens an analogous protection vis-à-vis acts of the Union as they presently enjoy vis-à-vis all the Member States": in other words, there will be a right of review of the actions of the Union, including its Court of Justice, to the Strasbourg-based European Court of Human Rights, just as there is a right of review of the actions of States, including their national supreme courts.

22. Under Protocol 32, accession to the

ECHR, which will be by QMV, will have to be effected in a manner which would not modify the division of competences between the Union and the Member States. Nor can it affect the individual positions of the Member States with respect to the ECHR. All Member States are parties to the ECHR but they have individually decided to ratify or not to ratify certain additional protocols, and some have entered derogations or reservations in relation to particular issues.

OTHER ELEMENTS

23. The Constitution also carries forward the existing Treaty provision that fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

UNION CITIZENSHIP

24. The Constitution provides that every national of a Member State shall be a citizen of the Union, but makes clear that "citizenship of the Union shall be additional to national citizenship and shall not replace it". This is not a new concept, but dates back to the Maastricht Treaty.

25. Union citizens enjoy the right:

- to move and reside freely within the territory of the Member States;
- to vote and to stand as candidates in the European Parliament and in municipal (local) elections in their Member State of residence;
- to enjoy, in third countries where their own Member State is not represented, diplomatic and consular protection from the services of any Member State;
- 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 Constitution's languages and to obtain a reply in the same language.

26. The last of these rights includes the use of Irish by citizens in their dealings with the European institutions, as it is one of the twenty-one languages in which the Constitution is equally authentic and valid.

27. The detailed arrangements for giving effect to these rights are set out in Part III of the Constitution.

Approach of Irish Government

The Government, while strongly supportive of making the rights of Union citizens more visible, believed that if the Charter were to become legally-binding its scope and application should be defined with appropriate precision. This was achieved through the Convention's work on recasting relevant Articles of the Charter. The prominence of the Charter Explanations as an explanatory tool was also welcomed. As a result, the Government was able to agree to the incorporation of the Charter as a legally-binding part of the Constitution.

The Government also strongly supported accession by the Union to the European Convention on Human Rights.

In relation to Union citizenship, the Government was satisfied with the clear statement of the complementary nature of Union and national citizenships and with the confirmation of the right of Irish citizens to petition the Union's institutions in the Irish language.

CHAPTER 5: THE COMPETENCES OF THE UNION

1. The definition of the Union's competences, or powers, was highlighted both in the Nice Declaration of 2000 and the Laeken Declaration of 2001 as one of the principal tasks of the Future of the Union process. The desirability of a clearer demarcation between the powers of the Union and those of the Member States was generally accepted by participants in the Convention, the recommendations of which were subject to only minor change by the IGC.

2. In general, the Constitution is felt to have made important progress in clarifying the Union's competences, and in this regard to represent a major improvement on the existing Treaties. That progress must be seen against a background which made the outcome somewhat more complex than some would have wished. First, the desire for a concise listing of the Union's competences to some degree conflicted with the need for a careful and precise definition of each of those competences and the rules for exercising them. Secondly, not all of the Union's competences fitted fully into the three broad categories which the Convention, in line with the Laeken Declaration, chose to employ.

PRINCIPLES RELATING TO COMPETENCE

ARTICLE I-11: Fundamental principles

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 within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution 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 insofar 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 shall ensure compliance with that principle 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 Constitution. 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.

3. Article I-11 describes the three principles of **conferral**, **subsidiarity** and **proportionality**, which are key to the allocation and exercise of competences.

4. The principle of **conferral** links back to the definition of the Union (see Chapter 3) as one on which "the Member States confer competences to attain objectives they have in common." It is made clear that the Union may act only within the limits of the powers the Member States have given it, and that competences not explicitly conferred on it remain with the Member States.

5. The principle of **subsidiarity**, which essentially means that action in areas where the Member States and the Union share a competence may be taken at Union level only where it is deemed likely to be more effective than if taken at national or regional level, was first written into the Treaties by the Treaty of Maastricht (1992). The principle of **proportionality** is mostly invoked in selecting the appropriate legal instrument for Union action in a given area. A Protocol setting out arrangements for the operation of these two principles was attached to the Treaty of Amsterdam (1997). Chapter 6 of this White Paper describes how subsidiarity and proportionality have been developed further in the Constitution.

CATEGORIES OF COMPETENCE

6. The Constitution sets out three broad categories of Union competence, which can be described respectively as **exclusive competence, shared competence**, and **supporting competence**. Under each heading there is a listing of the competences concerned. The aim in each case is to describe the actual situation as in the existing Treaties. The approach taken is mostly based on the relative capacities of the Union and the Member States to legislate in a given area. An alternative approach favoured by the Commission, which sought to define competences on the basis of the "intensity" of Union action, received little support.

7. In areas of **exclusive competence**, the Union alone may legislate, unless it delegates responsibility to the Member States to do so. There are in fact few such areas. They are:

- the customs union;
- the competition rules necessary for the internal market;
- monetary policy in the Eurozone;

- fisheries conservation;
- the common commercial policy (the Union's policy in international trade).

The Union also has exclusive competence for the conclusion of international agreements in certain defined situations.

8. In areas of **shared competence**, the Member States and the Union both have the power to legislate, though when the Union has legislated in relation to a specific aspect of that area the Member States may not do so. The principal areas are:
- internal market;
- social policy (certain aspects, mostly to do with employment rights);
- economic, social and territorial cohesion;
- agriculture and fisheries;
- the environment;
- consumer protection;
- transport;
- trans-European networks;
- energy;
- security and justice;
- common safety concerns in public health.

9. Areas of **supporting competence** are primarily for the Member States. The Union can take action to support, supplement or co-ordinate the Member States' activities; however, there can be no harmonisation of the Member States' laws and regulations in these areas. They are:
- the protection and improvement of human health;
- industry;
- culture;
- tourism;
- education, youth, sport and vocational training;
- civil protection, such as against natural disasters;
- administrative cooperation between national authorities.

10. As indicated, the three-fold listing of categories of competence is mostly based on the degree to which the Union and the Member States may legislate in a given area. This approach does not fully deal with a number of important areas where the Union's actions are more significant than in the "supporting competence" category but where its role is not mainly legislative. These areas were therefore listed and described separately:
- the co-ordination of economic and employment policies: the Member States have lead responsibility, but within a framework which is provided by the Union;
- the common foreign and security policy;
- research, technological development and space, where the Union carries out important programmes alongside those of the Member States;
- development co-operation and humanitarian aid, where again the Union's programmes complement those of the Member States.

11. Crucially, it is made clear that **"the scope of and arrangements for exercising the Union's competences shall be determined by the provisions relating to each area in Part III."** These provisions frequently include considerable detail, the outcome of careful negotiations between the Member States in successive Intergovernmental Conferences. The headline listing in Part I of the Constitution, therefore, is only a guide to

the Union's competences. In reality, some areas in the same broad categories can in reality involve much more substantial Union action than do others. For instance, the establishment and operation of the internal market, a shared competence, is fundamental to the Union and has been the subject of masses of detailed legislation. By contrast, its role in those aspects of public health which are a shared competence is much more limited.

NEW OR CLARIFIED COMPETENCES

12. In most cases, Part III carries forward with little change the policy provisions of the existing Treaties. There are eight policy areas in relation to which specific Articles have been included for the first time: tourism; energy; civil protection; humanitarian assistance; intellectual property rights; space policy (added to the provisions on research and technological development); sport (included in the Article on education, youth and vocational training); administrative co-operation. Of these, tourism, energy and civil protection were previously mentioned as being among the Union's tasks, although no individual legal bases were provided, and the Union has acted in these areas. The Union also already acts in the humanitarian assistance and intellectual property areas, the necessary powers having been deemed to be implicit in its objectives. (The Union's internal policies are discussed in Chapter 11).

FLEXIBILITY

13. The Constitution also carries forward from the existing Treaties the so-called "flexibility clause" (currently TEC 308). This provides that if action by the Union should prove necessary, within the framework of the policies defined in Part III of the Constitution, to attain one of the objectives set out in the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. The European Commission shall draw national Parliaments' attention to any such proposals. Such measures shall not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

14. The maintenance of a unanimity requirement, and the involvement of national Parliaments, both provide safeguards to ensure the proper use of the provision, as does the requirement that any action must be within the scope of policies already defined in Part III of the Constitution.

Approach of Irish Government

The Government supported the maximum clarification of the Union's competences, while also wishing to ensure that there was an explicit link between the headline listing of areas in Part I of the Constitution and the detail of Part III. It was satisfied that the Convention's draft, as accepted by the IGC, accurately represented the current situation, and was also prepared to see reference to the policy areas explicitly listed for the first time.

CHAPTER 6: SUBSIDIARITY AND THE ROLE OF NATIONAL PARLIAMENTS

1. During the initial identification of the topics requiring debate in the Future of Europe process, the role of national parliaments in the Union was highlighted both in the Nice Declaration of December 2000 and the Laeken Declaration of 2001. While the Treaty of Amsterdam already contained a Protocol on the matter, there was a general feeling that this needed to be re-examined and, as appropriate, strengthened.

2. There was an acceptance that the most important EU dimension of national parliaments' work is their role in scrutinising their own Governments and in holding them accountable for their actions in the Union. Nevertheless, many felt that a closer association of parliaments with the Union institutions could benefit both sides and could enhance the public credibility and legitimacy of the institutions.

3. The principle of subsidiarity, and the related principle of proportionality, were also the subject of a Protocol to the Treaty of Amsterdam. They too were perceived to be significant and deserving of further attention at the Convention.

4. The Convention recommended that revisions be made to both the existing Protocols, and its drafts were adopted almost unchanged by the IGC. The most significant innovation is that national parliaments now have a specific role in monitoring the implementation of the principle of subsidiarity.

PROTOCOL ON ROLE OF NATIONAL PARLIAMENTS

5. The Protocol on the Role of National Parliaments in the European Union recognises that how national parliaments scrutinise their governments' activities is a matter for the particular constitutional organisation and practice of each state. However, the desirability of encouraging greater parliamentary involvement in EU activities, and of enhancing the ability of parliaments to contribute to debate, is also recognised. The arrangements set out in the Protocol apply to all component chambers of a national parliament, where it is not unicameral (eg, in Ireland there will be direct communication with both the Dáil and Seanad).

6. Under the Protocol, all Commission green and white papers and other general communications, the Commission's annual legislative programme, and all

draft legislation are to be sent directly to national parliaments at the same time that they are sent to the Council and the European Parliament. The requirement for direct and simultaneous transmission is new. It is intended to give national parliaments more time for consideration. The same procedure shall apply to the annual report of the Court of Auditors.

7. The agendas for and outcomes of Council meetings must also go directly to national parliaments at the same time as they go to the Member State governments. Except in cases of stated urgency, at least six weeks must elapse between the provision to national parliaments of a piece of draft EU legislation and its being placed on a Council agenda for decision. There should normally be a ten day gap between the publication of an agenda and the taking of a decision. This is also intended to give national parliaments more time for consideration and debate.

8. It is also recalled that national parliaments must have at least six months' notice of any intention of the European Council to use the general passerelle provision (see chapter 8).

9. The Protocol also envisages that the European Parliament and national parliaments should together decide on arrangements for promoting regular and effective interparliamentary cooperation. This new element reflects the growing co-operation between them which was a feature of the Convention.

10. There was some support within the Convention for the creation of a Congress which would, at least once annually, bring together national and European parliamentarians to debate major EU issues. However, a majority felt that the creation of a new entity of this kind was unnecessary and potentially confusing.

11. The work of the existing Conference of Parliamentary Committees for European Affairs (COSAC) is also recognised, and the relevant provisions of the Amsterdam Treaty updated. COSAC may make submissions to the EU institutions; promote the exchange of best practice between national Parliaments and the European Parliament; and organise conferences on special topics, in particular on foreign policy and defence questions.

12. There is a cross-reference in this Protocol to that on subsidiarity.

PROTOCOL ON SUBSIDIARITY AND PROPORTIONALITY

13. The Protocol on the Application of the Principles of Subsidiarity and Proportionality fleshes out the related provisions of Part I of the Constitution, which state that

> **"Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar 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 shall ensure compliance with that principle in accordance with the procedure set out in that Protocol.

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

14. Each of the Union's institutions is required to "ensure constant respect" for these principles.

15. The Commission is required to consult widely before it proposes legislation, and where appropriate take in the regional and local dimensions of the action envisaged. There is a requirement that any proposed legislative act should contain a detailed statement setting out how it complies with the principles of subsidiarity and proportionality, and indicating the financial and legislative impact. Qualitative and, where possible, quantitative indicators are to substantiate the reasons advanced for concluding that a given objective is better achieved at Union level.

16. Within six weeks of the transmission of a draft legislative act to it, any national parliament, or any chamber of a parliament, may send to all EU institutions a reasoned opinion stating why it considers that the draft does not comply with the principle of subsidiarity. Account must be taken of these reasoned opinions. If at least one third of national parliaments (or of Chambers of national parliaments) issue such reasoned opinions, the draft must be reviewed. It may thereafter be maintained, amended or withdrawn. In the case of proposals in the areas of judicial co-operation and police co-operation the threshold is one quarter.

17. This so-called "yellow card" system is major development. Some within the Convention argued for a "red card" whereby a given number of parliaments could oblige the Commission to withdraw a proposal. Most felt that this was an undue interference with the Commission's right of initiative. It has been pointed out that it would be politically highly unlikely that the Commission would or could persist with an unaltered proposal in the face of serious concern.

18. Clearly, the use which is made of this mechanism will depend both on the extent to which legislative proposals are perceived to breach the principle of subsidiarity, and on the capacity of national parliaments, individually and collectively, to prepare reasoned opinions within the timescale involved. Discussions have begun in COSAC on how national parliaments might co-operate and coordinate their approaches.

19. The application of the principle of subsidiarity is intended to take place primarily before the adoption of legislation. However, the Court of Justice is empowered to adjudicate ex post on alleged infringements of the principle. Such actions may be brought by a Member State or notified by it, in accordance with its national legal order, on behalf of its national parliament or a chamber of it.

20. In addition, the Committee of the Regions may also bring such actions in respect of legislative acts in regard to which the Constitution requires it to be consulted.

21. The Commission is to publish an annual report on the application of the principles of subsidiarity and proportionality.

NATIONAL PARLIAMENTS AND THE AREA OF FREEDOM, SECURITY AND JUSTICE

22. In recognition of the particular sensitivity of the Justice and Home Affairs area, the Constitution contains a number of specific provisions associating national parliaments more closely with the Union's activities. As noted above (para. 16) a lower threshold applies to the use in this area of the subsidiarity "yellow card" mechanism. National parliaments are, with the European Parliament, to be kept informed of evaluations of the Member States' implementation of Union policies in the JHA area, in particular to facilitate full application of the principle of mutual recognition. They are also to be kept informed on the work of a standing committee established to promote and strengthen co-operation on internal security.

23. National parliaments are also to be involved in the evaluation of the activities of Eurojust and Europol.

NATIONAL PARLIAMENTS AND CHANGE TO THE CONSTITUTION

24. As set out above (para. 8) national parliaments are to be given at least six months' notice of any intention by the European Council to use the facility given to it to agree certain limited changes to the Constitution. Any use of the so-called passerelle clause, to allow for change from unanimity to QMV or from a special to the ordinary legislative procedure, can be blocked by a single national parliament. In addition, future change to the Constitution (other than in the limited cases just mentioned) is to be prepared by a Convention similar to that which drafted the Constitution itself and on which national Parliaments were heavily represented. These aspects of the Constitution are discussed further in Chapters 8 (decision-making) and 14 (other issues).

Approach of Irish Government

The Government strongly supported strengthening the role of national parliaments in the Union. Its representative co-authored a very early submission to the Convention highlighting the importance of the principle of subsidiarity. It welcomed the Convention's proposals in this area without reservation.

CHAPTER 7: THE UNION'S INSTITUTIONS

1. The principal arrangements for the Union's institutions are set out in Part I of the European Constitution. Further detail on their operation is contained in Part III.

2. Institutional issues were extensively debated at the Convention, in particular during its latter stages. They were also central to the Intergovernmental Conference.

3. While the Convention ultimately reached a broad consensus on institutional questions, it was clear that some key issues - notably the system of voting in the Council and the composition of the Commission - would need to be re-examined in the IGC. Indeed, these issues were central to the IGC's agenda right up to the end of its work.

4. Overall, the most significant institutional changes brought about by the Constitution are probably the creation of the posts of permanent President of the European Council and of Union Minister for Foreign Affairs, and the change to a double majority voting system in the Council. Important changes have also been made in respect of the composition of the Commission (though this was effectively a working out of principles laid down at Nice) and of the European Parliament, and as regards the Presidency of the Council. Some other changes were also made. At the same time, the overall institutional balance is widely regarded to have remained substantially intact. Much of the detail contained in the existing Treaties has been carried forward with little or no amendment.

THE INSTITUTIONAL FRAMEWORK

5. Article I-19 defines the Union's institutional framework as comprising the European Parliament; the European Council; the Council of Ministers; the European Commission; and the Court of Justice of the European Union.

6. Other institutions and bodies (the European Central Bank, the European Investment Bank, the Court of Auditors, the Committee of the Regions and the Economic and Social Committee) are also provided for.

THE EUROPEAN PARLIAMENT

7. The European Parliament, jointly with the Council, legislates for the Union and sets its budget. It also, as set out in detail elsewhere in the Constitution, has a wide range of accountability and supervisory functions, and offers a platform for general political debate. Under the Constitution, it also elects the President of the Commission.

