White Paper

An explanation of changes to the functioning of the European Union made by the Lisbon Treaty.

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White Paper

An explanation of changes to the functioning of the European Union made by the Lisbon Treaty.
The Lisbon Treaty contains seven articles. Article 1 is a series of amendments to the Treaty on European Union (TEU) and Article 2 is a series of amendments to the Treaty establishing the European Community. The Lisbon Treaty will rename the Treaty establishing the European Community as the Treaty on the Functioning of the European Union (TFEU).

Article 3 of the Lisbon Treaty states that it is concluded for an unlimited period. Article 4 annexes a number of Protocols to the EU Treaties, which are referenced in Annex A to this White Paper.

Article 5 of the Lisbon Treaty provides for re-numbering of the articles of the EU Treaties. For ease of reference, this White Paper follows that numbering. This is also used in the consolidated versions of the Treaty on European Union and of the Treaty on the Functioning of the European Union published in the Official Journal of the European Union on 9 May 2008. The numbering is provisional in nature, pending entry into force of the Lisbon Treaty.

Article 6 of the Lisbon Treaty provides that all EU Member States shall ratify the Treaty in accordance with their respective constitutional requirements and that their instruments of ratification of the Treaty shall be deposited with the Italian Government. Article 7 of the Treaty provides that it shall be equally valid in all “treaty” languages, including Irish.

The full texts of the Lisbon Treaty, the consolidated versions of the Treaty on European Union and of the Treaty on the Functioning of the European Union as well as the Charter of Fundamental Rights of the European Union are available at: www.lisbontreaty.ie

“The Union’s aim is to promote peace, its values and the well-being of its peoples”

Article 3, Treaty on European Union
The Lisbon Treaty and Ireland’s Legal Guarantees

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Glossary
Foreword:

Brian Cowen TD
Taoiseach

Micheál Martin TD
Minister for Foreign Affairs

Dick Roche TD
Minister of State for European Affairs
The purpose of this White Paper is to explain the Lisbon Treaty, which was signed in December 2007.

The Lisbon Treaty, which amends the existing EU Treaties, is the product of prolonged and intensive negotiations between the Member States of the Union. It has its origins in a Declaration by European Union Heads of State or Government in December 2001 which stressed the need for the Union to become closer to its citizens and more responsive to their needs and expectations.

The main purpose of the Treaty is to introduce a series of reforms designed to prepare the Union of twenty-seven Member States for the challenges of the 21st century. If ratified, the Treaty will:

• provide for a closer connection between the people of Europe and the EU institutions;
• reform decision-making in order to make the Union more effective in dealing with the issues that are important to the lives of Europe’s citizens;
• set out the Union’s powers and their limits in those areas where the Member States have agreed that the EU should have a role;
• enhance democracy by increasing the role of national parliaments and the European Parliament;
• make the Charter of Fundamental Rights part of EU law.

The Government strongly supports ratification of the Lisbon Treaty. It believes that ratification is vital if Ireland is to secure its position as a positive and constructive member of the European Union. This is essential for our future national wellbeing and represents a key component of our strategy for economic recovery. Ratification of Lisbon would remove any doubts that exist in the minds of the international community about our commitment to Europe.

This White Paper describes the contents of the Treaty in a fair and factual manner. It also outlines how the Treaty was negotiated, including the broad approach taken by the Government during the negotiations.

The White Paper also provides an account of the in-depth research and extensive consultation which followed the June 2008 referendum. It details the agreement reached at the European Council in December 2008 and reiterated at the European Council in June 2009, that each Member State will keep a Commissioner, should Lisbon enter into force.

The legally-binding guarantees on issues of concern to the Irish people which were secured at the June 2009 European Council are explained, as is the Solemn Declaration on workers’ rights and social policy. Ireland’s legal guarantees will be registered with the United Nations as an international agreement and will be attached to the EU Treaties as a Protocol at a later date.

The EU needs the Lisbon Treaty, if it is to continue delivering peace and prosperity to Europe in the years ahead. Ireland has a vital interest in an effective Union and that is why this Treaty is so important for our future.

We hope that this White Paper will contribute to an active and well-informed public debate on the Lisbon Treaty and Ireland’s legal guarantees. We will be taking a decision on the Lisbon Treaty in the coming months that will shape our nation’s future for years to come. It is imperative that we make the wise choice.
Introduction: Ireland, the Lisbon Treaty and the European Union

1. The Lisbon Treaty cannot be seen in isolation from Ireland’s experience of more than thirty-five years of EU membership. Nor can it be separated from our aspirations for the future, or from the realities of the world around us.

