



Foreign &
Commonwealth
Office

Treaty
establishing a
Constitution for Europe

Commentary

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**FOREWORD BY THE SECRETARY OF STATE FOR FOREIGN AND
COMMONWEALTH AFFAIRS,
THE RIGHT HONOURABLE JACK STRAW MP**

The Treaty establishing a Constitution for the European Union was signed in Rome on 29 October 2004. It is the product of more than two years of negotiations between the Union's Member States. From the start, the UK played a leading role in those negotiations. We put the case for a Treaty that would reform the Union in the light of its enlargement, while at the same time clearly limiting the EU's role and ensuring areas of vital national interest remained under the control of the Member States. This is the Treaty that we have before us.

This Treaty will ensure that the newly enlarged European Union is more efficient, effective and open. It provides for a strengthening of the voice of national governments within the EU, through the creation of a full-time President of the European Council. For the first time, it gives national parliaments the power to scrutinise proposed EU legislation at the draft stage and to send it back if they are not satisfied the Union needs to act.

The EU's Constitutional Treaty is complex. It has to be, precisely because it is not a law for governing a superstate, but a carefully drafted document regulating precisely the relations between European nations in a variety of areas. Nevertheless, it is still much simpler than the current overlapping EU Treaties and the 'three pillar' system that it will replace.

The Treaty is also long. This is because much of it is a replication of the existing Treaties. But the most important provisions are all in the new Part I of the Treaty. In 60 Articles, this, for the first time ever, sets out what the Union is, what powers it has, what its institutions are, and how it legislates. It makes clearer than ever before that the EU is a union of sovereign states, which can only exercise those powers given to it by its members.

This Treaty will come into force once ratified under the constitutional arrangements of each Member State. In the UK, this will be by legislation considered by both Houses of Parliament and then by endorsement in a referendum. I hope that this *Commentary* will help to inform that process. Its primary aim is to show how the Constitutional Treaty relates to the current EU Treaties. It does not restate the Government's policy on the Treaty, which can be found in the White Papers on this (Cm 6309), published in September 2004 and in the White Paper setting out our negotiating position (Cm 5934), September 2003. Like the Treaty itself, this paper is, necessarily, detailed. But it makes clear in particular how much of the new Treaty is drawn from the existing EU Treaties,

and the extent to which it is a codification, clarification, and in many places simplification, of the existing European legal order.

A handwritten signature in black ink, reading "Jack Straw". The signature is written in a cursive style with a large initial "J" and a distinct "S".

JACK STRAW
Secretary of State
for Foreign and Commonwealth Affairs

PART ONE: INTRODUCTION

1. During the negotiations on what became the Treaty Establishing a Constitution for Europe, the Government was asked by the European Scrutiny Committee of the House of Lords for an annotated analysis of the new Treaty, setting out changes it made to existing voting procedures, and any new powers given to the European Union. Members of the House of Commons also asked the Government to provide an analysis of where the new Treaty introduces changes, and where it simply replicates the *status quo* under the existing EU treaties.
2. This document responds to those requests. It explains what the Treaty is, and how it has been put together; gives a broad indication of what each Article, or set of Articles, does; and explains in detail how this Treaty relates to previous Treaties, and the changes it makes to the Union's powers.

A How the EU Treaties have evolved

3. The current arrangements governing the operation of the European Union are complex, reflecting their evolution over fifty years. The European Union - made up of both the European Communities (sometimes known as the "first pillar") and cooperation in the areas of common foreign and security policy ("the second pillar") and criminal justice ("third pillar") - is based on a succession of international treaties agreed between its Member States. Those Treaties establish the institutions of the Union and the Communities, and define the powers which the Member States give to it. These complex arrangements will be largely swept away by the Constitutional Treaty which replaces the EU and European Communities with a single European Union based on a single treaty.
4. The first of the European Communities was the European Coal and Steel Community (ECSC), established by the Treaty of Paris in 1951 by Belgium, France, West Germany, Italy, Luxembourg and the Netherlands. Six years later, the same six countries also established two other Communities, by separate Treaties, both signed in Rome. One was the European Atomic Energy Community (Euratom); the other, which would in time become by far the most important of the three, was the European Economic Community (the EEC, as it was then known).
5. Each of the three Communities had a separate set of institutions. However, a Convention signed at the same time as the EEC and Euratom Treaties made provision for a single Assembly (now the European Parliament) and a single Court of Justice. The establishment of a single set of institutions was completed by the Merger Treaty of 1965, which created a single Council and a single Commission of the European Communities. This paved the way for the subsequent development of the European Union and the European Community.
6. The main stages in the development of the Union and the Communities since then have taken two forms:

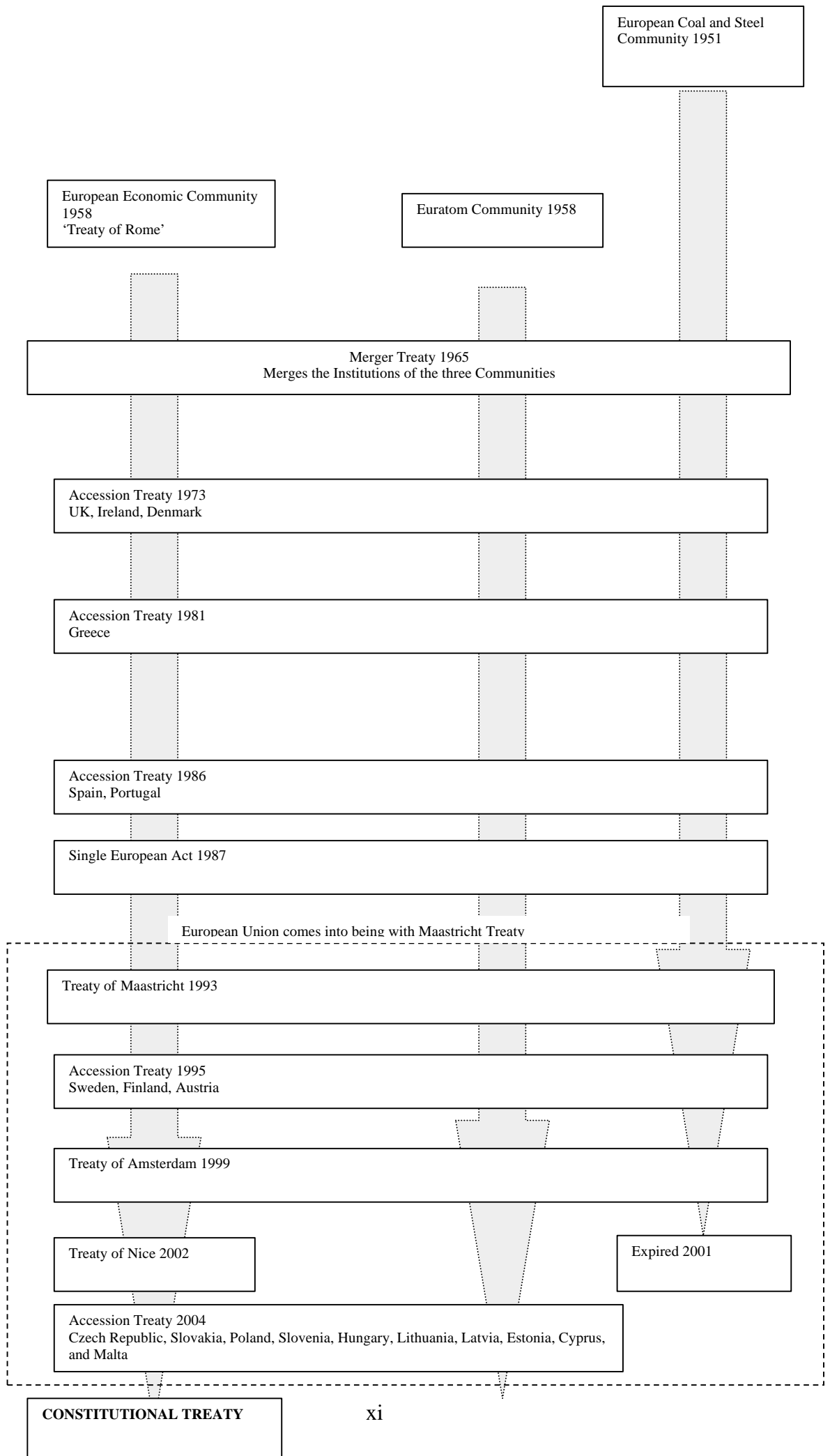
(a) new Treaties following Inter-Governmental Conferences among the Member States, giving new powers to the Communities and Union or providing for new institutional arrangements. These Treaties, and their dates of entry into force, are:

- the Single European Act (1987), which paved the way for the completion of the internal market;
- the Treaty of Maastricht (1993), which renamed the EEC as the European Community (EC) and created the European Union, a wider legal framework within which the EC, Euratom and the ECSC remained in being;
- the Treaty of Amsterdam (1999);
- the Treaty of Nice (2003).

(b) Treaties providing for new Member States to join the Communities and Union. These typically set out the changes needed to the institutions (e.g., more Members for the European Parliament), any transitional arrangements needed for the new Members (e.g. the dates at which they apply common EU policies) and specific arrangements for some Member States (eg in relation to their overseas territories). These Treaties occurred at the time of the following changes to the EU's membership:

- the UK, Ireland, and Denmark (1973);
- Greece (1981);
- Greenland's departure from the EEC (1985). Greenland was and remains an overseas territory of Denmark;
- Spain and Portugal (1986);
- Austria, Sweden, and Finland (1995);
- The Czech Republic, Slovakia, Poland, Slovenia, Hungary, Lithuania, Latvia, Estonia, Cyprus, and Malta (2004).

7. The Treaty establishing a Constitution for Europe is the successor to all these Treaties. In legal terms, it is, like its predecessors, a treaty among sovereign States, establishing the framework for an international organisation. It was negotiated first of all in a "Convention" of Governments and MPs under the chairmanship of former President Giscard d'Estaing, and subsequently, and as for all previous Treaties, in an Inter-Governmental Conference of the Member States.
8. The diagram on the next page sets out the development of the Treaties in schematic form.



B What the new Treaty does and what it contains

9. In one respect the Constitutional Treaty differs from what has gone before. Until now successive Treaties have simply sought to amend or supplement the original Treaties of Paris and Rome. As a result, the legal framework of the Union and the Communities is currently based on a patchwork of overlapping Treaties, with the visibility or accessibility of particular provisions bearing no necessary relation to their underlying importance. Although unofficial consolidated versions of the Treaties are available, these generally do not contain all the extant Treaty provisions. And these texts are themselves extremely difficult to read and make sense of, even for the expert. The rules that govern the activities of the Union and the Communities are therefore often difficult to find and set in context.
10. The new Treaty changes all that. If it is approved by all the Member States and comes into force, it will replace all the old Treaties (apart from the Euratom Treaty). In future, the Constitutional Treaty will contain all the key provisions of the EU's organisation.
11. Moreover, every active provision of the old Treaties will be consolidated into the new one, in a logical order. The new Treaty will give due prominence to the most important provisions, delete spent or obsolete provisions, and state in treaty form fundamental principles of the Union legal order which have until now been set out only in the case law of the Court of Justice. Inevitably, given the range of activities covered by the Union and the diversity of interests engaged in its institutions, that still leaves a lengthy and in places complicated text. But the new Treaty will be clearer and more authoritative than previous consolidations. And, most importantly, it will be comprehensive, providing a complete statement of every provision relevant to the way the Union works in practice.
12. The new Treaty consists of a preamble, 448 Articles arranged in four Parts, 36 Protocols and 2 Annexes. 50 Declarations were included in the official record (or "Final Act") of the signature ceremony.
13. The **Preamble** consists of several paragraphs explaining who the parties to the Treaty will be and why it was decided to negotiate and agree the Constitutional Treaty. As in the case of previous Treaties, the signatories are representatives of the Member States of the Union. The preamble does not express legally binding commitments in the way that the Treaty and the Protocols do. But, as an indication of the purpose of the new Treaty, it forms part of the legal context in which it is to be interpreted.
14. **Part I** contains the fundamental Constitutional text. It is relatively short – 60 articles in total. It sets out what the Union is, what powers it has, what its institutions are, and how it legislates. Some of it derives from the existing Treaties. Some of it is new – for example, the provisions for the new permanent President of the European Council or the Union Minister for Foreign Affairs. Some of it sets out for the first time in clearly visible Treaty form important principles deriving from the case law of the Court of Justice and the practice of the Institutions.
15. **Part II** is the Charter of Fundamental Rights, which sets out the rights and principles that must be observed by the Union when legislating and by the Member States when implementing Union law. This is discussed in more detail below.