8. As described in chapter 8, on decision-making, the Constitution continues the process which has been carried forward through successive Treaties of extending the number of areas in which the Parliament is co-legislator with the Council, through the so-called "ordinary legislative procedure." Its budgetary role is also amended and expanded (see chapter 10).

9. The main focus of debate in the Convention and IGC was the size and composition of the Parliament. The Treaty of Nice provides for a Parliament of 732, and also contained a Declaration setting out the allocation of seats in a Union of 27 members (viz after the planned accession of Bulgaria and Romania). Ireland would have 12 seats (in the current 2004-9 session it has 13).

10. The Constitution's provisions on the Parliament have five main elements:

i. There is a minimum seat threshold per country of six (this reflected pressure from the smallest Member States);

ii. There will be a ceiling of 96 members per country (Germany currently has 99 members);

iii. The overall maximum number of members is 750;

iv. Representation will otherwise be "degressively proportional". This term is not explicitly defined but is understood to reflect the current situation whereby the allocation of seats broadly reflects a Member State's population but is skewed towards countries with smaller populations;

v. The European Council will adopt by unanimity, on the proposal of the European Parliament and with its consent, a European decision establishing the composition of the Parliament. It would presumably be necessary for fresh decisions to be taken from time to time with the arrival of new Member States or other changes. However, current arrangements will stand to the end of the 2004-9 Parliament.

11. In a Union of 27, these changes would effectively allow for the allocation of up to sixteen additional seats as compared to the current arrangements. This could in principle permit the concerns of those countries which may feel they are unfairly treated in the current allocation to be addressed, without requiring the taking of seats from others.

THE EUROPEAN COUNCIL

12. The functions and composition of the European Council are described in Article I-21. Its role is substantially unchanged: to "provide the Union with the necessary impetus for its development and [to] define [its] general political directions and priorities."

13. The members of the European Council are the Heads of State or Government of the Member States, together with its own President and the President of the Commission. The Union Foreign Minister is to take part in its work: where the agenda so requires, Heads of State or Government may decide to be assisted by a Minister. The European Council is to meet quarterly; special meetings may be convened where necessary. Except in the few cases where it is specified otherwise, the European Council is to act by consensus. Where there is a vote, only Member States can participate.

14. The Constitution provides for the establishment of a new post of **President of the European Council**. The creation of this position, and the nature of its responsibilities, were actively debated in the Convention.

15. The terms of reference of the President in fact basically reproduce the current duties of the rotating chair of the European Council, as they have evolved. The President of the European Council is to chair it and drive forward its work, facilitating cohesion and consensus; to ensure the preparation and continuity of the European Council's work, but in co-operation with the President of the Commission and on the basis of the work of the General Affairs Council; and, at his or her level, to ensure the external representation of the Union's Common Foreign and Security Policy.

16. The President of the European Council is to be elected by the European Council, acting by a qualified majority, for a two and a half year term renewable once - ie, the maximum period in office will be five years. It is stipulated that he or she may not hold a national office.

THE COUNCIL OF MINISTERS

17. The Constitution defines the Council's role as exercising, jointly with the Parliament, legislative and budgetary functions, and as carrying out policy-making and co-ordinating functions as laid down in the Constitution.

18. As before, the Council is to consist of a Ministerial-level representative of each Member State, who is able to commit the government in question and cast its vote.

19. In a formalisation of the existing position, the Constitution explicitly states that the Council is to meet in different configurations. The General Affairs Council has a coordinating role and is to prepare and ensure follow-up to meetings of the European Council, in liaison with the President of the European Council.

20. The Foreign Affairs Council is, under the strategic guidance of the European Council, to elaborate the Union's external action.

21. Other Council configurations are to be established through a unanimous European Council decision. At present there are eight such formations other than the General Affairs and External Relations Council, which is to be split into the General Affairs Council and the Foreign Affairs Council.

22. When the Council is considering or voting on legislation, it is to meet in public. This is an important further step towards greater transparency and accountability.

23. Future arrangements for the Presidency of the Council occupied much of the IGC's time, in particular during the Italian Presidency. There was a widespread view that whatever arrangement was now agreed should be relatively easy to change in the light of experience. Accordingly, the Constitution itself simply provides that the Presidency of Council configurations is to be held by the Member States on the basis of equal rotation. More detailed rules are to be laid down by the European Council, acting by QMV.

24. However, the Foreign Affairs Council, as an exception to this rule, is to be chaired by the Union Foreign Minister. A minority of Member States, including Ireland, argued unsuccessfully that it would be preferable for this Council to continue to be chaired by a Member State. The European Council will be chaired by its new President.

25. While the Constitution's treatment of the Presidency is brief, the IGC decided that it should also reach more detailed agreement on the main elements of the new system, which are formally to be adopted by a European Council decision. An IGC Declaration therefore includes a draft of that decision.

26. The draft decision provides for a team Presidency of pre-established groups of three Member States for an 18-month period. The groups are to be made up on the basis of equal rotation among the Member States, taking into account their diversity and the need for geographical balance. Each member of the group will in turn chair for a six-month period all Council formations (other, of course, than that for Foreign Affairs). The other members of the group are to assist it in all its responsibilities, on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

27. Given the long lead-in time required for Presidency preparation, political agreement has already been reached on the allocation of Member States to Presidency groups for the period 2007-2020, assuming ratification of the Constitution. Ireland is to be teamed with Greece and Lithuania between January 2013 and June 2014; we are to be in the chair during the first half of 2013.

28. As is already the case and as provided for in the current Treaties, the preparation of the Council is entrusted to a Committee of Permanent Representatives of the Member State Governments (Coreper). Coreper is to be chaired by the Member State chairing the General Affairs Council. A representative of the Foreign Minister will chair the Political and Security Committee.

29. With the eventual absorption of the function of the High Representative for the CFSP into the new Foreign Minister post, the Council is now once again to be served by a full-time Secretary-General, as it was before the entry into force of the Amsterdam Treaty.

VOTING IN THE COUNCIL OF MINISTERS

30. Decisions in the Council are normally by qualified majority voting (QMV). As explained in Chapter 8, the use of QMV is further extended by the Constitution, though unanimity continues to apply in some important areas. The definition of QMV was the single most difficult and contentious issue in the IGC.

31. The Constitution introduces a new system of double majority voting, under which a qualified majority must consist of at least 55% of the Member States comprising at least 65% of the population of the Union. Other aspects of the system are described below.

32. Since the establishment of the European Communities, a system of weighted voting has been employed. In such a system, each Member State has a certain number of votes (the largest have most, the smallest fewest, but the allocation is far from strictly proportional). A qualified majority requires a certain number of votes in favour (over time this threshold has normally been about 70% of the total).

33. The Treaty of Nice retained the system of weighted voting, but made a number of changes, which many strongly criticised as particularly complex and unintelligible. Moreover, it was demonstrated that, mathematically, it would be substantially harder for majorities to be assembled and thus for the Council to make decisions.

34. Within the Convention, therefore, a substantial majority of members favoured an alternative system, the so-called "double majority" whereby a proposal would require the support both of a majority of Member States and of Member States representing a majority of the Union's population. This was seen as simpler and easier to explain, more efficient in decision-making terms, and as better reflecting the dual nature of the Union as a Union of states and peoples.

35. The Convention proposed a system whereby a measure would, to achieve a qualified majority, require the support of at least half of all Member States, which would have to represent three-fifths of the Union's population.

36. In the early stages of the IGC it emerged that the large majority of Member States either supported or could accept this.

However, there was very strong opposition from both Spain and Poland, which were set to lose the particularly advantageous position they had gained under Nice. This was the principal, if not the only, reason for the failure of the IGC to agree under the Italian Presidency.

37. The Irish Presidency therefore needed to find a compromise formula which would assuage Spanish and Polish concerns while also maintaining the support of those most strongly in favour of the Convention outcome. It emerged that an increase in the thresholds proposed by the Convention, while maintaining the principle of double majority voting and the objective of easier decision-making, was the way to achieve this.

38. The Constitution therefore provides that a qualified majority should be defined as least 55% of the Member States comprising at least 65% of the population of the Union. This compromise went some way in the Spanish and Polish direction while continuing to facilitate easier decision-making than Nice. Two additional elements were introduced to reassure smaller and medium-sized Member States. There is a requirement that a blocking minority should comprise at least four Member States (this prevents three of the biggest four from blocking on their own, which otherwise they could do). There is also a requirement that a majority must comprise at least 15 Member States (though once the Union has 27 members this threshold will be passed automatically under the 55% of Member State threshold).

39. In the relatively few cases where a proposal does not come from the Commission or the Union Minister for Foreign Affairs, in line with the current Treaties the number of Member States which must support it rises to 72%.

40. One further element of the package, which was important to Poland in particular, was the inclusion of arrangements to promote the greatest possible consensus among Member States, notwithstanding the voting rules. Therefore, it was agreed that, if opposition to a given proposal reaches at least three-quarters of the levels needed to block it (under either the population or Member State key), particular efforts are to be made to reach a solution satisfactory to all. This is without prejudice to legal requirements. This arrangement, which will be given effect by a Council decision, will apply at least until 2014, after which it may be repealed by the Council.

EUROPEAN COMMISSION

41. The European Constitution makes changes to the composition of the Commission. It also slightly alters the method of appointment of its President.

42. However, the duties of the Commission, its collegiate nature, and the requirements imposed on individual Commissioners are essentially unchanged. Under the Constitution, it:

i. promotes the general interest of the Union;

ii. oversees the application of Union law;

iii. executes the Union budget, and manages programmes;

iv. proposes legislation;

v. represents the Union externally, other than in the foreign policy area;

vi. initiates annual and multi-annual programming for the Union.

43. The composition of the Commission has been a major issue of debate within the Union since the negotiations on the Amsterdam Treaty (1997). From its creation until 2004, the Commission was composed of two members each from larger Member States (initially France, Germany and Italy, and subsequently also the United Kingdom and Spain) and one from the smaller. As the Union grew, so too did the Commission.

44. Many felt that the Commission was becoming too large and unwieldy, and that it would risk becoming weaker and less cohesive. Other argued that it was important to maintain at least one Commissioner per Member 30-32 above, as a means of ensuring that the Commission was aware of issues in all Member States and would thereby enjoy greater public confidence.

45. After extensive debate in the negotiations on the Nice Treaty, it was provided at Nice that from 2004 the Commission would initially be composed of one national from each Member State. However, before the total of Member States reached 27, agreement was to be reached on a number of Commissioners less than 27, with positions to be filled on the basis of strictly equal rotation between the Member States. As things stand, the Union is now expected to have 27 members in 2007. If the Constitution were not to enter into force before then, this provision of the Treaty of Nice would have to be applied.

46. The issue was again the subject of considerable discussion in the Convention and IGC, with numerous alternatives being proposed. Several smaller Member States, notwithstanding the provisions of the Nice Treaty, continued to argue for the indefinite maintenance of one Commissioner per Member State. Other delegations pressed for a sharp reduction in the size of the Commission. Ireland and some others stressed the importance of maintaining the Nice arrangements for equal rotation.

47. Agreement was eventually reached on maintaining one Commissioner per Member State until 2014 (ie, for the lifetimes of the current Commission and the next one). From then, membership of the Commission will equal two-thirds of the number of Member States, unless the European Council decides unanimously to adjust this number. As under Nice and according to the same rules, there is to be strictly equal rotation among Member States.

48. A Declaration emphasises the need for full transparency in the Commission's dealings with all Member States, and states that the Commission should take the necessary measures, including appropriate organisational arrangements, to ensure that political, social and economic realities in all of them are fully taken into account.

49. The appointment of the President of the European Commission was also widely debated in the Convention; in this respect, however, the Convention's recommendation was accepted by the IGC.

50. Several members of the Convention argued that the Commission President should be elected by the European Parliament alone. Others felt that this would risk excessive politicisation of the post and would not guarantee Member State confidence. Various alternatives were canvassed, including two proposed by Irish members: John Bruton advocated direct election by the public, and Minister Roche suggested an "electoral college" involving both European and national parliamentarians.

51. The provision eventually agreed represents only a slight adjustment of the current arrangements. The President is to be elected by the European Parliament, but on the basis of a single nomination made by the European Council (acting by QMV). The European Council is required to take into account the elections to the European Parliament and to hold appropriate consultations.

52. If a majority of European Parliament members fails to support the nominee, the European Council must within a month send forward a new candidate.

53. Once the Commission President is elected, he or she, with the Council, agrees on nominees for the other Commission posts. As is now the case, the Parliament then votes on the Commission as a body, following which the Commission is formally appointed by the European Council.

54. The responsibilities and powers of the President of the Commission include laying down guidelines within which the Commission is to work, deciding on its internal organisation so as to ensure that it acts consistently, efficiently and as a collegiate body, and appointing Vice-Presidents. The President has the power to oblige a Commissioner to resign.

THE UNION MINISTER FOR FOREIGN AFFAIRS

55. The creation of the post of Minister for Foreign Affairs is one of the Constitution's main institutional innovations. The Convention proposed a so-called double-hatting arrangement, whereby one individual, who would both be a member of the Commission and hold a position in the Council framework, would have a role in all external policy matters, both directly and in a co-ordinating capacity. The IGC made only minor changes to the Convention draft, with a view to making as clear as possible the relationship of the Foreign Minister to both the Commission and the Council.

56. Under the Constitution, the Minister is to be appointed by the European Council, acting by QMV and with the agreement of the President of the Commission.

57. He or she is to conduct the Union's foreign and security policy, as mandated by the Council, to represent the Union in political dialogue with third countries and to express the Union's position in international organisations (detailed aspects of the Minister's role are described in Chapter 13). The Foreign Minister is also to chair the Foreign Affairs configuration of the Council of Ministers.

58. The Minster is also to be a Vice-President of the Commission, with responsibility both for external relations and the co-ordination of external action generally. He or she is bound by Commission collegiality in the exercise of these responsibilities, but not in respect of his or her other duties.

59. The Minister is to be assisted by a European External Action Service, which will comprise officials from the Council Secretariat and the Commission as well as staff seconded from the Member States' national diplomatic services. The External Action Service will be established, following the entry into force of the Constitution, by the Council acting on a proposal from the Minister and with the consent of the Commission. As envisaged by the IGC, preliminary work has begun.

THE COURT OF JUSTICE OF THE EUROPEAN UNION

60. The Constitution makes no major changes to the current Treaty arrangements in regard to the Court, which were in any event revised by the Treaty of Nice. Article I-29 pulls together the key elements of the existing texts on the Court which is now defined to include the Court of Justice, the General Court (formerly the Court of First Instance) and specialised courts. It sets out briefly the role and functions of the Court (to "ensure that in the interpretation and application of the Constitution the law is observed") and prescribes the composition of the Court of Justice (one judge per Member State) and the General Court (at least one judge per Member State).

61. One innovation is the establishment of a seven-person panel to offer opinions on the suitability of candidates for judgeships and advocate-generalships. This was recommended by a Convention "discussion circle".

62. Other changes worth noting include:

i. a shortening of the procedure for imposing fines on Member States not in compliance with Court judgments;

ii. greater provision for the use of QMV by the Council in amending less fundamental aspects of the Court's Statute;

iii. a requirement, based on respect for the right to liberty and for the right to a speedy trial that the Court act with "minimum delay" in giving preliminary rulings at the request of Member States, where an individual is in custody.

63. As regards the jurisdiction of the Court, it is made clear that it continues as a general rule not to have jurisdiction as regards the Common Foreign and Security Policy. However, again in the interest of fundamental rights – the rights to access to a court and to an effective remedy - it has the power to rule on the legality of restrictive measures (sanctions, freezing of assets) taken against natural or legal persons.

64. For similar reasons, the right of individuals to bring legal proceedings before the Court is somewhat expanded. An individual may bring proceedings in relation to legal acts of the Union which do not require implementing acts by the Member States where those acts directly affect that individual.

65. One consequence of the granting of a single legal personality to the Union and of collapsing the "pillars" is that the Court now has full jurisdiction in regard to the Constitution's provisions on freedom, security and justice, though it may not review the proportionality or legality of operations carried out by Member States' police or other law-enforcement services, or the exercise by the Member States of their responsibilities with regard to the maintenance of law and order and safeguarding internal security.

OTHER INSTITUTIONS AND BODIES

66. The Constitution maintains the functions and structure of the **European Central Bank** largely unchanged. Its role, with national central banks of those countries whose currency is the euro, is to conduct the monetary policy of the Union, and its primary objective is to maintain price stability. Its independence, and status as an institution, are underscored.

67. There is no change to the **Court of Auditors,** the function of which is to examine the Union's accounts and to ensure good financial management. It will continue to consist of one national of each Member State.

68. The **European Investment Bank (EIB)** is the European Union's long-term lending institution. The Constitution makes no

change to existing provisions as regards the composition of its Board of Governors and Board of Directors (there will continue to be one member from each Member State).

69. Provision is also made for the continued existence of the Union's two advisory bodies, the **Economic and Social Committee** and the **Committee of the Regions.** The term of office of members of the two committees is extended from four to five years. Members of the Economic and Social Committee are to be "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" – this updates the current formulation. As before, the Committee of the Regions is to consist of representatives of regional and local bodies. The ceiling of 350 members of each body is retained, but, to allow for future flexibility, the number nominated by each Member State is no longer set down but is for future unanimous decision by the Council.