2. The Lisbon Treaty represents the culmination of years of reflection and negotiation among the Member States in which Ireland played a leading role, especially during our 2004 EU Presidency.

3. The Treaty reflects the collective view of 27 sovereign States on how we can best manage our unique relationship within the EU. It aims to equip the Union with the tools it needs to help us deal with the challenges posed by an enlarged Union and a changed world.

4. The new powers for the European Parliament, the new role for national parliaments, the new citizens’ initiative and the new focus on encouraging the participation of young people in the democratic life of Europe will enhance the democratic legitimacy of the European Union.

5. The Lisbon Treaty offers us an opportunity to bring to an end a complex process of institutional change represented by successive Treaties – Maastricht, Amsterdam and Nice – and to focus our combined efforts on helping to deliver solutions to the challenges facing Europe, today and tomorrow.

6. The Government considers that ratification of the Lisbon Treaty is vital to securing Ireland’s position within the EU and thus supporting our economic recovery.
7. Now that guarantees have been provided by our EU partners on issues that raised concerns last year, there is a fresh basis for consulting the people in a referendum later this year. In the months ahead, as we debate the merits of ratifying the Treaty, it is very important that we keep in mind wider considerations concerning our interests and our position in the Union and in the world.

Ireland's Experience of EU Membership

8. Since we first joined the Union in 1973, Ireland has undergone fundamental change, to which our EU membership has made a highly positive contribution. The world in which we live has also been reshaped in recent decades, most notably on account of the ending of the Cold War which paved the way for EU enlargement.

9. The people’s decision in 1972 to permit Ireland to join the European Communities was a major policy choice. It has benefited our country immensely. Our economic circumstances have been transformed by the trade and investment opportunities available to us as members of the EU.

10. We have forged new, comprehensive relationships with our European neighbours with whom we have so much in common. In concert with our EU partners, we have been able to make a very positive contribution to the cause of peace and stability in Europe and beyond.

11. Since 1973, Ireland has made a significant contribution to the evolution of the EU, including on the six occasions when we have held the EU Presidency.

12. Irish people have experienced the benefits that flow from our unique engagement with our EU partners. Throughout the Union, Irish citizens exercise their rights as European citizens to live, study, vote, work and retire in other Member States.

13. By concentrating on maximising our real sovereignty – our capacity to influence events at home and abroad – we have been able to draw very significant benefit from our role as a positive and constructive member of the EU.

The Economic impact of EU membership

14. The economic benefits of membership have always been a central part of our European experience. Our 35 years in the EU have seen a growth in our per capita GDP from less than two-thirds of the Union average in 1973 to a position today where, despite our current economic difficulties, we are well above the EU average income per head.

15. Over the years, our trade has multiplied and diversified. In 1973, our exports to other EU countries stood at €840 million. Today, it has multiplied one hundred-fold and now totals €98,000 million. Membership has opened up new economic horizons and allowed us to escape from the dependencies of the past.
16. The Single Market, approved by the Irish people in 1987, is the centrepiece of European integration. As an EU member, we have been able to help shape the rules governing the single market. It has provided our firms with huge opportunities from which we have benefited immensely.

17. As part of the largest trans-national market in the world, our trade has expanded and diversified. We have attracted substantial quantities of inward direct investment from companies seeking a base within the European Union. The Single Market has helped us to create jobs and to increase prosperity. It has given Irish people the freedom to work and to do business across the Union.

18. The current economic crisis reminds us of the advantages of belonging to the EU and of possessing a strong international currency – the Euro – which is not prey to manipulation from outside. The liquidity provided by the ECB to Irish banks has been a real asset to Ireland, as it has supported the stability of our financial system.

19. The European Single Market is not just about liberalisation and removing barriers to trade. It is intimately bound up with the protection of consumers’ and workers’ rights. Nowhere is this more evident than in the harnessing of the Union’s four freedoms to the requirements of a Social Europe. These requirements have transformed workers’ rights in Ireland – including in relation to equal pay, maternity leave, and protection in the workplace. In each instance, membership requires that we adhere to the very highest standards.