16. **Part III** explains what the Union will seek to achieve in the various policy areas in which powers are conferred on it, what the limits on its powers are and what the detailed legislative procedures are for exercising these powers. Much of Part III is taken verbatim (apart from technical updating) from existing Treaties.
17. **Part IV** is mostly “housekeeping.” It contains technical and supplementary provisions which, for example, make clear that the Constitutional Treaty replaces previous Treaties, provide for the continued application of existing EU legislation and other parts of the *acquis*, set out how the Treaty may be amended, how it is to be ratified and when it will come into force.
18. The **Protocols and Annexes** are an integral part of the Constitutional Treaty and have the same legal force. Provisions are to be found in these sections simply because they are lengthy or technical or because including them in the Treaty itself would complicate the readability of the text. For example, some Protocols set out the detailed internal rulebooks of bodies such as the Court of Justice, the European Central Bank and the European Investment Bank. Some bring together, for convenience, the remaining provisions of the various Accession Treaties that are still in force. Other Protocols contain provisions relating only to certain Member States: for example, the provisions for the UK’s right to opt in to EU laws on asylum, immigration, and civil law. But all these Protocols have the same legal force as the rest of the Treaty. Again most of the Protocols are simply taken verbatim (apart from technical updating) from existing Treaties.
19. Finally, the **Declarations**. Declarations have been included in the official records of the signature ceremonies (“Final Acts”) of every significant Treaty relating to the Communities and the Union. The Constitutional Treaty is no exception, and 50 declarations appear in its Final Act. Declarations 1 to 30 and declarations 42 to 50 relate to the main Treaty provisions of the Constitutional Treaty; declarations 31 to 40 relate to the Protocols. Declarations 1 to 41 are made ‘by the Conference’, which means by all the Member States that are signatories to the Treaty. They therefore represent the views of representatives of all the Member States. While not part of the Treaty, they offer an authoritative account of what the signatories of the Constitutional Treaty had in mind in agreeing to its terms, and for that purpose they are relevant in its interpretation. Some indicate how a provision of the Constitutional Treaty is to be understood (eg Declaration 1 or 12). Some say how powers in the Constitutional Treaty are to be exercised (eg Declaration 3 or 8). Some say how the signatories intend to handle issues connected with the Constitutional Treaty in future (eg Declaration 30 or 40). The remaining declarations were made by individual Member States or by groups of Member States or by the Commission. They reflect particular concerns of the States that made them.
20. Declaration 12 concerning the Explanations relating to the Charter of Fundamental Rights (Part II of the Treaty) has a special status. Although the Declaration itself is not part of the Treaty, Article II-112(7) of the Constitutional Treaty requires the ECJ, when interpreting the Charter, to pay due regard to these Explanations.

C The Charter of Fundamental Rights

21. The Charter of Fundamental Rights of the European Union forms Part II of the Constitutional Treaty. This section explains the origin and significance of the Charter.