TRANSITIONAL ARRANGEMENTS

70. The Constitution itself provides for different dates of entry into force of the various institutional provisions. Some are due to take effect from the date of ratification of the Constitution (Presidency of the European Council, Foreign Minister, Council Presidency). The new voting arrangements will take effect from 2009, and the limitation of the size of the Commission from 2014.

71. A Protocol addresses various of the other issues involved in the transition to the new Constitution. The allocation of seats in the European Parliament to existing members of the Union will be unchanged during the 2004-9 term; the European Council will adopt a decision on the subsequent composition of the Parliament in good time before the 2009 elections.

72. Until the introduction of the new Council voting system on 1 November 2009, the Nice system will remain in place.

73. The Commission in office when the Constitution enters into force will stay in office until the end of its term. However, on the day of the appointment of the Union Foreign Minister (who will be a member of the Commission), the term of office of the existing Commissioner of the same nationality will expire. Javier Solana of Spain has already been identified by the European Council as the intended Foreign Minister.

74. The terms of office of the existing Secretary-General/High Representative and Deputy Secretary-General will expire on the entry into force of the Constitution.

Approach of Irish Government

The Government's overriding approach was to ensure that the overall institutional balances, and in particular the interests of smaller Member States, were adequately protected. At the same time, it was prepared to consider seriously all proposals aimed at achieving greater effectiveness. As Presidency, it was required to broker compromises on the most contentious issues.

The Government attached particular importance to the maintenance of the principle, agreed at Nice, of absolute equality between the Member States in regard to the rotation of posts of the Commission. This was secured in the negotiations. While the Government representative at the Convention proposed for consideration an arrangement whereby the Commission President would be elected jointly by the European Parliament and national parliaments, the Government was happy with the system eventually agreed, which balances the roles of the Council and the Parliament.

The Government was pleased to be able to help safeguard the position of the smallest Member States in the European Parliament, without significantly affecting the interests of others. It was prepared to accept the creation of the post of President of the European Council, so long as the role was appropriately defined. It welcomed the development of the team Presidency concept in regard to most Council formations. The Government also supported the creation of the post of Union Foreign Minister, as an important step towards greater coherence in the Union's external action. It felt that as defined it struck a reasonable balance between the various dimensions of the post. It would have preferred that the Member States retain responsibility for chairing the Foreign Affairs Council.

On the definition of qualified majority voting, the Government, having analysed the possible impact of different voting systems, was satisfied that Ireland's capacity to safeguard its interests would not be materially affected by a move to a double majority arrangement. It recognised the advantages of the new system in terms of clarity and overall decision-making efficiency.

CHAPTER 8: DECISION-MAKING IN THE UNION

1. One of the objectives set for the Convention in the Laeken Declaration was to recommend ways of simplifying the Union's legal instruments and decision-making procedures. The Constitution includes significant changes in this area.

2. The Constitution also further extends the use of qualified majority voting (QMV), already the most common decision-making method in the Council, to further policy areas. Further extension of the European Parliament's powers in the legislative area is also provided for.

3. The Constitution also makes certain changes to the existing arrangements for "enhanced cooperation", whereby groups of Member States can in certain circumstances be empowered to take forward co-operation within the Union framework.

THE UNION'S LEGAL ACTS

4. The Constitution reduces the number of types of legal instrument from the fifteen contained in the current Treaties to six: **European laws, European framework laws, European regulations, European decisions, recommendations** and **opinions**.

5. In most cases, the Constitution provides a so-called "legal base" setting out which type of legal instrument is required in relation to a given matter; where it does not, the choice of appropriate instrument from among these six is made on a case-by-case basis and in accordance with the principle of proportionality.

6. **European laws** and **European framework laws** are described as "legislative acts" and can be compared to Irish primary legislation.

7. A **European law** (which is similar to the current "regulation") is binding and directly applicable in all Member States.

8. A **European framework law** (like the current "directive") is also legally binding as to the result to be achieved but gives Member States flexibility as to how this is done.

9. While several exceptions are allowed for, the "**ordinary legislative procedure**" as defined in the Constitution involves an equal role for the Council and the Parliament in the adoption of European laws and European framework laws, and requires the Council to operate by qualified majority and the Parliament by a simple majority of those voting. In some cases, however, unanimity applies within

the Council, or a special majority is required in Parliament. On occasion the Parliament's role is only consultative (these issues are further discussed below).

10. The new "double majority" system of qualified majority voting, under which a majority in the Council must normally comprise at least 55% of the Member States, representing 65% of the Union's population, is described in detail in chapter 7, on the Union's Institutions.

11. A **European regulation** is a legally binding, but non-legislative, act implementing a legislative act or a provision of the Constitution (it can be compared to secondary legislation in Ireland).

12. A **European decision** is also legally binding, either generally or, where it is addressed to named groups or individuals, to them only.

13. **Recommendations** and **opinions**, as their names suggest, are non-binding but are provided for in various parts of the Constitution.

14. There is scope for the Council and Parliament to decide, when adopting a legislative act, to delegate to the Commission the power to adopt regulations to supplement or amend non-essential elements of the law. The Council and Parliament may choose to set conditions allowing them to revoke this delegation or prevent the entry into force of a given regulation.

15. The implementation of Union law is primarily a matter for the Member States. However, the Commission, and in certain cases the Council, can also be given this power. The Member States are empowered to put in place arrangements for controlling the Commission's exercise of its implementing powers – these so-called "comitology" rules are in future to be determined not by unanimity but by QMV.

OVERALL BALANCE OF DECISION-MAKING PROCEDURES

16. As described above, the Constitution provides that the "ordinary legislative procedure" involves co-decision between the Council and the Parliament, with QMV in the Council. Previous Treaties, up to and including the Treaty of Nice, have progressively extended QMV and co-decision. However, numerous exceptions remain. Both at the Convention and the IGC, a major theme of debate was the degree to which there should be a further expansion of both QMV and co-decision.

17. There was broad consensus that the extension of both QMV and co-decision was in principle desirable, in particular to facilitate decision-making in an enlarged Union and through the Parliament to increase democratic control over legislation. There was little disagreement about several specific changes which were proposed. However, while, essentially as a matter of principle, some favoured the near-universal application of QMV, numerous individual policy areas continued to be a source of sensitivity for one or more delegations.

18. The Convention, while believing that some decisions should remain subject to unanimity (eg defence matters and most aspects of taxation) nonetheless proposed the further extension of QMV in many areas.

19. In the IGC, it became clear that many of the Convention's recommendations were acceptable, but that nonetheless a final deal would involve rowing back in some areas. Key issues included taxation, the own resources system, judicial co-operation in criminal law, and adoption of the multi-annual financial framework. The outcomes negotiated in each case are described in the chapters on the policies concerned.

20. The extension of co-decision tended to be less controversial but certain changes were also made to the Convention's proposals in this area also.

21. The overall extent of the scope of the shift from unanimity to QMV is difficult to quantify. This is because it is hard to decide how to categorise areas where, for example, some aspects are decided by unanimity but others by QMV, or where special protections apply (as with the "emergency brake" in regard to social security and judicial co-operation in criminal law). Likewise, some decisions are potentially of much greater substance than others which may be narrowly procedural.

22. Annex II lists all of the Articles which either involve some change from unanimity to QMV, or which are new and in regard to which QMV is the standard decision-making method. 51 Articles in total are involved.

23. In qualitative terms, areas experiencing significant shifts from unanimity to QMV include: energy (with the exception of measures primarily of a fiscal nature); intellectual property; possible implementing measures for the own resources system; social security for migrant workers; judicial co-operation in criminal matters; the structure of Eurojust and Europol; urgent financial aid to third countries; and support measures for culture.

24. Major areas subject to unanimity include taxation, defence, the creation of a European Public Prosecutor, most aspects of employment law, anti-discrimination measures, the multi-annual financial framework, and own resources.

25. In the institutional area, some important issues are subject to QMV, following on from Nice in some cases: these include major appointments and – subject to the principle of equality between Member States - arrangements for the Council Presidency. Others, including the future composition of the European Parliament and any change to the number of European Commissioners, are subject to unanimity.

26. Areas in which there has been a significant shift to co-decision between Council and Parliament include: Justice and Home Affairs issues generally; major policy aspects of the Common Agricultural Policy; some aspects of the jurisdiction and operation of the European Union Court of Justice; staff regulations; and implementing decisions in the Common Commercial Policy;

FUTURE CHANGES IN DECISION-MAKING PROCEDURE

27. The Constitution also includes a range of provisions allowing for changes to be made to decision-making procedures. While a limited number of these so-called "passerelles" have previously existed, the possible scope of future such changes is now enhanced.

28. At the Convention, and to a lesser degree at the IGC, there was pressure from some quarters for a simpler system of future change to the Constitution. Ideas included making a clear distinction between a "heavy" amendment procedures applicable to Part I of the Constitution and a "lighter" one applicable to its other Parts. It was also proposed that some changes should be allowable other than by unanimity. While many Member States, including Ireland, successfully opposed the possibility of making any changes other than unanimously, there was also a recognition that some greater degree of flexibility could be potentially useful in future, to cope with changing circumstances.

29. In addition, in the negotiations over whether unanimity or QMV should apply to particular subjects, allowing scope for possible future change was a useful element in forging compromises.

30. In consequence, the Constitution includes both a so-called "**general passerelle**" Article covering changes to decision-making procedures (IV-444) and a "**simplified revision**" Article allowing for limited changes to the internal policy Articles of Part III (IV-445: this is dealt with in Chapter 14).

31. The general passerelle Article enables the European Council to decide to change decision-making procedures in Part III of the Constitution currently requiring unanimity to QMV. This may not apply to decisions under other Parts of the Constitution, or to any decisions with military implications or in the field of defence. The European Council can also decide to change any special legislative procedure in Part III to the ordinary legislative procedure.

32. The European Council must act by unanimity. Moreover, any proposal to use the general passerelle must be notified to all national parliaments at least six months in advance. Any one national parliament can veto its use and the European Council cannot then act.

33. In addition to the general passerelle, specific provisions allowing for possible change from unanimity to QMV are included in regard to the following areas:

- Common Foreign and Security Policy (other than defence-related issues)
- Adoption of the multiannual financial framework
- Social policy (employment law).
- Fiscal measures in regard to the environment
- Judicial co-operation in regard to family law.

34. The social policy and environment "mini-passerelles" are carried forward from the existing Treaties. In each case, the

Council would make the decision by unanimity. No specific role is prescribed for national parliaments.

35. There is also the possibility of changing from unanimity to QMV in areas of enhanced co-operation (see para. 44 below).

ENHANCED CO-OPERATION

36. The European Constitution carries forward, and simplifies somewhat, the provisions for "enhanced co-operation" or flexibility first introduced by the Treaty of Amsterdam and then revised by the Treaty of Nice. However, it is worth noting that, while much attention has been paid to these current Treaty provisions – which essentially lay down the conditions under which a group of Member States less than the whole can be permitted to proceed with a given initiative - they have not to date been used.

37. The Constitution continues to make clear that enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. It must comply with the Constitution and with Union law, must not undermine the internal market or economic, social or territorial cohesion, constitute a barrier to trade or distort competition.

38. Enhanced co-operation may be authorised only as a last resort, when it has established that the Union as a whole is not in a position to agree to move ahead on a given issue within a reasonable period.

39. A minimum of a third of Member States must take part in an enhanced co-operation group. This threshold was the subject of some debate. The current figure under Nice is eight Member States (ie just under a third). Some favoured raising the threshold to one half: others wanted a lower figure (five was proposed at the Convention).

40. In general, authorisation to move to enhanced co-operation must be based on a Commission proposal, following a request by Member States, and requires the Council to act by QMV with the consent of the Parliament.

41. However, Member States wishing to establish co-operation between themselves in the framework of the common foreign and security policy must seek the opinion of both the Foreign Minister and the Commission. In the CFSP area, authorisation to proceed with enhanced co-operation requires unanimity in the Council. Unlike in the Treaty of Nice, there is no prohibition on the use of enhanced co-operation in defence matters. However, as the Constitution already allows for a range of specific arrangements in this area, it is not clear how and whether the general enhanced co-operation provisions might be used.

42. The Constitution makes clear that as a general principle enhanced co-operation shall be open to all Member States at any time. Arrangements similar to those already contained in the current Treaties govern the admission of a Member State to an existing enhanced co-operation group. While there is a clear presumption

that the participation of a new member will be confirmed by the existing group members, acting by QMV, there is provision for the setting of conditions (for instance, the adoption by a new member of relevant measures already put in place by the group).

43. Unless there is a unanimous Council decision to the contrary in a given case, expenditure on enhanced co-operation, other than in relation to normal administrative expenditure, is for the participating Member States to bear.

44. As a rule, decision-making within enhanced co-operation groups follows the arrangements applicable to that policy area generally. Thus matters which are decided by unanimity in the full Council are also to be decided by unanimity within the enhanced co-operation group. However, the IGC agreed to provide for a so-called "mini-passerelle" within enhanced co-operation, similar to the general passerelle provision (see paras 30-32 above), whereby the group can unanimously decide to move to QMV or to adopt the ordinary legislative procedure. This has no implications for the general rules on decision-making. It cannot apply to matters with military or defence implications.

Approach of Irish Government

The Government strongly supported the simplification of the Union's legal instruments and decision-making procedures. As a general rule, it favoured the extension of qualified majority voting, and of co-decision between the Council and the European parliament. However, it continued to argue strongly that in a number of particularly sensitive and important matters, including defence and taxation, unanimity remained the appropriate decision-making procedure. It was therefore pleased with the final decision of the IGC in this regard. In regard to criminal law co-operation, it was concerned that the introduction of QMV could lead to the adoption of measures which would fail to take proper account of specific features of our national legal system. The "emergency brake" safeguard agreed by the IGC (see Chapter 12) met these concerns.

The Government was prepared to accept the inclusion of a general passerelle arrangement, as part of an overall agreement, subject to a number of important conditions, including the exclusion of foreign policy and defence matters from its scope, and the requirement of unanimity at European Council level before the passerelle is employed. The Government also welcomed the capacity of any national parliament to block agreement.

The Government was also prepared to agree to a certain relaxation of the conditions for the establishment of enhanced co-operation, provided that the essential safeguards provided for in previous Treaties were maintained.

CHAPTER 9: THE DEMOCRATIC LIFE OF THE UNION

1. An important objective of the drafters of the Constitution was to improve and highlight the ways in which European citizens can, individually and collectively, influence the work of the Union's institutions. One section of the Constitution accordingly deals with the relationship of citizens to the institutions. It sets out a number of general principles, imposes a number of obligations on the Union, and provides assurances and safeguards.

2. Many of these elements of the Constitution are derived from existing Treaty provisions. It makes them more visible by grouping them together in one place. In addition, of course, EU citizens enjoy the fundamental rights described in Chapter 4.

3. The principle of **democratic equality** obliges the Union to observe, in all its activities, the principle of the equality of its citizens, who are to receive equal attention from its institutions, bodies, offices and agencies.

4. The functioning of the Union is founded on **representative democracy**. It is recalled that citizens are directly represented at Union level in the European Parliament. In addition, it is recognised that governments participating in the European Council and Council are themselves democratically accountable, either through parliaments or directly to citizens (in the case of directly-elected Presidents).

5. It is stated that every citizen has the right to participate in the democratic life of the Union, and that decisions should be taken as openly and closely as possible to the citizen. Arrangements for the monitoring and enforcement of the principle of subsidiarity are explained in Chapter 6.

6. There is a recognition that **political parties at European level** contribute to forming European political awareness and to expressing the will of citizens. The Constitution allows for the regulation of their funding.

7. There is an obligation on the institutions to give citizens and representative organisations the opportunity to make known and to exchange their views. There is also a requirement that the institutions maintain an **open, transparent and regular dialogue with representative associations and civil society**. The Commission, in particular, has in recent years developed wide-ranging consultation procedures, and there is an obligation on it to continue to do so.

SOCIAL PARTNERS

8. Specific reference is made to the role of the social partners, and to the need to facilitate dialogue with and between them. The diversity of national systems and the need to respect the autonomy of the social partners is recognised. There is an explicit recognition – inserted by the IGC – of the annual tripartite social summit for growth and employment, which brings together the Union, trade unions and employers and is held on the eve of the Spring European Council.

RELATIONS WITH CHURCHES

9. Another Article, based on a Declaration to the Treaty of Amsterdam, deals with the status of churches and non-confessional organisations. The Union respects and does not prejudice the status under national law of churches and religious organisations or communities, or, equally, the status under national law of philosophical and non-confessional organisations.

10. In a new departure, the Union, recognising the identity and specific contribution of these churches and organisations, is to maintain an open, transparent and regular dialogue with them.

CITIZENS' PETITION

11. Another innovation is the provision for a citizens' petition. Not fewer than one million citizens, coming from a significant number of different Member States, may invite the Commission to bring forward a proposal in any area covered by the Constitution.

12. Procedures to manage the operation of this arrangement will be set down in a law, which must inter alia specify the minimum number of countries from which the citizens concerned have to come. While it is too early to say how extensively or effectively this provision will be used, and while the Commission is not obliged to respond, it has the potential to become quite significant.

EUROPEAN OMBUDSMAN

13. The office of European Ombudsman is maintained. Elected by the European Parliament, and completely independent, the Ombudsman is to receive, examine and report on complaints of maladministration in the activities of the Union's institutions, bodies, office or agencies. There is already co-operation between the European Ombudsman and national Ombudsmen.