20. Ireland has benefited greatly from the operation of the EU’s internal policies. The Common Agricultural Policy has supported our farming and rural communities to the tune of more than €40 billion since 1973, which represents more than €1 billion for each year of our membership. Cohesion and structural funds have helped upgrade our infrastructure, with funding from the EU budget totalling €17 billion.

21. The European Research and Development Programme connects researchers in Ireland with their colleagues across the Union and around the world, facilitating the innovation-led growth on which we increasingly depend.

22. While coal and steel were symbolic areas of cooperation in early post-war Europe, today’s Union faces a very different, far broader agenda, with concerns such as the environment, energy security and the global economic situation offering productive ground for EU initiatives to serve our shared interests.

23. Ireland has a huge interest in being able to continue deriving maximum economic benefit from our EU involvement. This can best be done from a situation in which we are able to agree with our 26 EU partners on the future direction of the Union, as mapped out in the Lisbon Treaty.
24. Our EU membership is one of the keys to our economic recovery and it is vital that we reaffirm our determination to continue to operate as a positive and constructive member of the Union.

Ireland in the Union

25. Our membership of the Union has coincided with an increase in national self-confidence and a strengthening of our identity. The Union’s recent decision to give official status to the Irish language reflects this reality.

26. As a small State, Ireland values a rules-based system of international relations. Thirty-five years of EU membership and more than fifty years of UN membership prove that our interests are best advanced by engaging persistently and intensively with other nations on the issues which concern us. We get the best outcome by forming coalitions and seeking to influence agendas.

27. While our veto on the most sensitive issues remains important as a last resort, our best asset in an EU context is our ability to be at the constructive heart of negotiations where compromises are made and consensus is forged.

28. Indeed, the Oireachtas Sub-Committee on Ireland’s Future in the European Union observed in its survey of our engagement with the Union that we have painstakingly built-up a reservoir of goodwill towards Ireland through our constructive approach to EU affairs.

29. As our world has changed, so have our demands of the Union. In response to these changes, the Member States have agreed to pursue important new policy objectives in new areas like energy policy and the fight against cross-border crime.

30. Problems like climate change and energy require coordination and concerted action. Last winter – one of the coldest in memory – millions of Europeans suffered great hardship as a result of a disruption in the supply of natural gas to the Union. On this occasion, Ireland was among the least affected countries, but that crisis is a stark reminder of the vulnerability of European nations to energy supply disruptions and the value of acting together within the EU in coping with such risks.

31. The Union needs to gear up for the challenges of the 21st century. These are of such a scale that no one country, big or small, can hope to face them alone. That is why the innovations in the Lisbon Treaty are so important.

The Union in the World

32. After the relative stability of its early years, the Union has in recent years entered into a period of intensive reform and substantial enlargement. These developments have taken place in response to historic changes on our continent, not least the end of the Cold War and the fall of the Berlin Wall.

33. It is a remarkable achievement that so many Member States have peacefully
made the transition from Communism to membership of a democratic Union which adheres to the very highest standards of human rights protection.

34. Ireland’s distinctive voice on the world stage is amplified by our membership of the Union. The Union is not a military power, and its Member States have no desire to move in such a direction. The values and principles of the European Union’s foreign policy are fully aligned with our traditions – 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.

35. The privileged position we hold offers Ireland an unprecedented opportunity to pursue our foreign policy goals in the wider world. If the Lisbon Treaty is ratified, the Union will be represented by a High Representative for Foreign Affairs and Security Policy which will give the Union and Member States a clearer voice in international affairs. At the moment, external policy issues are divided between the European Commission, the Council and the 27 Member States. The Union of 27 Member States has at its disposal many levers for influencing events and for conflict prevention. This is a very different proposition from engagement on a purely national basis.

36. Hand-in-hand with its innovative foreign policy tools, the Union has developed its crisis management capacity. Ireland’s participation in global peacekeeping has traditionally taken the form of support for UN missions, but the UN now increasingly delegates modern crisis management missions to regional organisations, such as the EU.

37. Most recently, the Defence Forces participated in one such mission in Chad, deploying forces to protect 500,000 refugees and other vulnerable persons from predatory groups of bandits across an area roughly the same size as Ireland. The EUFOR mission in Chad and the Central African Republic involved 4,000 troops from 19 nations. It is a source of pride that the Operations Commander of this highly regarded mission was an Irish officer, Lieutenant General Pat Nash.