Background and History

22. The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) set out rights and freedoms which the contracting States were required to secure to everyone within their jurisdiction. It also provided mechanisms for review of governmental legislation or other action against the ECHR standards. The EU's institutions have from the outset also had powers to legislate or act in ways that affected the rights and legal position of individuals and companies. Yet the citizen had, hitherto, no clear list of rights which had to be respected by the EU when it exercised its powers.
23. The Charter of Fundamental Rights was agreed at the Nice European Council in December 2002 as a political declaration, not in itself legally binding. But it clarified the rights and principles which the Union had to observe while legislating.
24. As the work of the Convention on the Future of Europe got under way, it became clear that many Member States wanted the Charter to be given legal force by including it in the Treaties. The Government was not opposed in principle to this, but did insist that greater legal clarity was required in order to define unambiguously the scope of the obligations it would place upon the Union and Member States. That was the purpose of the Presidium Explanations which now appear in Declaration 12 to the Constitutional Treaty. The text of these Explanations forms the *Commentary* on each Article in this Part of the Comparative Analysis.

How the Charter works

25. The starting point is Article I-8(1) of the Treaty. This commits the Union to recognising the rights, freedoms and principles set out in the Charter of Fundamental Rights. The fact that the Treaty uses the word “recognise” rather than “respect” makes it clear that the Charter contains rights which already exist, and whose detail is defined elsewhere.

Article I-8(3) is a continuation of the formula in the existing Treaties. It makes clear that the Union’s general principles of law regarding fundamental rights remain as guaranteed by the ECHR, and as they result from the constitutional traditions common to the Member States. In other words, the Charter does not displace the basic law on fundamental human rights, as currently set out in Article 6(2) TEU.

The specific articles and the Charter Explanations

Articles 61 to 110 set out the specific obligations on the Union. They vary in nature, from the right to life or the right not to be tortured to the entitlement to social security benefits.

Each Article has an Explanation, and all the Explanations now appear in Declaration 12 to the Constitutional Treaty. In this *Commentary* they are printed next to the Charter Articles for convenience. The Explanations help to identify the source of each specific provision in international and European law. They fill in the detail which the headline identification of the rights in the Charter itself provides.

There are two types of obligation in the Charter: “rights”, which create legal obligations; and “principles”, which have to be taken into account by the Union when legislating, but which are only enforceable in Court when the EU acts implementing them are being interpreted or reviewed

Articles II-111 and II-112: the “horizontal” Articles:

These Articles apply to all the provisions of the Charter (so they are, in the jargon, “horizontal”). They are essential to the interpretation of the Charter and the accompanying Explanations.

Article II-111

Paragraph 1 makes it clear that the Charter is addressed primarily to the Union institutions. It affects the Member States only when they are implementing Union law. It also makes clear that the limits of Union powers in the other Parts of the Constitution must be respected. In other words, the Charter is not about imposing new obligations on Member States when they act within national competence. It is about constraining the action of the Union’s institutions: ensuring that when the institutions act, they respect fundamental rights.

Paragraph 2 makes clear that the Charter does not extend the field of application of Union law or change the competences or functions conferred on the Union. The Charter reflects existing law – it does not and cannot extend it.

Article II-112

Paragraph 1 restates a familiar principle, from the European Convention on Human Rights, about the circumstances in which limitations can lawfully be placed on the rights and freedoms in the Charter.

Paragraph 2 states that those Charter provisions based on existing EU rights have the same meaning and scope as their corresponding provisions in EU law.

Paragraph 3 does the same thing, but for provisions which are based on elements of the European Convention on Human Rights.

Paragraph 4 deals with Charter provisions that draw upon the constitutional traditions common to the Member States. An example is Article II-70(2) on conscientious objection. It also requires that those Charter provisions that are drawn from such traditions must be interpreted “in harmony” with them.

Paragraph 5 is of great importance. It indicates that some of the Charter provisions are not legal rights as such, but “principles” (see above).

Paragraph 6 provides that in applying the Charter full account must be taken of national laws and practices as specified in the Charter. In some cases this is actually specified in the relevant Articles themselves. This underlines the important point that in a number of cases, respect for national laws and practices is a vital part of the special approach required by the Charter.