TRANSPARENCY, FREEDOM OF INFORMATION AND DATA PROTECTION

14. The general principle of transparency is emphasised, and it is recalled that the European Parliament meets in public, as must the Council when it is considering and voting on draft legislation.

15. The right of access to documents – freedom of information – is stated, subject to detailed arrangements to be laid down by law. Likewise, the right to the protection of personal data processed by Union institutions or by the Member States carrying out activities within the scope of Union law is confirmed, again with arrangements for the making of detailed rules. A Declaration notes that in making such rules due account has to be taken of the requirements of national security.

Approach of Irish Government

The Government supported the consolidation and highlighting of the ways in which EU citizens can interact with the institutions. It particularly welcomed the emphasis on dialogue with the social partners and with the churches, and looks forward to further elaboration of how the citizens' petition procedure will operate in practice.

CHAPTER 10: THE UNION'S FINANCES

1. Part I of the Constitution includes the principles on which the Union's financial arrangements are based, while Part III sets out the more detailed procedures which give them effect. The essential elements of the existing system of Union finances are not changed, but there are some relatively significant innovations. For the first time, multiannual financial planning is given a Treaty basis. This gives a constitutional basis to the existing practice (as agreed between the Commission, Council and Parliament) of planning EU expenditure for several years ahead. This approach enhances budgetary discipline and allows for the development of EU expenditure in an orderly way. The annual budgetary procedure, whereby the Union's annual expenditure is determined, has also been significantly simplified.

2. The financial aspects of the Constitution did not have a high public profile. Nonetheless, the Member States, the Commission and the Parliament all appreciated their significance and some elements were intensely debated.

BASIC PRINCIPLES

3. The Constitution sets out basic principles of sound financial planning and management:

   - All revenue and expenditure items to be included in annual estimates and the annual budget;
   - All actions involving expenditure to require a legal basis;
   - No agreement on new measures with significant budgetary implications unless funding is available within the limit of the Union's own resources and is in compliance with the multiannual financial framework;
   - The Union and the Member States to combat fraud and other illegal activities affecting the Union's interests.

OWN RESOURCES

4. The Constitution provides that the Union shall provide itself with the means necessary to achieve its objectives and carry through its policies. Its budget is to be financed wholly from its own resources, ie revenues that the Union receives to finance its operations.

5. The own resources system is to be defined by a European law of the Council, which can also establish new categories of own resources or abolish an existing category. The financing of EU expenditure must be decided by unanimity by Member States The European Parliament must be consulted but the decision is the preserve of Member States alone. The current categories of own resources are customs duties; a VAT-based revenue; and contributions from Member States based on their Gross National Income.

6. There was considerable debate in the IGC about whether the Own Resources law should in future be adopted by QMV or should continue to require unanimity. The Convention had recommended the former. However, a number of Member States, including the UK which benefits from special rebate arrangements, were opposed. In the end, unanimity was maintained for the basic Own Resources law. However, the Constitution allows scope for implementing measures to be determined by QMV insofar as this is agreed unanimously by all Member States.

MULTIANNUAL FINANCIAL FRAMEWORK

7. Since the late 1980s, the Union has operated on the basis of a multiannual financial framework, (currently called the "financial perspectives"), which sets out the broad allocation of funding over a period of some years and within which the annual budget is framed. This has allowed for long-term planning of agricultural and structural fund expenditure, for example. (Negotiations are currently under way on the financial perspectives for the period 2007-13).

8. However, up to now the financial perspectives have not been provided for in the Treaties. They have been the subject of political agreement fleshed out in "inter-institutional agreements". The financial perspectives (to be called the multiannual financial framework) will now be encompassed by the Constitution.

9. The multiannual financial framework will, accordingly, ensure that "Union expenditure develops in an orderly manner and within the limits of its own resources." It will set out annual ceilings for each category of expenditure.

10. The Convention recommended that the framework be adopted by QMV. This was strongly opposed by some Governments at the IGC – chiefly the Netherlands – and it was agreed to make it subject to unanimity, with the consent of the European Parliament.

11. However, provision is also made for the European Council to decide by unanimity at some future point that QMV should apply. In a Declaration, the Netherlands said that it would agree to such a shift provided that the current own resources law has been modified in such a way as to resolve "its excessive negative payment position vis-a-vis the Union budget." (The Netherlands is currently per capita the largest net contributor to the budget).

ANNUAL BUDGET

12. Subject to the overall parameters set down by the multiannual financial framework, the annual budget will determine the details of the Union's expenditure policies. The European Parliament's role in the budgetary process - acting jointly with the Council - is one of its most significant powers, acting jointly with the Council in the negotiation and adoption of the budget.

13. The current procedures for establishing the budget are complex and lengthy. The Convention recommended the abolition of the current distinction between "compulsory" and "non-compulsory" expenditure and a more streamlined and simpler budgetary process. At the moment, the final decision on compulsory expenditure (essentially expenditure that is deemed obligatory under the Treaty, the vast bulk of which is CAP spending), effectively lies with the Council. Parliament, on the other hand, effectively has the final say with regard to non-compulsory expenditure. The Convention also proposed a simplified single procedure covering all types of expenditure, though making it clear that legal obligations to third parties must be respected.

14. While the abolition of the distinction between compulsory and non-compulsory expenditure was not contested in the IGC, several Member States felt that the proposed new procedure represented an excessive shift in the institutional balance towards the Parliament and away from the Council. At the same time, the Parliament made clear that it attached great importance to the issue.

15. Eventually, a compromise approach was agreed. The draft budget will, as is currently the practice, be proposed by the Commission. Both the Council and the Parliament may propose amendments to it. Where there are differences between the two institutions, their representatives are to meet in a joint Conciliation Committee to seek an agreed approach within a given period. That agreed approach is in turn to be approved by the full Council and the Parliament. When no compromise is possible, or if the agreed approach is subsequently rejected by both institutions or by the Parliament alone, the Commission is to bring forward a new draft. If no budget has been agreed by the start of a financial year, up to one twelfth of the previous year's budget may be spent each month until a new budget is agreed.

Approach of Irish Government

The Government was supportive of the general approach taken by the Convention, in particular the inclusion of specific reference to the multiannual financial framework and the simplification of the budgetary procedure. It was prepared to accept the abolition of the distinction between obligatory and non-obligatory expenditure, so long as payments to third parties (including in the CAP context) remained legally protected. However, it felt that the budgetary procedure recommended by the Convention did not fully retain the overall institutional balance between Council and Parliament, and accordingly welcomed the revisions made by the IGC. The Government strongly favoured the continuation of unanimity in regard to Own Resources, and was pleased with the outcome secured in this respect. The Government's position was that, since own resources could potentially take the form of tax-like revenues, retaining unanimity was essential and consistent with Ireland's position on decision-making on taxation in the EU. It would have been happy to see the multi annual financial framework determined by QMV.

CHAPTER 11: THE UNION'S INTERNAL POLICIES

1. Over one third of the European Constitution's Articles relate to the Union's internal policies – those concerned with economic, social and other issues within the Union. These Articles are found in Part III and set out the detail of how the competences listed in Part I (see chapter 5) are defined and exercised.

2. However, with some exceptions, most internal policies were not subject to detailed debate at the European Convention or in the IGC. Many of the relevant Articles carry forward current Treaty provisions, subject to minor wording changes. In several other instances, the changes made are not of enormous significance.

3. The most substantial changes relate to the area of Freedom, Security and Justice and are dealt with in Chapter 12.

4. There are seven internal policy areas in relation to which specific new Articles or new references within existing Articles have been included for the first time, though the current Treaties have allowed for some activity in this regard. They are: intellectual property rights; space policy (added to the provisions on research and technological development); energy; tourism; sport (included in the Article on education, youth and vocational training); civil protection; and administrative co-operation. There is also a new provision for European laws in regard to services of general interest.

5. As outlined in Chapter 8, in several internal policy Articles there have been changes in regard to the decision-making procedure involved. In most instances these changes involve a move from unanimity to qualified majority voting within the Council, and/or a fuller role for the European Parliament.

HORIZONTAL PROVISIONS

6. At the start of Part III of the Constitution, a number of Articles set out general objectives or considerations which are to be reflected in the specific policies set out subsequently. These include:

   - the elimination of inequality, and the promotion of equality, between women and men;

   - combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

- environmental protection requirements and the goal of sustainable development;

- the requirements of animal welfare.

7. The IGC decided to add a requirement on the Union to take into account social policy objectives, as follows:

> **Article III-117: Social Clause**
>
> In defining and implementing the policies and actions referred to in this Part, 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.

SERVICES OF GENERAL INTEREST

8. An article deals in general terms with services of general economic interest (those which actually or potentially concern all citizens, such as communications, transport, power etc). As in the existing Treaty, an obligation is placed on the Member States and the Union within their respective competences to take care that such services operate on the basis of principles and conditions (in particular economic and financial conditions) which enable them to fulfil their mission. However, for the first time it is provided that European laws shall define these principles and conditions, without prejudice to the competence of the Member States to provide, commission and fund such services.

INTERNAL MARKET

9. This very substantial chapter, which covers the free movement of persons, services, goods, and capital, and competition and state aids, is largely unchanged. However, there are some innovations:

- future decision-making in relation to the **social security arrangements** necessary to allow for the free movement of workers is to be by QMV, not unanimity. However, where a Member State considers that a proposed measure "would affect fundamental aspects of its social security system, including its scope, cost or financial structure" it may request that the matter be referred to the European Council, which operates by consensus (the so-called "emergency brake") (Article III-136);

- Decisions on measures making it easier to take up and pursue activities **as a self-employed person** move entirely to QMV (Article III-141);

- While as a rule the free movement of capital is safeguarded, with a view to combating terrorism, the Union is given the capacity to **freeze the assets of individuals, organisations, and non-state entities**, subject to legal safeguards (Article III-160).

- For the first time there is an Article making specific provision for the establishment of uniform **intellectual property rights** protection (Article III-176).

10. The questions of whether the Union's competence in the area of **taxation** should be increased, and whether decisions in this area should continue to be solely by unanimity, were actively debated in a Convention working group, in the full Convention and at the IGC. The Convention proposed some changes, which nevertheless fell well short of what many of its Members, and some Member States, would have supported. Conversely, a number of Member States, including Ireland, argued strongly that no change to the existing Treaty provisions was warranted.

11. The IGC eventually decided to maintain the current Treaty Articles unchanged, thereby maintaining unanimous decision-making in relation to indirect taxation and removing a proposed provision in relation to corporation tax.

ECONOMIC AND MONETARY POLICY

12. The existing Treaty provisions on economic and monetary policy remain largely intact.

13. The Convention made some proposals to enhance the Commission's role in monitoring the economic policies of the Member States. In the closing stages of the IGC, some of these proposed changes were reversed.

14. The Commission may now issue a warning directly to a Member State where it believes that its economic policies are not compatible with the agreed Broad Economic Policy Guidelines (Article III-179.4). Recommendations in such a case remain a matter for the Council to decide, though now the Member State concerned may not participate in the vote.

15. The economic policy objectives and obligations regarding debt levels and spending deficits originally set out in the Maastricht Treaty are unchanged. The question of whether an excessive deficit exists is now for the Council to decide on the basis of a Commission proposal, but subsequent recommendations to the Member State concerned are still based on a recommendation by the Commission (which is more easily altered by the Council than is a Commission proposal - this was one of the changes agreed to the Convention text by the IGC).

16. During the IGC, it was acknowledged that further debate was needed on the detail of the Stability and Growth Pact, which is not contained in the Constitution itself. A Declaration, representing a compromise between those Member States most attached to the strict enforcement of the Pact and those favoring a degree of flexibility, looked forward to future debate on the Pact. It was agreed that "Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is gradually to 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."

(Agreement on the reform of the Stability and Growth Pact was reached at the European Council on 22/23 March 2005).

17. In the institutional area, the existence of the hitherto informal "Eurogroup" of Member States which have adopted the Euro as their currency is provided for.

18. It is provided that the Eurogroup shall adopt common positions on relevant issues arising in international financial institutions and may also adopt appropriate measures to ensure unified representation. It is also provided that the Eurogroup elect from among its members a permanent chair for a two-and-a-half year term (the current Eurogroup, which being informal is not required to await the entry into force of the Constitution, has already selected as its first permanent chair Jean-Claude Juncker, the Prime Minister and Finance Minister of Luxembourg).

19. There was debate at the IGC on whether the admission of new Member States to the Eurogroup should be decided by the full Council or the Eurogroup. In a compromise, it was agreed that the Council should take the decision, having received the recommendation of a qualified majority of Eurogroup members.

ECONOMIC, SOCIAL AND TERRITORIAL COHESION

20. The precise wording of Article III-220, which sets out the objectives of cohesion policy, was the subject of much debate in the IGC. Member States with regions suffering from particular disadvantages were eager to see specific references to these kinds of disadvantage; there was a desire on the part of others not to pre-judge the allocation of structural funding, or to compromise the principle that the most disadvantaged should benefit most, irrespective of the cause of their disadvantage.

21. It was agreed that, in strengthening 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 areas which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density, and island, cross-border and mountain regions."

AGRICULTURE AND FISHERIES

22. The limited changes made in regard to agriculture and fisheries do not appear likely to have significant implications for the Common Agricultural Policy or the Common Fisheries Policy.

23. Compared to the current Treaties, there is a specific reference to fisheries policy in the title of the relevant section and in its substance.

24. In relation to agriculture, the main change is that the European Parliament has gained a greater role as co-legislator with the Council in making the basic laws or framework laws establishing the common organisation of the market. The Council alone remains responsible for making regulations or decisions on fixing prices, levies, aid and quantitative restrictions. It is also responsible, as now, for the fixing and allocation of fishing opportunities. Where the exact dividing line lies between the legislation in which the Parliament is involved and the measures for which the Council continues as sole legislator remains to be seen.

25. As described in chapter 10, on the Union's finances, the abolition of the distinction in the annual budget between "compulsory" and "non-compulsory" expenditure" will have the effect of subjecting the allocation of annual funding to agriculture to the same procedures as other categories of expenditure. This change to the budget procedure, including as regards CAP funding, will be subject to the overall requirement that the Union honour obligations to third parties, including farmers.

RESEARCH AND DEVELOPMENT & SPACE POLICY

26. In addition to continuing provision for EU-funded framework research programmes, the Union now has the capacity to enact other legislation deemed necessary, within its competence and in conjunction with the Member States, to promote European research and development (in a so-called "European research area). The IGC agreed a Declaration stating that the Union's action will play due respect to the fundamental orientations and choices of the research policies of the Member States.

27. The Convention proposed (largely at the behest of President Giscard) and the IGC agreed an Article creating a legal basis which would allow, if the Council and Parliament so legislate, for a European space policy (Article III-254).

ENERGY

28. For the first time, a specific Article on energy is included, though the Union has previously been involved in this area in pursuit of its general economic objectives.

29. Energy policy will aim to ensure the functioning of the energy market, ensure security of supply, and promote energy efficiency and energy saving and the development of new and renewable forms of energy.

30. Union legislation 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. The IGC also made a declaration indicating its belief that the new Article does not affect the right of the Member States to take the necessary measures to ensure their energy supply.

31. While in general legislation, in the energy field is to be adopted by QMV in the Council, an exception is made for measures primarily of a fiscal nature, which remain subject to unanimity, like all other tax measures.

PUBLIC HEALTH

32. With a small number of exceptions, public health remains an area where the Union can act only to support the work of the Member States, and cannot legislate to harmonise national laws. At the IGC, there was some debate between those who wanted to increase the Union's powers in certain areas, and those who wished to copperfasten the primary role of the Member States. In Ireland's view, the eventual outcome managed to achieve both objectives.

33. Article III-278 requires the Union to respect the responsibilities of the Member States for the definition of their health policy and for the organisation, management and delivery of health services and medical care, and the allocation of resources.

34. However, the European Constitution provides for a greater role for the Union in monitoring and combating serious cross-border threats to health (eg communicable diseases such as SARS). The Union is also given the power to adopt measures setting high standards of quality and safety for medical products and devices for medical use.

35. In terms of health promotion through incentive measures, specific reference is now included to measures "which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol."

TOURISM

36. A new Article (III-281) requires the Union to complement Member State action in the tourism sector, in particular by promoting competitiveness.

SPORT

37. There has been inserted in the Articles dealing with education, youth and vocational training (III-282/283) a commitment that the Union to "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."

38. The Union is to promote "fairness and openness in sporting competitions and cooperation between bodies responsible for sports" and to "protect the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen".

CIVIL PROTECTION

39. A new Article (III-284) concerns cooperation between the Member States in order to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters. This is primarily aimed at civil protection work within the Union, but the promotion of international co-operation is also an objective.

ADMINISTRATIVE CO-OPERATION

40. Another new Article (III-285), inspired by the experience of successive enlargements, aims to support co-operation between Member States' administrations in order to improve their capacity to implement Union law. Such co-operation, which is to be voluntary, can include the exchange of information, the secondment of officials, and supporting training schemes.

OTHER AREAS

41. No significant changes are made in relation to the Union's competences in the following policy areas:

- Employment
- Social policy
- Environment
- Consumer policy
- Transport
- Trans-European networks
- Industry
- Culture
- Education, youth, and vocational training.