38. The Union is well placed to influence the Union’s foreign policy in a direction consistent with our national interests and traditions.

The Union: our natural home

40. In 1972, the people made a decision that would fundamentally alter the direction of Ireland’s national development. On the back of that decision, we have become a modern, European nation, engaged at a multitude of levels – economically, commercially, culturally, socially and politically – in daily exchanges with our neighbours and partners across the Union.
41. Membership of the Union has served us well for the past 35 years. We have risen to the various challenges posed by membership and carved out a distinctive role for ourselves. We have a deep interest in continuing with this productive European journey in the years ahead. This requires that we be in a position to combine with our EU partners within structures that meet our respective needs and that are adequate for the tasks we want the EU to undertake. The Lisbon Treaty represents a road map for Europe’s future agreed by all the Member States.

42. Over the years, we have played a central role, out of all proportion to our size, in the development and shaping of that Union. In a world which is increasingly shaped by forces beyond the control of nation States, the Union amplifies our voice and it promotes our interests. Our experience of 35 years provides abundant proof that the European Union is a natural home for the protection of Ireland’s interests and the pursuit of our aspirations.
Chapter 1: The Lisbon Treaty and Ireland’s Legal Guarantees

1. On 19 June 2009, the 27 EU Heads of States or Government meeting at the European Council agreed an important package of guarantees and assurances for Ireland regarding the Lisbon Treaty. These guarantees represent a comprehensive and constructive response on the part of our fellow EU members to the concerns about aspects of the Lisbon Treaty that surfaced during last year’s referendum campaign. This package consists of: (i) a legally-binding decision on the right to life, education and the family; taxation; and security and defence; (ii) a Solemn Declaration on workers’ rights and social policy; and (iii) a National Declaration by Ireland setting out the basis for Ireland’s participation in UN-mandated missions for peacekeeping, conflict prevention and strengthening international security. The European Council agreed that the legally-binding decision would become a protocol to the EU Treaties at the time of the next EU accession treaty, which is likely to be in 2010 or 2011.

2. The June meeting also confirmed the commitment given by the European Council in December 2008 to decide, upon the entry into force of the Lisbon Treaty, that the Commission will continue to include one national per Member State. This was another significant response on the part of the European Council to the concerns of Irish voters.

3. On the basis of the legal guarantees, the solemn declaration and the December 2008 agreement on retaining
a Commissioner, the Government has committed itself to seeking the ratification by referendum later this year of the Lisbon Treaty. The aim is to bring the Lisbon Treaty, which has already been approved by the parliaments of the other 26 European Union Member States, into effect by the end of 2009, but this depends on a positive vote in our referendum.

What is the Lisbon Treaty and where did it come from?

4. The Treaty amending the Treaty on European Union and the Treaty establishing the European Community was signed at Lisbon on 13 December 2007 by the Heads of State or Government of the twenty-seven Member States of the European Union.

5. It represents the culmination of many years of negotiation aimed at reforming and up-dating the workings of the European Union so that it can continue to serve the needs of today's Union of 27 Member States with a combined population of 500 million. The Lisbon Treaty is designed to equip the Union to meet the challenges facing Europe in the changing world of the 21st century.

6. Its stated purpose is to enhance “the efficiency and democratic legitimacy of the Union” and to improve its coherence. It contains provisions:

- setting out clearly the Union's aims and values;
- on democratic controls, with a greater role for national parliaments (including the Oireachtas), the European Parliament and citizens by means of a citizens’ initiative;
- improving the democratic decision-making processes within the Union;
- setting out clearly the Union's powers and their limits;
- giving legal status to the Charter of Fundamental Rights and allowing the ratification by the EU of the European Convention on Human Rights;
- designed to improve the Union's capacity to carry out its international responsibilities; and
- on equality between the Member States.

7. The Lisbon Treaty can only enter into force following its ratification by all 27 Member States in accordance with their constitutional requirements. In Ireland, as with previous significant EU Treaties, approval is required in a constitutional referendum. The 27 EU Heads of State or Government have established 1 January 2010 as the target date for its entry into force.

The EU Reform process: from the 1957 Treaty of Rome to the Lisbon Treaty

to serve the Union’s needs for the foreseeable future.

9. A Declaration on the Future of the Union was agreed in 2000 by the Heads of State or Government of the Member States. This Declaration reflected the growing belief among the (then 15) Member States of the Union that in order for an enlarged European Union to continue to function effectively, it would require strengthened and reformed institutions and structures.