Paragraph 7 clarifies the status of the Charter Explanations (which are set out in Declaration 12 to the Final Act). It requires the courts to have due regard to them when reaching judgments on issues relevant to the Charter. In other words, the limitations, clarifications, and comment to be found in the Explanations cannot be simply set aside by courts, including the European Court of Justice, but must be taken into account.

D How to read the Treaty and how to use the Commentary

The Treaty

26. The Constitutional Treaty is easier to read and use than might appear at first sight. In fact, the principles of reading it are relatively simple.
27. The basic legal provisions are set out in Part I. Detailed expansion of those provisions is in Part III and in some cases in Protocols. Declarations may offer guidance as to the interpretation or significance of the Treaty provisions.
28. A good example is the provisions relating to the Court of Justice. Article I-29 (Part I) describes the Court's composition and functions in general terms. Articles III-353 to III-381 (Part III) deal with these matters at greater length setting out key provisions on the Court's jurisdiction. Protocol 3 on the Statute of the Court of Justice sets out the constitutional rules governing the operation and organisation of the Court.
29. The route from one Article to another is rarely signalled in the Treaty text itself. The *Commentary* which follows attempts to fill that gap, by – for the most important areas of EU policy – signposting the provisions set out in different parts of the Treaty.

The Commentary

30. This *Commentary* follows the structure of the Constitutional Treaty, with the text of the *Commentary* on the left hand page, and the text of the new Treaty on the right. Each Part is preceded by a short introduction setting out its basic structure and purpose. Then there is a short commentary on each Article or, occasionally, group of Articles, explaining whether it is based on Articles in the existing Treaties, and whether there is a change in voting procedure or in the EU's powers. Important or significant changes are dealt with at more length than provisions that substantially repeat provisions from existing Treaties. There are short sections on the Protocols and Declarations.
31. Much of the Constitutional Treaty draws on or is closely based on provisions in the existing EU and Community Treaties. However, the wording of the provisions in the Constitutional Treaty is rarely identical to the wording of the provisions it replaces. The differences between the old and new provisions are usually not substantive, but result from e.g. changes in the name of the relevant legislative acts; changes in the names of the EU institutions; updating or deletion of spent or obsolete provisions; re-drafting to provide greater clarity; re-ordering of existing provisions into a more logical structure; consequential re-numbering and so on.

32. To avoid overcomplicating the text, purely technical adjustments of this kind are not pointed out in the *Commentary*. Instead, the *Commentary* describes the relationship between the Constitutional Treaty and the provisions it replaces in various ways:

"in substance the same as" means that the provision in the Constitutional Treaty has the same effect as the predecessor Article, and follows the language of its predecessor closely even though the wording may be different in some respects. In a few rare cases the wording is identical to that in the predecessor Article(s): these cases are not distinguished specifically. (There are very few identical provisions because of terminological changes, updating of cross-references, and so on.);

"corresponds to" means that the provision in the Constitutional Treaty fulfils the same function as the predecessor Article, but is different in certain material respects. These differences are identified in the *Commentary*;

"draws on / is based on" means that the predecessor provision is the source of the provision in the Constitutional Treaty, but that it has been developed in significant ways. These developments are then identified in the *Commentary*.

33. The headings given to each Article in Part I and Part IV were agreed as part of the official text of the Constitutional Treaty. Those attributed to each Article in Part III of the *Commentary* are unofficial and have been added to aid the reader.
34. Following this introduction, there is an **Appendix** setting out a short history of the development of the Community and Union Treaties, showing when powers were acquired in various areas.
35. At the end of the *Commentary* are to be found a list of the areas where the Constitutional Treaty provides for voting to be by qualified majority rather than unanimity (**Annex 1**), and where the co-decision procedure now applies; and Abbreviations and a Glossary which explain commonly used technical terms, acronyms and abbreviations (**Annex 2**).
36. Readers should note that this *Commentary* has been prepared in response to requests from Members of Parliament and the European Scrutiny Committee of the House of Lords. It is intended as a guide to the Constitutional Treaty; it does not purport to be a definitive legal analysis of the Treaty nor an exhaustive statement of the position of the Government on the provisions of the Treaty. Persons in doubt as to the impact of the Treaty on their rights or obligations should seek appropriate legal advice.
37. Finally, comments and feedback on this document are welcome and should be communicated to the Europe Directorate of the FCO.