Approach of Irish Government

The Government believed that the Convention and IGC were correct not to engage in a root-and-branch overhaul of all internal policy aspects of the Treaties, but rather to concentrate on key issues. The Government was pleased that the essentials of provisions relating to the internal market, Economic and Monetary Union and the Common Agricultural Policy remain unchanged. It also worked intensively with like-minded partners to ensure that all taxation decisions remain subject to unanimity. The Government pressed strongly for the inclusion of the new Social Clause (Article III -117) which obliges the Union to take account of social objectives, including the guarantee of adequate social protection, and the fight against social exclusion, in all policy areas. The Government particularly welcomed the changes made in relation to a number of issues, including energy, public health, and sport.

CHAPTER 12: AREA OF FREEDOM, SECURITY AND JUSTICE

1. While the Constitution does not make major changes to most of the Union's internal policies, it substantially amends current provisions in the area of freedom, security and justice. This covers visa, asylum and immigration policy; cooperation in civil law; judicial co-operation in criminal law; and police cooperation.

2. At the Convention, there was a general view that this area needed to be thoroughly examined. A Working Group was established, chaired by John Bruton, the former Taoiseach. It pointed out that asylum and immigration issues, organised crime and international terrorism are all, in their different ways, highly important and sensitive. Each has a clear cross-border dimension.

3. These matters are all dealt with in the current Treaties and action on them has been a major Union priority over the past number of years, with the adoption of ambitious multi-annual work programmes by the European Council in 1999 and 2004.

4. However, the Working Group felt that the current Treaty arrangements are complex, confusing and often ineffective. It was especially critical of the distinction between "first pillar" issues – visas, asylum and immigration - which are handled in ways broadly similar to other internal policies, and the "third pillar" issues of criminal law and police co-operation to which special procedures apply, and argued for a more uniform approach.

5. The Working Group also felt that there was a need to clarify the potential scope of Union action, above all in the criminal law area, and to distinguish more clearly between legislative and operational responsibilities.

6. It also supported greater judicial oversight by the European Court of Justice and a more extensive role for the European Parliament. At the same time, it argued that national parliaments should continue to play a greater role in this area than in regard to other internal policies of the Union. These elements are reflected in the Constitution.

7. There was general agreement in the Convention and the IGC, on the need for the Union to play a clearer and more effective role in these important policy areas. The main line of dispute was between those who supported a more extensive increase in the Union's powers, and the application of qualified majority voting to almost all areas, and those who highlighted the national sensitivity of certain issues, and the need for a greater degree of caution. Ireland, together with the UK, Cyprus and Malta, highlighted the particular issues raised in the criminal law area by the differences between the common law and the civil law traditions.

GENERAL PROVISIONS

8. The overall objectives of the Union in the area of freedom, security and justice are as follows:

Article III-257: The Union's Role in Freedom, Security and Justice

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 Chapter, 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.

9. The European Council is to define strategic guidelines for legislative and operational planning in this area: this is in line with current practice.

10. The particular role of national parliaments in ensuring that measures in the criminal law and police co-operation area comply with the principle of subsidiarity is recalled (as set out in Chapter 6, the support of only a quarter of national parliaments, as opposed to a third generally, is required to invoke the so-called yellow card and oblige the Commission to reconsider a proposal).

11. Another distinctive institutional feature of the criminal law and police co-operation areas is that legislative proposals may be made not only by the Commission, as is the general rule, but also on the initiative of at least a quarter of Member States (currently in this area one state alone may make a proposal – the view has been that this can lead to an overcrowded agenda).

12. There is provision for peer review of the effectiveness of the implementation of Union policies by the Member States. Administrative co-operation between Member States is also envisaged.

13. A new standing committee to promote and strengthen operational co-operation in internal security matters is provided for. However, the responsibilities of the Member States in the maintenance of law and order and internal security are unaffected by the Constitution.

BORDER CHECKS, ASYLUM AND IMMIGRATION

14. The Constitution's provisions in these areas are aimed more at consolidating and clarifying current arrangements than at introducing major change.

15. In keeping with existing arrangements, a Protocol provides that Ireland and the UK are not required to take part in measures in this area, but have the right, which we often exercise, to opt in on a case by case basis subject to certain conditions. These arrangements reflect a decision on the part of the UK to maintain border controls on the movement of persons from other EU Member States and the need for us to take corresponding measures if we are to maintain the common travel area.

16. In regard to border checks, the Union's policy requires the absence of any controls and aims to ensure that proper checks are carried out at the Union's external frontiers, and that an integrated external border management system is developed.

17. This policy is to be carried forward by European laws or framework laws covering such matters as visa policy, the conditions under which third country nations may travel within the Union, and the nature of checks at external borders.

18. The Union is also to develop a common policy on asylum and other protection related issues, which must be in accordance with the 1951 Geneva Convention on refugees. Thus far, minimum standards have been agreed in this area and the Constitution goal is to achieve common standards across the Union. Legislation is to cover such issues as common procedures for granting and withdrawing asylum /subsidiary protection status; the determination of which Member State is responsible for considering an asylum /subsidiary protection application; standards concerning reception conditions for applicants for asylum / subsidiary protection; and partnership and cooperation with third countries for managing inflows.

19. As regards immigration, policy is aimed at the efficient management of flows, fair treatment of legal third country residents, and combating illegal immigration and people-trafficking. Measures can include entry and residence requirements, and common standards for issuing long-term visas and residence permits and arrangements for freedom of movement between the Member States.

20. The Union is also empowered to conclude readmission agreements with third countries allowing for the repatriation of those no longer meeting the criteria foe entry or residence.

21. Incentive measures to promote the integration of legal immigrants may be created by the Union.

22. However, while the Union aims at a common immigration policy, the right of Member States to determine volumes of admission to their territory of immigrants coming to seek work is re-stated.

23. In the areas of border checks, asylum and immigration the need for solidarity between the Member States and for responsibility-sharing, including as regards financial burdens, is recognised. For example, given their locations many of the new Member States will have particularly onerous responsibilities in regard to checks at the Union's eastern borders.

24. Laws and framework laws in these areas are all to be adopted by the ordinary legislative procedure (QMV in the Council and co-decision with the European Parliament).

CIVIL LAW

25. The Constitution also deals with judicial co-operation in civil matters with cross-border implications. A requirement that these matters be necessary for the proper functioning of the internal market has been changed to a requirement that measures are to be adopted particularly when necessary for such functioning. This may have the effect of widening the scope of the Article somewhat.

26. As with the areas of border checks, asylum and immigration the UK and Ireland have a general opt-out from this section of the Constitution, but can choose to opt in to individual measures.

27. In the context of facilitating access to justice, the essential principle laid down is the mutual recognition and enforcement of judgments and decisions made primarily, but not exclusively, within each of the Member States' court systems.

28. European laws or framework laws can establish measures to support the implementation of this principle, covering matters such as the cross-border service of documents, arrangements for taking evidence, common rules as regards the conflict of laws and of jurisdiction, compatible rules of procedure, and support for the training of the judiciary and judicial staff. This largely accords with the present position.

29. Following current practice, decision-making is normally by the ordinary legislative procedure (QMV in the Council and co-decision with the Parliament). However, family law matters with cross-border implications are to be decided unanimously in the Council following consultation of the Parliament. There is also scope for the Council to agree, unanimously, that certain aspects of family law can in future be subject to the ordinary legislative procedure.

CRIMINAL LAW

30. As indicated earlier, the section of the Constitution dealing with judicial co-operation in criminal matters was the

subject of particularly intensive debate within both the Convention and the IGC. While recognising that considerable work has already been done in this area, all supported improved co-operation, and a clearer statement of the Union's objectives and powers. The issue was how far moves to further integration needed to be balanced with particular safeguards to protect the distinctiveness of national arrangements and legal traditions.

31. Judicial co-operation in criminal matters is to be based on the principle of mutual recognition of judgements and judicial decisions. The aim is to deal with cross-border crime, not purely national offences. It is not intended to introduce a common European criminal law or criminal judicial system.

32. To the extent necessary to facilitate such mutual recognition, and police and judicial co-operation in criminal matters with a cross-border dimension, European framework laws may establish minimum rules. The differences between the legal traditions and systems of the Member States must be taken into account in such rules (this assurance was proposed by Ireland). The general view was that different judicial systems could only have mutual confidence in one another if they could be sure that certain standards were being met.

33. Minimum rules may concern: the mutual admissibility of evidence between the Member States; the rights of individuals in criminal procedure; and victims' rights. Any other specific aspects of criminal procedure may be added to the list by the Council, acting unanimously with the consent of the European Parliament.

34. It is stipulated (again, at the suggestion of Ireland) that the adoption of minimum rules across the Union does not prevent Member States from maintaining or introducing a higher level of protection for individuals. It should also be recalled that the human rights protections in the European Convention on Human Rights and the Charter of Fundamental Rights will apply.

35. The Convention recommended that framework laws be adopted by the ordinary legislative procedure. This would involve a change from current arrangements in this area, whereby legislation is adopted by unanimity, following consultation with the European Parliament.

36. This was largely accepted by the IGC, but following negotiation it was also agreed that particular arrangements should still apply in certain cases. Hence:

- framework laws are normally to be adopted by the ordinary legislative procedure;
- however, where a Member State considers that a draft law would affect fundamental aspects of its criminal justice system, it may request that the law be referred to the European Council (**this is the so-called "emergency brake**")
- the European Council shall, within four months, either send the draft back to the Council for further consideration and decision in the usual way, or ask that a new draft be prepared;

- if the European Council fails to act (as it decides by unanimity this is a possible scenario), or if within a year no framework law has been adopted on the basis of a new draft, and at least one third of the Member States wish to proceed, then they may move to enhanced co-operation in the area covered by the proposed framework law by notifying the European Parliament, the Council and the Commission accordingly (See Chapter 8, for more on enhanced cooperation.)

37. Under this compromise, a Member State having a fundamental difficulty with a proposal can avoid being bound by it, but those wishing to move ahead may do so.

38. The same decision-making procedure applies to co-operation in regard to substantive criminal law as to criminal procedure.

39. European framework laws may establish minimum rules regarding the definition of criminal offences and penalties in areas of particularly serious crime with a cross-border dimension. Action of this nature is also provided for in the current Treaties.

40. The areas of crime concerned are terrorism; trafficking in human beings and the exploitation of women and children; illicit drug trafficking; illicit arms trafficking; money laundering; corruption; counterfeiting of means of payment; computer crime and organised crime.

41. Other areas of crime may be added by unanimous decision of the Council after obtaining the consent of the European Parliament.

42. Minimum rules can also be adopted regarding the definition of criminal offences and sanctions where an approximation of criminal laws and regulations proves essential for the effective implementation of Union policy in an area where harmonisation measures have been taken.

43. The Union can also adopt measures to promote and support crime prevention by the Member States.

44. The Constitution makes continuing provision for Eurojust, an existing body which supports and strengthens cooperation and coordination between national prosecuting authorities in the Member States in relation to serious cross-border crime. Future European laws governing Eurojust are to be agreed by the ordinary legislative procedure. At the IGC, there was discussion of precisely how to define Eurojust's remit, in particular whether it should be competent to initiate prosecutions. It was agreed in this context that its tasks could include the initiation of criminal investigations and proposing the initiation of prosecutions to be conducted by national authorities.

45. The European Parliament and national parliaments are to be involved in evaluating Eurojust's activities.

46. A major issue in the Convention and IGC was whether the Constitution should establish a single European Public Prosecutor (EPP), with the right to conduct prosecutions in national courts in regard to (a) offences against the Union's financial interests and (b) serious cross-border crime generally.

47. Opinion was sharply divided on the necessity of creating such a post. Ireland was one of several Member States to argue that the post was unnecessary and would cut across effective existing arrangements.

48. The compromise reached was to allow the Council, if it unanimously decided to do so, to establish the EPP at some future point, acting with the consent of the European Parliament. The scope of the EPP would initially be confined to offences against the Union's financial interests. By a further unanimous decision the European Council could extend its powers to serious cross-border crime.

POLICE CO-OPERATION

49. The Union will continue to promote co-operation between national police and other law enforcement services. Any laws concerning co-operation in operational matters will require unanimity, after consultation with the European Parliament.

50. Europol, which supports such cooperation, is also provided for. European laws shall determine its structure, operation, field of action and tasks. It is to be scrutinised by the European Parliament and national parliaments.

51. Europol can only take operational action in liaison and in agreement with the authorities of the Member State whose territory is concerned. Any use of coercive measures is exclusively for national authorities.

Approach of Irish Government

The Government saw the area of Freedom, Security and Justice as being one of the relatively few policy areas where substantial revision of the current Treaties was desirable, in view of the rapidly increasing significance for the Union and its citizens of the issues involved. It supported the further extension of qualified majority voting and co-decision in the areas of border checks, asylum and immigration, while also ensuring that the Protocols allowing the UK and Ireland to opt-out of these areas were maintained. Ireland was one of a number of Member States which successfully argued that measures in the family law area should remain subject to unanimity.

In the field of judicial co-operation on criminal law, the Government was anxious both to promote more effective Union action against crime, and to ensure that the particular characteristics of our criminal law system were not inadvertently threatened. The compromise reached – the clarification of the scope of Union competence in this area, and the normal application of QMV decision-making subject to an emergency brake procedure where fundamental aspects of a Member State's criminal justice system are involved – was acceptable. Ireland was one of several Member States to oppose the creation of a European Public Prosecutor but could accept the compromise proposal that the possibility of the future creation of this post, subject to unanimity, be left open.

CHAPTER 13: THE UNION'S EXTERNAL ACTION

1. In recent years, the European Union's engagement with the wider world has grown in response to the opportunities and challenges posed by the international environment. This engagement has been in support of the shared values and objectives of the Union and its Member States and has drawn on the wide range of instruments which the Union has at its disposal, including political and diplomatic relations, trade and economic relations, development cooperation policy and the Union's developing capabilities for civilian and military crisis management.

2. How to enhance the effectiveness, coherence and visibility of the Union in the outside world was one of the main issues considered by the Convention and IGC. Member States wished to ensure that the Union was adequately equipped to carry out its international responsibilities.

3. The European Constitution contains a number of important innovations across the range of the Union's external policies. However, there are also strong elements of continuity from the current Treaties. As in other areas, many Articles of the existing Treaties are carried forward relatively unchanged. Certain more sweeping changes proposed from some quarters in the Convention were not accepted.

EXTERNAL ACTION - GENERAL APPROACH

4. The European Constitution seeks to impart a greater coherence and unity to all elements of the Union's policy towards the wider world, grouping them together in a single section, or Title.

5. Importantly, however, the Common Foreign and Security Policy (which embraces the Common Security and Defence Policy) is different in a number of ways from other aspects of external action. For instance, decision-making remains primarily on a unanimous basis. The Commission's role is relatively minor. Moreover, the great bulk of the CFSP (save in relation to the protection of certain individual rights) remains exempt from the jurisdiction of the European Court of Justice. The largely political and intergovernmental character of the CFSP is therefore retained.

6. The establishment of the post of Union Foreign Minister (see Chapter 7) is one of the principal institutional changes contained in the Constitution. He or she will have responsibility for the implementation both of the CFSP, as mandated by the Council, and of aspects of external relations now handled by the Commission. As a Commission Vice-President he or she will have a coordinating role in respect of issues with an international dimension, such as trade and development aid. He or she will also carry out the role currently undertaken by the Foreign Minister of the Member State holding the Presidency in representing the Union abroad. At the same time, the President of the European Council will also have a role in representing the Union abroad at his or her level.

7. The establishment of this new post is intended to enhance the coherence and international visibility of Union action. It does not affect the competences of national Foreign Ministers who will remain responsible for conducting their own States' national foreign policies. In addition, policy in all areas of external action will continue to be determined by Member State Governments, meeting in the Council and European Council.

8. The Foreign Minister is to be assisted by a new European External Action Service, made up of officials from the Commission, the Council Secretariat and – on secondment - from the diplomatic services of the Member States.

ARTICLE III-292: GENERAL PRINCIPLES OF UNION EXTERNAL ACTION

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;

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

9. The Constitution gathers together the principles and objectives of the Union's external action in a single text. These general principles cover all dimensions of the Union's external action. The strong emphasis on multilateral co-operation, the role of the United Nations, on conflict prevention and on poverty eradication as the primary aim of development policy all reflect Irish proposals and are in keeping with the principles and priorities of our foreign policy.

10. The importance of consistency between the different elements of external action is emphasised. The European Council, acting unanimously, is to take decisions identifying the strategic interests and objectives of the Union, covering either the relations of the Union with a particular country or region, or a particular theme. Such decisions can deal with any or all aspects of the Union's external action. It will, in turn, be for the Council to adopt the necessary implementing decisions.

COMMON FOREIGN AND SECURITY POLICY

11. As indicated earlier, the principal innovation of the Constitution in relation to the Union's external relations is the creation of the post of Union Minister for Foreign Affairs. The Foreign Minister is to chair the Foreign Affairs Council; make proposals in relation to the CFSP; implement decisions of the Council or European Council; and represent the Union externally in relation to CFSP matters (such as in political dialogue with

third parties and at international conferences and in international organisations).

12. Otherwise, many essential aspects of the CFSP remain largely as in previous Treaties, though some of the terminology used has been changed. As stated above, policy will continue to be made by Member States.

13. As at present, the Common Foreign and Security Policy covers all areas of foreign and security policy. Member States are to support the CFSP actively and unreservedly, in a spirit of loyalty and mutual solidarity. They shall refrain from any action contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations. They are to consult one another before undertaking any international action or commitment with implications for the Union's interests.