10. A year later, the Heads of State or Government declared that the Union needed to come closer to its citizens and become more responsive to their needs and expectations. They also laid great stress on the need for change to help the Member States tackle together more effectively the challenges posed by the circumstances of the 21st century. They, therefore, established the Convention on the Future of Europe to “pave the way as broadly and openly as possible” for a future EU Intergovernmental Conference.

11. This Convention was a major innovation in that previous reforms of the Union’s structures were negotiated and agreed exclusively by groups of senior officials and Ministers representing Heads of State or Government in Intergovernmental Conferences. On this occasion, a Convention was appointed, made up of one Government representative and two parliamentary representatives from each Member State, as well as representatives from the European Commission and the European Parliament.

12. The Irish Government’s representative for most of its sessions was the Minister of State for European Affairs, Dick Roche TD and the Oireachtas was represented by deputies from Fine Gael, Labour, the Green Party and Fianna Fáil.

13. Ireland’s main concerns related to the institutional balance within the Union (between the Council of Ministers, the Commission and the European Parliament), and the equality of Member States with particular regard to the interests of the Union’s smaller states. The Government also wanted to safeguard Ireland’s particular traditions in the defence and security policy areas. Taxation was an issue on which the Government was determined that any EU decisions should continue to be taken by unanimity.

14. Over time, consensus emerged on a draft Constitutional Treaty which would: set out the Union’s objectives, values and principles; lay down how the various EU institutions should be organised; list the rights of EU citizens; and, define the Union’s powers in those policy areas where the Member States had agreed that the EU should have a role.

The Intergovernmental Conference (IGC), 2003 – 2004

15. The draft Constitutional Treaty prepared by the Convention was welcomed in June 2003 by the Heads of State or
Government as a good basis for work in an Intergovernmental Conference (IGC), which is the normal mechanism for agreeing on treaty reform within the EU.

16. From the beginning there was broad agreement in the Inter-Governmental Conference with the main outlines and content of the Convention’s draft. Ireland assumed the Presidency of the EU in January 2004. The Irish Government conducted intensive consultations with all of its European Council partners and worked to resolve the outstanding issues. Consensus was eventually reached on the Constitutional Treaty in June 2004 and the Treaty was signed in Rome on behalf of all the Member States that October.

From the Constitutional Treaty to the Lisbon Treaty

17. The electorates in Spain and Luxembourg approved the Constitutional Treaty by referendum. In all, 20 Member States ratified the Constitutional Treaty, which was also approved by a large majority in the European Parliament.

18. With the French and Dutch referendum results in May and June 2005, it became apparent that the Constitutional Treaty, in its original form, could not be ratified by all the Member States. It was agreed that a “period of reflection” would be required in order to agree a way forward for the Union.

19. This marked the beginning of a two year process during which it became clear that the idea of a “European Constitution” had given rise to considerable misunderstanding and misgivings on the part of citizens, in particular the relationship between the proposed new Constitutional Treaty and national constitutions. During this period, in Ireland the National Forum on Europe played a significant role in facilitating debate on the EU’s future.

Negotiation and adoption of the Lisbon Treaty

20. In June 2007, a new Intergovernmental Conference was convened. The mandate given to the IGC was to draw up a Treaty which would consist of amendments to the current Treaties with the aim of enhancing the efficiency and democratic legitimacy of the enlarged Union, as well as the coherence of its external action. In a direct response to the concerns of many of Europe’s citizens, the idea of replacing the existing European Union Treaties with a single Constitutional Treaty was abandoned.

21. It was agreed that the new Lisbon Treaty would drop those elements which had had a constitutional character, but preserve the institutional balance reflected in the Constitutional Treaty. For example, it was agreed not to proceed with the formal adoption of symbols such as the EU flag, the anthem and Europe day.

22. Other modifications related to: the competences of the EU and the Member States and their delimitation; the specific
nature of the Common Foreign and Security Policy (CFSP); the enhanced role for national parliaments; the treatment of the Charter of Fundamental Rights; the re-naming of the post of “Union Minister for Foreign Affairs” as “High Representative of the Union for Foreign Affairs and Security Policy” and a revised mechanism, in the area of judicial co-operation in criminal matters and police co-operation, enabling Member States to go forward with a proposed measure while allowing others not to participate. An Irish Government proposal to include a reference to combating climate change was also agreed.