Appendix: The development of the competences of the European Union: the Treaty of Rome to the Constitutional Treaty

This Appendix sets out in summary form the main changes made over the years to the powers (“competences”) conferred on the European Community (established as the European Economic Community by Treaty of Rome in 1957) and the European Union (established by the Treaty of Maastricht in 1993). Changes were also made from time to time to the Communities set up by the ECSC and Euratom Treaties, but these are generally not significant. The functions and powers of these Communities have remained confined to narrow economic sectors (coal and steel and nuclear energy) more or less as originally established.

It is important to bear two key points in mind in any discussion of Union “competences” or powers under the Constitutional Treaty (or of the Communities’ powers under the current Treaties). Both flow from the fundamental principle of “conferral”, set out in Article I-11(2) of the Constitutional Treaty.

First, the Union only has the competences that have been conferred on it. Competences not conferred on it remain with the Member States. Second, the Union may only act within the limits of the competences conferred on it. So the fact that the Union is under the Constitutional Treaty given “competence” in relation to health or culture does not mean that it can act on any aspect of these matters nor that it can act in any way it chooses. The Union can only exercise the powers it has been given for the purposes for which they were given and in accordance with the procedures laid down in the Treaty. The starting point in assessing the Union’s powers on any given issue is therefore the relevant Article or Articles conferring the powers. These Articles will expressly limit what the Union can do, for example by stating what kind of measure the Union can or cannot adopt or by stating what the purpose of any Union action must be. In the following summary, references to Community or Union competences must be read against this background.

Treaty of Rome (the EEC Treaty) At the time of accession of the UK to the European Economic Community, the task envisaged for the EEC by the Member States was, “by establishing a common market and approximating the economic policies of the Member States, to promote”:

- the harmonious development of economic activities
- continuous and balanced expansion
- an increase in stability
- an accelerated raising of the standard of living, and
- closer relations between the States belonging to the Community.

The Treaty provided for the activities the Community would be involved in. They included:

- eliminating customs duties and restrictions on imports and exports between Member States
- a common customs tariff and a common commercial policy towards third countries
- abolition of obstacles to the freedom of movement for persons, services and capital
- a common policy for agriculture (development of the common fisheries policy began at about the time of UK accession)
- a common policy for transport

- a system to ensure that competition in the common market was not distorted
- the co-ordination of economic policies
- the approximation of the laws of the Member States for the functioning of the Common Market
- creation of the European Social Fund
- establishment of European Investment Bank, and
- creation of an association of overseas countries.

The **Single European Act** (entered into force in 1987) added the following new policies to the Treaty:

- the internal market programme that aimed to create, by 31 December 1992 an area without internal frontiers in which the free movement of goods, persons, services and capital was ensured
- co-operation in economic and monetary union
- social policy including health and safety of workers
- economic and social cohesion policy
- research and technological development
- environmental policy.

European political cooperation, the forerunner of the common foreign and security policy, was established.

There were also several significant institutional reforms:

- creation of a Court of First Instance established to assist the Court of Justice
- introduction of a legislative 'co-operation' procedure with an enhanced role for the European Parliament
- an enhanced role for the European Parliament in relation to the conclusion of international agreements by the Community
- consolidation of the 'comitology' procedure under which the Council delegates powers to the Commission on certain conditions was formally included in the Treaty, and
- introduction of qualified majority voting in the Council in areas which had previously required unanimity.