14. General guidelines for the CFSP are to be defined by the European Council. Within this framework, the Council of Ministers is to adopt European decisions on actions and positions to be taken by the Union, and any necessary implementation arrangements.

15. Proposals or initiatives regarding the CFSP may be submitted to the Council by any Member State, by the Union Minister for Foreign Affairs on his or her own, or by the Minister with the support of the Commission.

16. At present, unanimity is the general rule for decisions in the area of the CFSP, and the Constitution does not significantly alter this. Although there were calls to extend the use of QMV, the Member States agreed that, in an area of great sensitivity, closely linked to national sovereignty, it would be inappropriate to use QMV as the norm. Accordingly, unanimity remains the general rule for decision making. There is, however, still scope for a Member State to exercise a right of "constructive abstention", whereby it can choose to allow the rest of the Union to proceed with a given decision; such a decision shall not apply to the Member State concerned.

17. The existing treaties already allow certain categories of decision to be taken by QMV:

- those taken by the Council on the basis of an earlier (unanimous) European Council decision relating to the Union's strategic interests and objectives
- those implementing decisions already taken on Union actions or positions
- the appointment of special representatives.

18. The Constitution provides for a limited expansion of QMV, by adding to this list decisions made on the basis of a proposal by the Union Foreign Minister which has been specifically (and unanimously) requested by the European Council.

19. However, even when a decision is taken by QMV, a Member State can exercise the so-called 'emergency brake', for "vital and stated reasons of national policy", to prevent a decision being taken. If a compromise cannot be found, the matter can be referred to the European Council for unanimous decision.

20. The European Council is also able to decide unanimously that decisions in other cases should in future be taken by QMV. However, this does not apply to decisions having military or defence implications. Such decisions must always be taken unanimously.

21. The role of the European Parliament in regard to the CFSP remains consultative. The European Court of Justice has essentially no jurisdiction over the CFSP.

22. As under the current Treaties, Member States are to co-ordinate their positions in international organisations and at international conferences. Co-ordination is to be the responsibility of the Union Minister for Foreign Affairs, rather than the Presidency, which currently has this responsibility.

23. Member States which are members of the UN Security Council remain obliged to cooperate and to keep other Member States fully informed, and are to defend the positions and the interests of the Union. They are also to request that the Union Foreign Minister be asked to present the Union position.

24. Current arrangements relating to Member State diplomatic and consular service co-operation stand.

25. The Political and Security Committee will remain in place. It was established by the Treaty of Nice, and brings together representatives of the Member States and the Commission to monitor the international situation, to deliver opinions to the Council, to monitor implementation of agreed policies, and, where tasked to do so, to exercise political control and strategic direction of crisis management operations. It is to be chaired by a representative of the Foreign Minister.

26. Administrative expenditure relating to the implementation of the CFSP is charged to the Union budget, as normally are operating expenses other than in regard to the Common Security and Defence Policy. The latter will continue to be borne by Member States in proportion to GNP. A Member State which has used the constructive abstention mechanism in relation to a particular operation (see para. 16 above) is exempted from contributing to the costs of that operation.

27. Arrangements are made for the financial procedures to apply in case of urgent action, including the provision of a "start-up fund" financed by the Member States for the Petersberg tasks (see paras 36-40 below).

COMMON SECURITY AND DEFENCE POLICY

28. The European Union's common security and defence policy is an integral aspect of its Common Foreign and Security Policy, and is aimed at supporting the achievement of the CFSP's objectives. Its primary function is to provide the Union with an operational capacity to undertake peace-keeping and crisis management missions outside the territory of the Member States. In addition to military tasks, there is a significant civilian and humanitarian dimension. In the European Constitution, the title "Common Security and Defence Policy" replaces the formula "European Security and Defence Policy (ESDP)" which is currently in use in the Treaties.

29. Since the entry into force of the Amsterdam Treaty (May 1999), the Union has worked to make a practical reality of the Treaty's provisions in the security and defence area. Substantial progress has been made to identify and put in place crisis management capabilities. Nevertheless, there remains a widespread view that the Member States individually, and the Union collectively, could and should do more to be able to respond effectively to the challenges of a complex international environment.

30. At the IGC, Member States initially adopted differing positions on how far the Union should work to develop an independent capability in the defence area, and how far it should work with NATO (of which 19 of the 25 Member States are Members) and the United States. A number of Member States, including Ireland, were vigilant to ensure that their policies of military neutrality or non-alignment would not be compromised by any new arrangements under the Constitution. Following discussion, agreement was reached during the Italian Presidency on a number of proposals which were fully consistent with the differing security and defence traditions of all the Member States, including Ireland. Defence issues had, therefore, been essentially resolved before the Irish Presidency.

31. The provisions of the European Constitution in the security and defence area are fully consistent with Ireland's traditional policy of military neutrality. In particular, the safeguard that these provisions shall not prejudice the specific character of the security and defence policy of certain Member States is carried over from previous treaties.

32. The Constitution states that previous Declarations "shall also be preserved until they have been deleted or amended." The Seville Declarations of June 2002, in which Ireland set out in a national declaration its approach to security and defence matters and the European Council took cognisance of the Irish declaration, therefore remain in place. The Government has made clear that it will continue to honour and give effect to the commitments made at Seville.

33. Key principles in the development of security and defence policy have been that all Union decisions with military or defence implications be taken unanimously, and that each Member State has a sovereign right to determine whether and to what extent it should take part in any given action. A further theme of debate in the Convention and the IGC was the balance to be struck between the continued development of the capacity of the Union as a whole, and, on the other hand, allowing sufficient flexibility for action by smaller groups of Member States with the capacity or desire to do more.

34. The European Constitution contains no provision for the establishment of a European army or for the introduction of conscription. The question of any obligation or involvement in relation to such issues simply does not arise on the basis of the European Constitution.

35. Article I-41 sets out the key provisions of the Constitution in regard to the common security and defence policy. These are fleshed out in Part III, and in associated Protocols.

ARTICLE I-41: Common Security and Defence Policy

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 civil 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 Article shall not prejudice the specific character of the security and defence policy of certain Member States, it shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, 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. An Agency in the field of defence capabilities development, research, acquisition and armaments (European Defence Agency) shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

4. European 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 Union Minister for Foreign Affairs or an initiative from a Member State. The Union Minister for Foreign Affairs 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 III-310.

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 III-312. It shall not affect the provisions of Article III-309.

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.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy. It shall be kept informed of how it evolves.

ARTICLE I-41.1/I-41.5 - EXPANDED PETERSBERG TASKS

36. Article I-41.1 relates to the so-called **Petersberg tasks**, which the Union may decide to undertake for purposes of peace-keeping, conflict prevention and the strengthening of international security, using the resources of the Member States.

37. The Constitution lists the tasks as including:

- 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.

38. The references to disarmament, military advice, conflict prevention and post-conflict stabilisation have been added to

those tasks listed in the current Treaties. Each of these tasks may also contribute to combating terrorism. The Constitution goes on to specify that all of these tasks are to be conducted 'in accordance with the principles of the United Nations'. Any decision to launch a Petersberg task operation is for the Council, acting by unanimity. Such a decision is to cover the scope, objectives and general conditions for the task.

39. Under Article I-41.5, the Council, acting unanimously, has the option of entrusting a particular operation to a group of Member States which are willing and have the necessary capability to take it on. The group itself, with the Foreign Minister, is to manage the task. However, at the insistence of Ireland and others, the Council as a whole must be kept informed. Any decision on amending the objective, scope or conditions of the task is for the Council, again acting unanimously.

40. Irish participation in any given Petersberg task will remain for Ireland alone to decide. The Government have made clear that the "triple lock" provisions - a Government decision, Dáil approval, and UN authorisation – will continue to apply in relation to service abroad by contingents of the Irish Defence Forces.

ARTICLE I-41.2 - COMMON DEFENCE

41. Article I-41.2 essentially carries forward the existing Treaty provision on the possibility of the development of an EU common defence. It is stated that the progressive framing of a common defence policy "will lead to a common defence when the European Council, acting unanimously, so decides." (the current treaty uses the terms "may lead" and "if the European Council....so decides"). However, any decision to move to a common defence will continue to be taken by unanimity and must be approved by each Member State in accordance with its constitutional requirements.

42. The Irish Constitution, as amended to allow for ratification of the Treaty of Nice, precludes Irish membership of a common defence. The Government proposes that this provision be carried forward in a new amendment allowing for ratification of the European Constitution. Ireland could not be part of a common defence, therefore, unless the people were to decide to remove this provision from the Irish Constitution.

ARTICLE I-41.3 - CAPABILITIES / EUROPEAN DEFENCE AGENCY

43. In the European Constitution, Member States undertake to make civilian and military capabilities available to the Union to contribute to the objectives defined by the Council. For this purpose, in Article I-41.3, they undertake progressively to improve their military capabilities. But no specific requirements as to the level of military spending are involved, nor is there any binding requirement to increase it.

44. Article I -41.3 also sets out the role of the European Defence Agency. This was

established in 2004 under the existing Treaties to identify operational requirements and participate in defining a European capabilities and armaments policy. The Government has decided that Ireland take part in the Agency but that participation in specific projects will be for national decision on a case-by-case basis.

ARTICLE I-41.6 - PERMANENT STRUCTURED COOPERATION

45. A further innovation is the provision made in Article I-41.6 for permanent structured co-operation among 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." This was based on a proposal by the Convention. However it was substantially reworked to meet the fears of those NATO members which were concerned lest this appear to threaten the central role of that organisation

46. As set out in Article III-312, and Protocol No 23, structured cooperation involves a range of commitments to building military capabilities and to more intense co-operation in such areas as training, equipment, and logistics. It is to be open to Member States prepared to proceed more intensively to develop their defence capacities. They must also have the capacity by 2007 to supply within a period of 5 to 30 days combat forces capable of carrying out the Petersberg tasks.

47. It is made clear that provisions governing Permanent Structured Cooperation do not affect the separate provisions governing the launching and management of Petersburg task missions

48. Participation in structured co-operation is on an opt-in basis. Following the entry into force of the Constitution, those Member States which meet these criteria and wish to participate shall so indicate. The Council is within three months to make a decision to establish permanent structured cooperation and determine the list of participating Member States. There is provision for later entry to the group, for subsequent withdrawal, and for suspension if a Member State is no longer meeting the criteria.

49. Decisions about membership of the structured co-operation group are to be by QMV. All other decisions and recommendations in permanent structured co-operation require unanimity.

50. There is no obligation on Ireland to take part in permanent structured cooperation. We can opt in or remain outside as we wish. In due course a decision will fall to be made.

ARTICLE I- 41.7 - MUTUAL DEFENCE

51. Article I-41.7 introduces into the European Constitution the "mutual defence commitment" contained in the Western European Union treaty, to which many Member States are party but which is now effectively obsolete. It establishes

an obligation of aid and assistance to any Member State which is the victim of armed aggression on its territory. However, it is again clearly stated that this shall not prejudice the specific character of the security and defence policy of certain Member States. This was inserted at the behest of Ireland, Finland, Sweden and Austria.

52. Ireland will not therefore be bound by any mutual defence commitment. Ireland will retain the right to take its own sovereign decision on whether and how to come to another Member State's assistance in the event of an armed attack, taking into account our traditional policy of military neutrality.

PROTOCOL ON ENHANCED COOPERATION WITH THE WESTERN EUROPEAN UNION

53. Protocol 24, which essentially carries forward an aspect of the Treaty of Amsterdam, allows for the Union to draw up, together with the Western European Union, arrangements for enhanced cooperation between them. Ireland is an Observer of the Western European Union, which, apart from its Parliamentary Assembly, is now essentially defunct. No such proposal is currently under consideration, nor is the Government aware of any intention to make one. A decision on such a proposal would be taken by unanimity. (The provisions of Protocol 24 are entirely separate from the general provision for enhanced cooperation between the EU Member States contained elsewhere in the European Constitution.)

COMMON COMMERCIAL POLICY

54. The Common Commercial Policy – the Union's international trade policy – remains one of its major responsibilities. It is one of only five areas of exclusive Union competence. In trade negotiations, the Commission negotiates on behalf of the Union, subject to a mandate given it by the Member States.

55. The Constitution largely restates current Treaty provisions, subject to a number of amendments. The scope of the common commercial policy is expanded to include explicit reference to foreign direct investment (aspects of the regulation of which have become a major issue in international trade negotiations). The European Parliament is given an enhanced co-decision role in the adoption of measures defining the framework for implementing the common commercial policy.

56. The aspect of the common commercial policy which was most extensively discussed in the Convention and IGC was the appropriate method of decision-making by the Council in authorising the negotiation and conclusion of agreements in this area. On the one hand, there was a strong view that the ability of the Union to adopt effective and flexible negotiating positions required the maximum possible use of QMV. On the other hand, there was a concern among many to ensure that obligations arising from external trade negotiations could not force the Member States to accept measures which they would not be prepared to agree through the Union's internal procedures.

57. In the Constitution QMV is the standard decision making mechanism in the common commercial policy, but with some important qualifications. The Council is to act unanimously in the areas of trade in services, intellectual property and foreign direct investment where the negotiations cover issues for which unanimity is required internally. It is made clear that the exercise of the Union's competences in the common commercial policy cannot affect the delimitation of competences between the Union and the Member States.

58. Moreover, the Council is also to act unanimously in relation to agreements in the fields of trade in cultural and audiovisual services, where these agreements would risk prejudicing the Union's cultural and linguistic diversity, or in the fields of trade in social, education and health services, where these agreements would risk seriously disturbing the national organisation of such services and prejudicing the responsibility of the Member States to deliver them.

DEVELOPMENT COOPERATION AND HUMANITARIAN AID

59. Existing provisions in regard to development co-operation and economic, financial and technical co-operation are largely carried forward, though simplified and placed in the context of the Union's external action. As noted earlier, the primary objective of policy in this area is the reduction and, in the long run, the eradication of poverty. The Union's development cooperation and that of the Member States shall complement and reinforce each other.

60. For the first time, there are provisions directly covering humanitarian aid. Operations under this heading are intended to provide ad hoc assistance, relief and protection for people in third countries who are victims of natural or man-made disasters. Humanitarian aid operations shall be conducted in compliance with the principles of international law and with the principles of impartiality, neutrality and non-discrimination.

61. In addition, on the proposal of the Convention, a European Voluntary Humanitarian Aid Corps is to be established.

INTERNATIONAL AGREEMENTS

62. The Constitution has general provisions covering the negotiation of agreements with one or more third countries or international organisations. As a rule, the Council establishes a negotiating mandate, appoints the Union negotiator (this will usually be the Commission or the Foreign Minister, depending on the subject) and concludes agreements.

63. The European Parliament's consent for the conclusion of agreements is required in many cases.

64. QMV is the normal decision-making method except in relation to matters which are subject to unanimity internally, and in the case of accession or association agreements. Special arrangements govern the common commercial policy, as described above.

SOLIDARITY CLAUSE

65. The Constitution includes a "solidarity clause" requiring the Union and its Member States to 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. In the aftermath of the Madrid bombing of 11 March 2004, the European Council, at the initiative of the Irish Presidency, made a political declaration committing Member States to act in a spirit of solidarity.

66. Under the solidarity clause, the Union is to mobilise all instruments at its disposal, including the military resources made available by the Member States, to:

- 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 or a natural or manmade disaster.

67. Arrangements for implementing the solidarity clause are to be set out in a Council decision on the joint proposal of the Commission and the Minister for Foreign Affairs. Decisions having defence implications will be taken unanimously. A Member State has the right to choose the most appropriate means to comply with its solidarity obligation to an affected Member State, including whether, or not to make available military forces. It would, therefore, be for Ireland to determine the nature of its response in accordance with our Constitutional and legal framework.

Approach of Irish Government

The Government wished to see the Union adequately equipped to play a role internationally in support of shared values and objectives. The Government was pleased with the definition of those values and objectives, and supported proposals to enhance the coherence and effectiveness of the Union's external relations, notably the appointment of a Union Foreign Minister. The Government's approach to security and defence matters was to ensure an outcome which would enable the Union to develop its capabilities for conflict prevention and crisis management whilst ensuring that any new arrangements were fully consistent with Ireland's traditional policy of military neutrality. It was satisfied that it did so successfully.

In regard to the Common Commercial Policy, the Government, conscious of the immense importance of trade to Ireland's economy and employment levels, was anxious to ensure the Union's negotiating effectiveness. At the same time, it sought to ensure that the Common Commercial Policy's scope and decision-making capacity were in line with those of its internal policies.

The Government also supported the rewording of the Union's commitments and goals in the development co-operation area, with particular reference to the eradication of poverty.

CHAPTER 14: OTHER ISSUES

1. This chapter covers some further aspects of the European Constitution not covered in previous Chapters.

FUTURE CHANGE TO THE CONSTITUTION

2. It is the ambition of the signatories that the Constitution will serve the European Union for many years to come. Provision is, however, made for future amendment.

3. Ordinarily, amendments will be made, as is the case under the current Treaties, by a conference of Member State Governments. Any amendments will require unanimous agreement among the Governments, and must then be ratified by all Member States in accordance with their respective constitutional arrangements. This represents no change.

4. However, the Constitution, reflecting the general view that the European Convention which preceded the 2003/4 IGC was a welcome and successful innovation, provides that normally an IGC is to be prepared by a similar Convention bringing together representatives of Governments, national parliaments, the European Parliament and the Commission.

5. Any Member State, the European Parliament or the Commission may submit proposals for amendment of the Constitution. The European Council is then to decide, acting by simple majority, whether to convene a Convention. The Convention is to adopt by consensus recommendations to be transmitted to the subsequent IGC.

6. The European Council may decide that the extent of the proposed amendments does not warrant the holding of a Convention. But it can only proceed directly to convene an IGC if the European Parliament agrees.

7. At the Convention and in the IGC, there was some pressure for a simpler system of amendment. Some argued that a clear distinction should be made between changes to Part I of the Constitution and changes to its other Parts, with a lighter procedure applying to the latter. It was suggested that these latter changes could be made by less than unanimous agreement among the Member States.

8. Many others argued, however, that it was not possible to make a general distinction between the different Parts of the

Constitution. Many Articles in Part III, for instance, define the exact scope of the Union's policies in significant areas. It was also argued that it was unacceptable that future change could be made against the wishes of one or more Member States.

9. These arguments were broadly accepted. However, it was agreed to establish simplified revision procedures to apply in certain limited and defined circumstances.

10. First, under the so-called "passerelle" arrangements (as set out in Chapter 8, on decision-making) the European Council can decide to change the decision-making procedure in a given area from unanimity to QMV, or from a special to the ordinary legislative procedure. This applies solely to Part III of the Constitution (and therefore cannot be used to change institutional arrangements, for example) and defence matters are excluded. Any national parliament can veto such a change.

11. There is also provision for the European Council unanimously to agree amendments to the Articles in Part III dealing with the internal policies of the Union. However, such amendments cannot increase the Union's competences. Moreover, they must be approved by all Member States in accordance with their respective constitutional requirements.

Approach of Irish Government

The Government was anxious to ensure that all future change to the Constitution would require the support of all Member States. It was prepared to accept a simplified revision procedure in the limited cases now envisaged, noting that this would require unanimity and approval by all Member States in accordance with their constitutional requirements

EURATOM

12. The European Atomic Energy Community (Euratom) is legally distinct from the current European Community and European Union, though they are served by common institutions.

13. Some at the convention were in favour of a comprehensive review of the Euratom Treaty which, having been drafted in the 1950s, is believed by many to require modernisation at the least. It was suggested by some that provisions relating to nuclear power, if necessary, should simply be included the article in the new Constitution dealing with energy.

14. Others, however, clearly opposed any change. The view taken by the Praesidium, which was not challenged by most Convention members, was that this was a distinct, complex, and technical subject which it was not appropriate for the Convention to deal with.

15. Therefore the Convention simply drafted a Protocol making institutional and financial changes to the Euratom Treaty in line with those changes being made in the Constitution proper. The Euratom Treaty would be maintained as a separate Treaty apart from the Constitution, which replaces all other EU Treaties.

16. At the IGC, while Ireland and some other Member States proposed a more extensive debate on Euratom, it was clear that there was no consensus in support of this.

17. Accordingly, the Constitution simply contains a Protocol along the lines proposed by the Convention, maintaining Euratom as a separate legal entity and making minimal technical changes to it.

18. Ireland, together with Germany, Austria, Hungary and Sweden made a Declaration noting that the core provisions of the Euratom Treaty have not been substantially amended since its entry into force, and need to be brought up to date. They called for an Intergovernmental Conference on Euratom to be convened as soon as possible.

Approach of Irish Government

The Government would have favoured an extensive review of the Euratom Treaty leading to a significant updating of its provisions. It has made clear that this continues to be its position.

RIGHT TO LIFE

19. Protocol no. 31 to the Constitution carries forward unchanged (save for the technical reference to the Treaties concerned) the terms of Protocol no. 17 to the Treaty on European Union (the Maastricht Treaty). The sole Article of the Protocol reads as follows: "Nothing in the Treaty establishing a Constitution for Europe or in the Treaties or Acts modifying or supplementing it shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland."

20. The Constitution also provides as a general principle that Declarations adopted by the European Council, the Council or by the Member States shall be preserved until they have been deleted or amended. Accordingly, the subsequent Solemn Declaration interpreting the Maastricht Protocol and indicating a willingness to amend the Protocol in the event of a future relevant amendment to the Irish Constitution stands and is authoritative.

Approach of Irish Government

The Government was anxious to ensure that the provisions of the Maastricht Protocol were carried forward unchanged.

ANNEX 1: PROTOCOLS AND DECLARATIONS

PROTOCOLS ATTACHED TO THE CONSTITUTION

A Protocol is a text annexed to a Treaty which expands upon an issue contained in that Treaty. It has the same legal standing and force as the Treaty itself.

Only those Protocols marked with an asterisk contain significantly new provisions. The others essentially carry forward existing Protocols or other legal texts.

1. **Protocol on the role of national Parliaments in the European Union***
   This Protocol is dealt with in detail in Chapter 6 .

2. **Protocol on the application of the principles of subsidiarity and proportionality***
   This Protocol is dealt with in detail in Chapter 6.

3. **Protocol on the Statute of the Court of Justice of the European Union**
   This Protocol sets out in detail the functioning of the Court of Justice. See also Chapter 7.

4. **Protocol on the Statute of the European System of Central Banks and of the European Central Bank**
   This Protocol sets out in detail the institutional arrangements underpinning the monetary policy aspects of Economic and Monetary Union. See also Chapter 11.

5. **Protocol on the Statute of the European Investment Bank**
   This Protocol sets out the organisational structure of the EIB and how it performs its functions.

6. **Protocol on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union**

7. **Protocol on the privileges and immunities of the European Union**
   This Protocol describes the special arrangements, in terms of privileges and immunities, which apply to the property, funds assets, operations and communications and staff of the Union.

8. **Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of**

Finland and the Kingdom of Sweden Constitution
This Protocol carries forward such provisions of the earlier Accession Treaties which are still deemed legally necessary.

9. **Protocol on the Treaty and the Act 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**
This Protocol carries forward the provisions of the most recent Accession Treaty which are deemed legally necessary. Given that this enlargement only took place in 2004, many of its special and transitional provisions will remain relevant for a period after the entry into force of the European Constitution.

10. **Protocol on the excessive deficit procedure**
This Protocol sets out the details of the excessive deficit procedure which is part of the Stability and Growth Pact. See also Chapter 11.

11. **Protocol on the convergence criteria**
This Protocol develops further the four criteria for membership of European Monetary Union set out in Article III-198 of the European Constitution.

12. **Protocol on the Euro Group***
This Protocol provides for informal meetings of the Ministers of those Member States whose currency is the euro in order to discuss questions related to the specific responsibilities they share with regard to the single currency. Further information can be found in Chapter 11.

13. **Protocol on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland as regards economic and monetary union**
This Protocol states that the United Kingdom shall not be obliged or committed to adopt the euro and sets out those provisions which apply to the UK notwithstanding its decision not to participate in the third stage of economic and monetary union.

14. **Protocol on certain provisions relating to Denmark as regards economic and monetary union**
This Protocol sets out those provisions of economic and monetary union which apply to Denmark notwithstanding its decision not to participate in the third stage of EMU.

15. **Protocol on certain tasks of the National Bank of Denmark**
This Protocol provides that the National Bank of Denmark will not be prevented from carrying out its existing tasks concerning those parts of Denmark which are not part of the Union, notwithstanding Article 14 of the Protocol on the Statute of the European system of Central Banks and of the European Central Bank.

16. **Protocol on the Pacific Financial Community franc system**
This Protocol recognises France's special arrangements with New Caledonia, French Polynesia and Wallis and Futuna.

17. **Protocol on the Schengen acquis integrated into the framework of the European Union**
This Protocol carries forward provisions originally agreed at the negotiation of the Treaty of Amsterdam in regard to the incorporation of the earlier Schengen inter-governmental agreement on the abolition of border checks into the Union. Ireland and the UK are not members of the Schengen system, but may request to take part in some or all of its provisions. The arrangements governing such a request are set out. See also chapter 12.

18. **Protocol on the application of certain aspects of Article III-130 of the Constitution to the United Kingdom and to Ireland**
This Protocol provides for the continuation of the "Common Travel Area" between the UK and Ireland. Further information can be found in Chapter 12.

19. **Protocol on the position of the United Kingdom and Ireland on policies in respect of border controls, asylum and immigration, judicial cooperation in civil matters and on police cooperation**
This Protocol permits the United Kingdom and Ireland to opt out of measures in the policy areas listed, and sets out the arrangements under which they may subsequently opt in. Further information can be found in Chapter 12.

20. **Protocol on the position of Denmark**
This Protocol effectively carries forward a range of existing Danish opt-outs in regard to aspects of security and defence, economic and monetary union and justice and home affairs.

21. **Protocol on external relations of the Member States with regard to the crossing of external borders**
This Protocol allows Member States to negotiate or conclude negotiations with third countries with regard to the crossing of external borders as long as they respect Union law and other relevant international agreements.

22. **Protocol on asylum for nationals of Member States**
This Protocol sets down the circumstances in which an 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.

23. **Protocol on permanent structured cooperation established by Article I-41(6) and Article III-312 of the Constitution***
This Protocol sets out the arrangements relating to structured cooperation in security and defence. This is dealt with in detail in Chapter 13.

24. **Protocol on Article I-41(2) of the Constitution**
This Protocol provides that the Union shall draw up, together with the Western European Union, arrangements for enhanced cooperation between them. See also Chapter 13.

25. **Protocol concerning imports into the European Union of petroleum products refined in the Netherlands Antilles**

26. **Protocol on the acquisition of property in Denmark**

27. **Protocol on the system of public broadcasting in the Member States**
This Protocol provides for Member State funding of public service broadcasting, with some conditions.

28. **Protocol concerning Article III-214 of the Constitution**
This Protocol specifies that for the purposes of Article III-214, which obliges each Member State to respect the principle of equal pay for men and women, benefits under occupational social security schemes shall not be considered as remuneration.

29. **Protocol on economic, social and territorial cohesion**
This Protocol reaffirms the Member States' commitment to the promotion of economic, social and territorial cohesion through the Structural and Cohesion Funds.

30. **Protocol on special arrangements for Greenland**
This Protocol deals with the special arrangements with regard to the import into the Union of products subject to the common organisation of the market in fishery products and originating in Greenland.

31. **Protocol on Article 40.3.3 of the Constitution of Ireland**
This Protocol carries forward unchanged the Protocol which was added to the Treaty on European Union after Maastricht. It states "nothing in the Treaty establishing a Constitution for Europe or in the Treaties or Acts modifying or supplementing it shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland". See also Chapter 14.

32. **Protocol relating to Article I-9(2) of the Constitution on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms***
This Protocol sets out in more details issues relevant to the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms. See also Chapter 4.

33. **Protocol on the Acts and Treaties which have supplemented or amended the Treaty establishing the European Community and the Treaty on European Union**

34. **Protocol on the transitional provisions relating to the institutions and bodies of the Union***
This Protocol sets out the transitional provisions which will apply before all the provisions of the Constitution and the instruments necessary for their implementation take full effect. Further information can be found in Chapter 7.

35. **Protocol on the financial consequences of the expiry of the Treaty establishing the European Coal and Steel Community and on the Research Fund for Coal and Steel**

36. **Protocol amending the Treaty establishing the European Atomic Energy Community***
Neither the Convention or the IGC chose to consider the issue of Euratom substantively and it was decided to maintain Euratom as a separate Treaty. As Euratom and the EU continue to share an institutional structure, this Protocol confirms the necessary minor changes to the institutional structures brought about by the Constitution. See also Chapter 14.

DECLARATIONS CONCERNING PROVISIONS OF THE CONSTITUTION

Declarations do not have legal force. However, in particular where they are made by the Intergovernmental Conference as a whole, or by all of the Member States outside an IGC, they are important as a statement of the intentions of the drafters. The Constitution provides that all previous Declarations remain valid until deleted or amended.

1. **Declaration on Article I-6**
   Article I-6 of the Constitution deals with the primacy of EU law. Further information can be found in Chapter 3.

2. **Declaration on Article I–9(2)**
   This Declaration recalls the commitment of the Union to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Further information can be found in Chapter 4.

3. **Declaration on Articles I-22, 1-27 and 1-28**
   This Declaration states that due consideration should be given to the need to respect the geographical and demographic diversity of the Union and its member States when choosing persons called upon to hold the offices of President of the European Council, President of the Commission, and Union Minister for Foreign Affairs.

4. **Declaration on Article I-24(7) concerning the European Council decision on the exercise of the Presidency of the Council**
   This Declaration stipulates that the Council should begin preparations for a decision on the new team Presidency arrangements as soon as the Constitution is signed and should give its political approval within six months. A decision on the team Presidency rota has already been reached - further information can be found in Chapter 7.

5. **Declaration on Article I-25**
   This Declaration sets out the draft European Decision of the Council on the implementation of the definition of qualified majority within the European Council and the Council. This draft European Decision will be adopted the day the European Constitution enters into force. It relates to the desire of Poland in particular that every effort be made to build consensus where a group of states falling narrowly short of a blocking minority opposes a measure. See also Chapter 7.

6. **Declaration on Article I-26**
   This Declaration stresses the need to ensure that the Commission liaises with all Member States and takes the political, social and economic realities of all Member States into account. See also Chapter 7.

7. **Declaration on Article I-27**
   This Declaration provides for consultations between the European Parliament and the European Council prior to the election of the President of the European Commission. See also Chapter 7.

8. **Declaration on Article I-36**
This Declaration notes the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated European regulations in the financial services area, in accordance with its established practice (known as the "Lamfalussy procedure").

9. **Declaration on Articles I-43 and III-329**
This Declaration states that the provisions on the solidarity clause and on its implementation are not 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. See also Chapter 13.

10. **Declaration on Article I-51**
This Declaration states that whenever rules on protection of personal data could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter.

11. **Declaration on Article I-57**
This Declaration states that the Union will take into account the particular situation of small-sized countries situated close to its borders.

12. **Declaration concerning the explanations relating to the Charter of Fundamental Rights**
These explanations relating to the Charter of Fundamental Rights are included here as a guide to the interpretation of the Charter. Further information can be found in Chapter 4.

13. **Declaration on Article III-116**
This Declaration states that, in its efforts to eliminate inequalities between men and women, the Union will aim in its various policies to combat all kinds of domestic violence.

14. **Declaration on Articles III-136 and III-267**
The Conference considers that in the event that a draft European law or framework law would affect fundamental aspects of the social security system of a Member State or would affect the financial balance of that system, the interests of that Member State will be duly taken into account.

15. **Declaration on Articles III-160 and III-322**
In the context of the freezing of assets in the fight against terrorism, this Declaration recalls the importance of the protection and observance of the due process rights of individuals and entities.

16. **Declaration on Article III-167(2)(c)**
This Declaration notes that this Article, on aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, should be interpreted in accordance with existing case law.

17. **Declaration on Article III-184**
This Declaration relates to the Stability and Growth Pact and Protocol 10. Further information can be found in Chapter 11.

18. **Declaration on Article III-213**
This Declaration recalls that the list of social policies listed in Article III-213, in which co-operation between the Member States is to be encouraged, remain within the competence of the Member States.

19. Declaration on Article III-220

Article III-220 states that the Union shall develop and pursue its action leading to the strengthening of its economic, social and territorial cohesion. Particular attention shall be paid to, amongst others, island regions. This Declaration states that, subject to the necessary criteria being met, this reference can include island States in their entirety.

20. Declaration on Article III-243

This Declaration deals with measures 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.

21. Declaration on Article III-248

This Declaration states 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. The Union's research and technological development policy is dealt with in Chapter 10.

22. Declaration on Article III-256

This Declaration affirms the right of a Member State to take the necessary measures to ensure their energy supply under the conditions provided for in Article III-131.

23. Declaration on Article III-273(1), second subparagraph

This Declaration states that the European laws determining Eurojust's structure, operation, field of action and tasks should take into account national rules and practices relating to the initiation of criminal investigations.

24. Declaration on Article III-296

This Declaration states that, as soon as the Treaty establishing a Constitution for Europe 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. This work has begun, but the EEAS cannot be established until the entry into force of the Constitution.

25. Declaration on Article III-325 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 Sections 3, 4 and 5 of Chapter IV of Title III of Part III of the Constitution insofar as such agreements comply with Union law.

26. Declaration on Article III–402(4)

This Declaration deals with the multi-annual financial framework, and provides for temporary arrangements to apply if the 2007-2013 framework has not been adopted by the end of 2006. Further information can be found in Chapter 10.

27. Declaration on Article III-419

This Declaration states that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend to make use of Article III-422 providing for the extension of qualified majority voting or for recourse to the ordinary legislative procedure. See Chapter 8.

28. **Declaration on Article IV-440(7)**
This Declaration deals with the status of the French territory of Mayotte.

29. **Declaration on Article IV-448(2)**
This Declaration deals with the possibility for a Member State to translate the Constitution into any other language which enjoys official status in all or part of their territory and to deposit this translation with the Council. It was made in response to a Spanish request.

30. **Declaration on the ratification of the Treaty establishing a Constitution for Europe**
This Declaration states that if two years after the signature of the Treaty establishing a Constitution for Europe four fifths of the Member States have ratified it and one or more Member States have encountered difficulties in proceeding with ratification, the matter will be referred to the European Council. See also Chapter 1, "Introduction".

DECLARATIONS CONCERNING PROTOCOLS ANNEXED TO THE CONSTITUTION

Declarations concerning the Protocol on the Treaties and Acts of Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, of the Hellenic Republic, of the Kingdom of Spain and the Portuguese Republic, and of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden

As noted, Protocol No 8 carries forward those elements of earlier Accession Treaties which are still deemed necessary.