The Maastricht **Treaty on European Union** (1993) created the European Union and introduced a three pillared institutional structure in which the Communities formed the "First Pillar", the Common Foreign and Security policy, the "Second Pillar" and the cooperation on Justice and Home Affairs, the "Third Pillar." The European Economic Community was renamed the European Community. The Treaty of Maastricht also introduced the following substantive reforms and new EU policies:

- the principles of subsidiarity and proportionality were formalised in the Treaty
- economic and monetary union was established and provision was made for the introduction of a single currency
- the European Union's international identity was to be asserted through a common foreign and security policy

- EU citizenship was introduced with various attendant rights
- co-operation in justice and home affairs was established as a new policy
- an elaborated Protocol on Social Policy was agreed and
- some existing powers (eg in relation to the environment and research and technological development) were enhanced and extended, and new powers were conferred on the European Community in the following areas (though not all of these changes involved creation of an express power to legislate):
 - health protection
 - competitiveness and industry
 - trans-European networks
 - culture
 - education, vocational training and youth
 - consumer protection
 - energy, tourism and civil protection
 - development co-operation.

Institutional reforms included:

- an increase in the European Parliament's legislative involvement through the co-decision procedure
- establishment of the Committee of the Regions
- a Parliamentary Ombudsman was introduced
- establishment of a European System of Central Banks and a European Central Bank.

The **Treaty of Amsterdam** (1999) altered the numbering throughout the Treaties in an attempt to simplify the increasingly legal complex structure of the EU and the Communities. In addition, substantive changes were made in the following areas:

- work on immigration, asylum, and civil law was moved to the First Pillar and made an area of Community policy. The UK, with some other Member States, obtained an opt-out on these matters. The Third Pillar retained police and judicial co-operation in criminal matters
- the policy of closer co-operation was advanced with the incorporation of the Schengen acquis into the EU framework
- the promotion of equality of men and women
- a new anti-discrimination provision was introduced to combat discrimination based inter alia on sex, racial or ethnic origin, religion
- an employment policy was introduced
- a new social policy was incorporated into the Treaty.

The Treaty of Amsterdam also

- amended the co-decision procedure and extended its application
- enhanced the role of the Committee of the Regions
- introduced a procedure to deal with Member States that were in breach of fundamental principles of the EU
- set out the meaning of the principle of subsidiarity in more detail
- created a mechanism to allow "closer" cooperation among groups of Member States in specific areas of EU policy.

The Treaty of Nice (2003) reached agreement on the institutional questions relevant to future enlargement of the EU to a Union of 25. These questions included the weighting of votes in the Council; the composition of the Commission; and distribution of seats in the European Parliament. In addition, agreement was reached on:

- further extension of the co-decision procedure and qualified majority voting
- the reform of the judicial system of the EU
- amendment of the provisions on “enhanced” (formerly “closer”) co-operation.

The **Treaty establishing a Constitution for Europe** (signed in 2004, not yet in force) consolidates and rationalises this complex accumulation of legal provisions, but does not represent a major change in the development of the powers of the Union. The *Commentary* in Part Two sets out in detail where changes have been made and what their significance is in relation to the preceding Treaties. There are numerous institutional and procedural changes flowing from the creation of a single Union structure and the general aim of simplification. As regards the Union’s powers, the Constitutional Treaty may be said to have altered the competences of the Union in the following broad ways:

- (a) Certain areas of essentially intergovernmental cooperation or action within the framework of the existing Treaties are now given specific legal bases. These are diplomatic and consular protection and the solidarity clause.
- (b) In some areas, measures have already been adopted under the TEC, although the precise scope of the Community’s powers was unclear or undefined. These areas have now been given a specific legal basis, and the scope of the Union’s powers has accordingly been strictly defined and limited. These are: services of general economic interest, some aspects of intellectual property, energy, tourism, civil protection, and humanitarian aid.
- (c) Some competences conferred on the Union are essentially new. These are the powers to adopt measures on travel and residence documents, space, sport, administrative cooperation, the European Research Area, and common safety concerns in health.
- (d) The scope of some well-established competences has been clarified and extended. These are the common commercial policy and Justice and Home Affairs.