31. **Declaration on the Åland islands**
This Declaration recognises the regime applicable to the Åland islands.

32. **Declaration on the Sami people**
This Declaration recognises the obligations and commitments of Sweden and Finland with regard to the Sami people under national and international law.

Declarations concerning the Protocol on the Treaty and the Act 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

As noted, this Protocol No 9 carries forward those elements of the 2003 Accession Treaty which are still deemed necessary.

33. **Declaration on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus**

34. **Declaration by the Commission on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus**

35. **Declaration on the Ignalina Nuclear Power Plant in Lithuania**
This Declaration deals with the arrangements relating to the agreement by Lithuania to close the Iganalina Nuclear Power Plant.

36. **Declaration on the transit of persons by land between the region of Kaliningrad and other parts of the Russian Federation**

37. Declaration on Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant in Slovakia
This Declaration deals with the arrangements relating to the agreement by Slovakia to close Unit 1 and Unit 2 of the Bohunice V1 nuclear power plant.

38. Declaration on Cyprus
This Declaration notes that, pending a settlement on the island, the application of the acquis will be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control.

DECLARATIONS CONCERNING OTHER PROTOCOLS

39. Declaration concerning the Protocol on the position of Denmark
This Declaration sets out arrangements for implementing the Protocol on the position of Denmark.

40. Declaration concerning the Protocol on the transitional provisions relating to the institutions and bodies of the Union
Further information can be found in Chapter 7 and in the section above dealing with this Protocol.

41. Declaration concerning Italy
This Declaration notes the content of the 1957 Protocol annexed to the Treaty establishing the European Economic Community and as amended upon adoption of the Treaty on European Union.

NATIONAL DECLARATIONS

42. Declaration by the Kingdom of the Netherlands on Article I-55
Article I-55.4 allows for the European Council to decide by unanimity that QMV should apply to the adoption of the Multi-annual Financial Framework. The Netherlands indicates that it would be prepared to agree to this only on condition that a satisfactory resolution is found to its concerns in relation to the Union's own resources system. See also Chapter 10.

43. Declaration by the Kingdom of the Netherlands on Article IV-440
This Declaration concerns the possibility of altering the status of the Dutch Antilles and/or Aruba with regard to the Union.

44. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden
The abovementioned counties state that they would like convene a Conference of Member States representatives to update the Euratom treaty (see also Chapter 14).

45. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland
This Declaration relates to Gibraltar.

46. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term "nationals"

47. Declaration by the Kingdom of Spain on the definition of the term "nationals"

48. Declaration by the United Kingdom of Great Britain and Northern Ireland on the franchise for elections to the European Parliament

49. Declaration by the Kingdom of Belgium on national parliaments

ANNEX 2: MOVEMENT TO QMV IN THE EUROPEAN CONSTITUTION

This Annex indicates both Articles within which there has been a movement from unanimity to qualified majority voting (QMV), and Articles dealing with issues or areas which have not previously been covered in the Treaties. In many cases the extensions to QMV are limited in scope, involving only aspects of an Article, or the further use of QMV in an Article already chiefly subject to it.

I-22 Election of European Council President **(new post)**

I-24 Changes to Presidency arrangements **(new possibility)**

I-28 Appointment of European Foreign Minister **(new post)**

I-32 Changes to composition of the Committee of the Regions and Economic and Social Committee **(new possibility)**

I-37 Comitology

I-47 Citizens' initiative **(new)**

I-54 Implementation of own resources decisions

I-60 Negotiation of withdrawal agreement **(new)**

III-122 Services of general economic interest **(new)**

III-127 Diplomatic and Consular protection measures

III-136 Social security for migrant workers **(with emergency brake)**

III-141 Provisions for self-employed persons

III-167 Provisions enabling repeal of the aspects of this article related to state aids policy and the effects of the past division of Germany

III-176 Intellectual property rights protection

III-187 Amendments to certain parts of the Statute of the European System of Central Banks

III-191 Use of the euro

III-194 Certain measures relating to the Broad Economic Guidelines and excessive deficit procedure

III-198 Procedure for entry into the euro

III-236 Transport

III-243 Provisions enabling repeal of this Article on transport policy as it affects areas of Germany affected by its past division

III-251 **European Research Area (Union research programmes already covered by QMV)**

III-254 Space Policy **(new)**

III-256 Energy **(new)**

III-260 Mechanism for peer review of Member States' implementation of policies in Justice and Home Affairs area

III-265 Border checks **(Irish opt-in)**

III-267 Immigration and Frontier Controls **(Irish opt-in)**

III-270 Judicial co-operation in criminal matters **(with emergency brake)**

III-271 Minimum rules for criminal offences and sanctions **(with emergency brake)**

III-272 Crime prevention

III-273 Eurojust **(aspects)**

III-275 Police co-operation **(aspects)**

III-276 Europol

III-280 Culture

III-281 Tourism **(new)**

III-282 Sport **(new)**

III-284 Civil protection **(new)**

III-285 Administrative co-operation

III-300 Role of the European Foreign Minister in CFSP implementing measures **(new – with emergency brake)**

III-312 Membership of structured co-operation in defence **(new)**

III-313 Urgent financing of CFSP measures

III-315 Aspects of the Common Commercial Policy

III-320 Urgent aid to third countries

III-321 Humanitarian aid operations

III-329 Implementation of solidarity clause **(new).**

III-357 Judicial appointments panel **(new).**

III-359 Establishment of specialised courts

III-364 ECJ jurisdiction on intellectual property rights

III-381 ECJ Statute **(aspects)**

III-382 Appointment of ECB Executive Board

III-398 Principles of European Administration

III-412 Internal Financial Regulations

GLOSSARY

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

CHARTER OF FUNDAMENTAL RIGHTS
The Charter of Fundamental Rights was agreed as a political declaration by the European Council at Nice in December 2000 and sets out, in a consolidated way, those rights citizens enjoy under the EU Treaties and related case-law, the European Convention on Human Rights and its case law, the Social Charters of the Union and the Council of Europe and the constitutional traditions and International obligations common to Member States. It will form Part Two of the Constitution and will apply to the EU Institutions and to Member States only when implementing EU law.

CO-DECISION
Co-decision is the procedure through which the Council of Ministers and the European Parliament jointly enact most Union legislation. It will form part of the Ordinary Legislative Procedure.

COMMISSION
The Commission is an independent body appointed by the Member States to act as the neutral guardian of their shared interests and to promote the general interest of the Union. It monitors the implementation of EU law, proposes legislation and has important executive functions. Commissioners are nominated by Member States, approved by the European Parliament and appointed for a period of five years. A new Commission took office in November 2004. The Commissioner nominated by Ireland is Mr Charlie McCreevy.

COMMITTEE OF THE REGIONS
The Committee of the Regions is an advisory body comprising representatives of regional and local interests. Members of the Committee are appointed by the Council of Ministers on the basis of nominations from Member States.

COMMON AGRICULTURAL POLICY (CAP)
The Common Agricultural Policy aims to increase agricultural productivity; to ensure a fair standard of living for the agricultural community; to stabilise markets; to assure the availability of supplies; and to ensure that supplies reach consumers at reasonable prices.

COMMON COMMERCIAL POLICY
The Common Commercial Policy aims "to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers". Under it, the EU negotiates collectively in international trade matters.

COMMON FISHERIES POLICY (CFP)
The aim of the Common Fisheries Policy is to manage fisheries for the benefit of both fishing communities and consumers.

COMMON FOREIGN AND SECURITY POLICY (CFSP)
The Common Foreign and Security Policy is an important component of the Union's external action. Within the framework of the Union's external action principles and objectives, the Member States undertake to work together on international issues in mutual political solidarity. CFSP covers all areas of foreign policy, including questions relating to security. Member States agree to consult one another on any foreign and security policy issues which are of general interest in order to reach a common position.

COMMON SECURITY AND DEFENCE POLICY (CSDP)
The Common Security and Defence Policy, currently known as the European Security and Defence Policy (ESDP) is an integral part of the Common Foreign and Security Policy. It provides the Union with an operational capacity to use on missions outside the Union for "peacekeeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter" (these are known as the 'Petersberg Tasks').

COMPETENCE
In the European Union, when Member States have believed that action at Union level could achieve more than the Member States acting individually, they have decided to confer 'competence' – or the power to act – on the Union in specific policy areas. Unless competence is explicitly conferred on the Union in a Treaty it remains with the Member States.

CONFERRAL
Under the principle of Conferral the Union can only act to the extent that the Member States have conferred competence on it. Competences not conferred on the Union in the Constitution remain with the Member States.

COUNCIL OF MINISTERS
The Council is the EU institution in which the Governments of the Member States are represented. Together with the European Parliament, it enacts legislation and is the budgetary authority. The Council meets in different formations, depending on the issues under discussion (e.g. environment) and each Member State is represented at Ministerial level in each formation.

COREPER
Coreper is the Standing Committee of the Permanent Representatives (Ambassadors) of the Member States in Brussels.

COURT OF AUDITORS
The Court of Auditors audits expenditure by EU Institutions.

COURT OF JUSTICE OF THE EUROPEAN UNION
The Court of Justice of the European Union, based in Luxembourg, has general responsibility for interpreting EU law and for ensuring that its application is consistent. Under the Constitution, it will consist of the Court of Justice (the highest court), the High Court (currently known as the Court of First Instance) and specialised courts.

DECLARATION
A statement attached to a Treaty by one or more Member States (or by the Conference which negotiated the Treaty) explaining its approach to a given matter. Though not legally binding, a Declaration carries substantial political weight.

ECONOMIC AND SOCIAL COMMITTEE
The Economic and Social Committee is an advisory body. Its role is to inform the decision-making institutions of the EU on a broad range of social and economic issues. It is made up of representatives of various categories of economic and social activity, nominated by the Member States.

ENHANCED COOPERATION
Enhanced cooperation allows a group of Member States to choose to cooperate on a specific matter, subject to certain conditions and safeguards, in areas in which the Union does not hold exclusive competence. The current Treaty provisions for enhanced co-operation have not yet been used.

EURATOM
The name given to the European Atomic Energy Community, and to the 1957 Treaty, sometimes known as the 'Second Rome Treaty', which established it. Euratom makes certain provisions for the management of nuclear power within the Union. It is legally distinct from the European Union but shares a common membership and common institutions.

EURO GROUP
The informal group of Finance Ministers of the Member States which have adopted the euro as their currency.

EUROJUST
Eurojust is a European Union body established in 2002 to facilitate judicial co-operation and coordination between Member States in dealing with the investigation and prosecution by them of serious cross-border crime, particularly organised crime.

EUROPEAN CENTRAL BANK
The European Central Bank conducts the monetary policy of the European Union. Its primary aim is to promote price stability.

EUROPEAN COMMUNITY
The European Community (EC), originally known as the European Economic Community (EEC), was established by a 1957 Treaty, commonly known as the Treaty of Rome. The European Community together with Euratom is known as the 'European Communities'.

EUROPEAN CONVENTION
The European Convention was established by the European Council in December 2001 to debate the future of the Union. It brought together government and parliamentary representatives from existing and future Member States of the Union with European Parliamentarians and representatives of the Commission. It was chaired by former French President Valéry Giscard d'Estaing. It met from February 2002 to July 2003 and brought forward recommendations for a new Constitutional Treaty for the EU.

EUROPEAN COUNCIL
The European Council sets the broad political guidelines for the Union. It brings together the Heads of State or of Government of the Member States together with the President of the Commission. It usually meets about four times a year.

EUROPEAN OMBUDSMAN
The European Ombudsman is elected by the European Parliament and investigates complaints about maladministration by the Union's institutions and bodies.

EUROPEAN PARLIAMENT
The European Parliament is directly elected every five years. Member States return Members of the European Parliament (MEPs) in rough relation to their size (though smaller countries return more MEPs than their population would strictly suggest).
The Parliament has, with the Council of Ministers, an important role in the legislative and budgetary processes of the EU. It also oversees the work of the Commission. Ireland returned 13 MEPs in the elections in June 2004

EUROPEAN UNION
The European Union (EU) was set up by the Treaty on European Union, or Maastricht Treaty, of 1992. It currently consists of three 'pillars' or areas of activity. The first pillar comprises the European Communities, the second pillar the Common Foreign and Security Policy, and the third pillar judicial and police cooperation in criminal matters. The European Constitution will create a single legal framework bringing together the Community and Union and abolishing the pillars.

EUROPOL
Europol, the European Police Office, aims at improving the effectiveness of cooperation between the police authorities of Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international organised crime.

EUROZONE
The area where the Euro is the official currency.

FIRST PILLAR
The first of the three pillars of the current European Union comprises the European Communities and covers largely, though by no means exclusively, economic business and social matters.

INTERGOVERNMENTAL CONFERENCE (IGC)
Changes to EU Treaties must be agreed unanimously at an Intergovernmental Conference Involving all of the Member States. A new simplified revision procedure (see chapter 14) will allow for minor changes to be made by a slightly lighter mechanism. A new Treaty, containing those changes, must then be ratified by all Member States according to their respective constitutional requirements.

LEGAL INSTRUMENT
A 'legal instrument' is a tool the Union may use to implement its policy decisions. In some cases this is legislative, i.e. a law must be enacted to implement the policy. In other cases it is nonlegislative, i.e. no law is necessary.

LEGAL PERSONALITY
'Legal Personality' is a legal term. It means that an entity or organisation, such as a limited liability company or an international organisation, can be treated for some legal purposes as if it were an actual person. For example, it can have rights and duties and can enter into contracts and agreements. At present, the European Community has an explicit legal personality, while the European Union does not. Under the Constitution, the Union (which will include the Community) will be given a single legal personality. Its powers will be limited to those necessary to exercise the competences conferred on it by the Member States in the Constitution.

MEMBER STATE
A country which is a member of the European Union.

NATIONAL FORUM ON EUROPE
The Forum was established by the Government in October 2001 to facilitate a broad discussion of issues relevant to Ireland's membership of an enlarging Union, and to consider the range of topics arising in the context of the debate on the Future of Europe. It meets regularly under its Chair, Senator Maurice Hayes.

OWN RESOURCES
The Union's 'Own Resources' are the means through which its activities are financed. The current own resources are divided into three categories. These are: so-called 'traditional own resources' (mainly customs duties collected by Member States on behalf of the EU); resources based on value added tax (VAT) (this resource is levied on the notional harmonised VAT bases of Member States); and The Gross National Income based resource (this resource is levied as a uniform rate in proportion to the GNI of each Member State).

'PASSERELLE'
The term 'passerelle' comes from the French word for footbridge. It is a procedure which would allow for unanimous decisions to change the decision-making procedure in a given policy area unless opposed by any National Parliament.

PETERSBERG TASKS
The activities the Union may undertake in the area of Common Security and Defence Policy are known as the 'Petersberg Tasks' (after the town in which they were agreed). Currently these are "humanitarian and rescue tasks, peace-keeping, and the tasks of combat forces in crisis management, including peace-making". The Constitution expands this list.

PRESIDENCY
This is in effect the chairmanship of the Council. The Presidency rotates every six months among the Member States. Ireland held the Presidency from January to June 2004. The Presidency chairs most Working Groups, COREPER and meetings of the Council of Ministers and is important in setting the Union's agenda and negotiating agreement on legislation and on action by the Union. The European Constition will make changes to the Presidency system.

PRIMACY OF EU LAW
The primacy of Union law is a very important principle which has existed since before Ireland joined the European Communities in 1973. It means that when Member States sit down to reach agreement on a law, they consent to implement what they have agreed and to be bound by judgments of the Union's Courts.

PROPORTIONALITY
Under the principle of proportionality, Union action may not exceed "what is necessary to achieve the objectives of the Union."

PROTOCOL
A protocol is a text, annexed to a treaty, which expands upon or explains a given topic. It has the same legal force as the Treaty itself.

QMV (QUALIFIED MAJORITY VOTING)
The Treaties provide that the Council of Ministers may take decisions, depending on the issue, by (a) unanimity; (b) qualified majority voting (QMV); or (c) simple majority. Decisions in most areas are taken by QMV. Currently, each Member State has a number of votes weighted according to a scale which groups together Member States of similar population size. To be adopted a measure requires a certain number of votes to be cast in its favour. Under the Constitution, a new system of 'double majority' voting will apply. To be adopted a measure will normally require the support of 55% of the Member States representing 65% of the Union's population.

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

SECOND PILLAR
The second of the three pillars of the current European Union deals with Common Foreign and Security Policy.

STABILITY AND GROWTH PACT
The Stability and Growth Pact is an agreement to ensure budgetary discipline in economic and monetary union (EMU), in particular through the avoidance of excessive budgetary deficits by Member States.

STRUCTURAL FUNDS
Structural Funds are funds used by the Union to promote the economic and social development of the regions deemed to be lagging behind.

SUBSIDIARITY
Under the principle of subsidiarity, the Union may only act if objectives cannot be sufficiently achieved by the Member States, either at national or local level, or where, because of scale, they can be better achieved at Union level.

THIRD PILLAR
The third of the three pillars of the current European Union covers certain police and judicial co-operation in criminal matters.

TREATY
A binding international agreement among states. The EU's objectives, powers and rules have been defined and developed in a series of Treaties among its Member States, from the Treaty of Paris (1950) to the Treaty of Nice (2001). Ireland, together with the UK and Denmark, joined the European Communities in 1973 by means of an Accession Treaty with the other Member States.

UNANIMITY
When unanimity is required, all Member States must agree with a proposal.