23. These adjustments were welcomed by the Government as bringing the EU closer to its citizens and giving a stronger role in EU affairs to national parliaments, while preserving those aspects of the 2004 agreement of particular value from an Irish perspective such as the institutional balance, and the retention of unanimous voting in sensitive areas such as defence and taxation.

24. When the Treaty was signed, subject to ratification, by the Heads of State or Government in Lisbon in December 2007, the Heads of State or Government welcomed it as providing the Union with a stable and lasting institutional framework. In a clear indication that the Lisbon Treaty is intended to bring to an end the protracted phase of EU treaty reform, the European Council declared that “We expect no change in the foreseeable future, so that the Union will be able to fully concentrate on addressing the concrete challenges ahead, including globalisation and climate change”.

The Structure of the European Union under the Lisbon Treaty

25. The Lisbon Treaty equips the Union to function effectively with a membership of twenty-seven or more countries and will, if ratified, amend the current Treaties.

26. Under the current Treaties, there are three broad areas, or “pillars” of EU activity. The first area broadly covers economic and social policy. These are covered by the Treaty establishing the European Community. The key feature of European Community policies is that they are, with some notable exceptions, generally decided by qualified majority vote and an important role is played by the European Parliament, the European Commission and the Court of Justice. The second area relates to the Common Foreign and Security Policy which is covered by the Treaty on European Union and where special arrangements apply, such as the fact that all significant decisions are taken unanimously and there is limited involvement of the Parliament, the Commission or the Court of Justice. This is an inter-governmental method of cooperation. The third area of EU activity covers Justice and Home Affairs (JHA). Currently, some JHA policies (external borders, immigration, asylum and judicial cooperation in civil matters) come under the European...
The Lisbon Treaty and Ireland’s Legal Guarantees

Community while others (judicial co-operation in criminal matters and police co-operation) remain under the European Union.

27. These somewhat confusing distinctions between the European Community and the European Union are to be abolished by the Lisbon Treaty. The new Treaty provides for a European Union with explicit legal personality that will replace the European Community established by the Treaty of Rome and the old Union established by the Treaty of Maastricht. All legal acts adopted under the current Treaties will remain in effect.

28. Under the Lisbon Treaty, the European Union will embrace all policies defined in the Treaties. However, important distinctions will remain between the handling of economic and social issues and Justice and Home Affairs on the one hand, and Common Foreign and Security Policy on the other. The most notable of these is the retention of unanimous decision-making for all significant issues in the area of the Common Foreign and Security Policy, whereas only a small number of economic and social issues, notably taxation, will remain subject to unanimity.

Structure of the Lisbon Treaty

29. The Lisbon Treaty consists of two sets of amendments to the existing EU Treaties. The first set contains the amendments to the Treaty on European Union while the second amends the Treaty establishing the European Community and gives it a new name, the Treaty on the Functioning of the European Union. This White Paper follows this format, with Chapters 2-6 referring to the Treaty on European Union (TEU) (known as the Maastricht Treaty) as amended, and Chapters 7-12 referring to the Treaty establishing the European Community (previously known as the Treaty of Rome) and now re-named the Treaty on the Functioning of the European Union (TFEU).

30. Article 1 of the Lisbon Treaty amends the Treaty on European Union by setting out the Union’s basic principles, values and objectives. It outlines the Union’s powers; describes the composition and operation of the Union’s institutions; 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.

31. Article 2 of the Lisbon Treaty amends the Treaty establishing the European Community. The amended Treaty will be known as the Treaty on the Functioning of the European Union. It defines in detail the exact scope of the powers given to the Union in each of the range of policy areas dealt with by the Union. It lays down how decisions are to be taken in each of these policy areas.

32. The Protocols attached to the Treaty are legally-binding texts which either flesh out aspects of the Treaty in greater detail or deal with issues of specific importance.
to one or more Member States. Two Protocols of particular interest to Ireland concern the area of Justice and Home Affairs. These Protocols give Ireland and the UK the right to participate in measures in this area on a case-by-case basis, but they cannot be bound to do so.

33. The IGC agreed or noted a number of Declarations relating to the Lisbon Treaty. 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. Ireland made a declaration indicating that we would aim to participate in measures in the judicial co-operation in criminal matters and especially police co-operation areas to the maximum possible extent and that the Government will review these arrangements after three years.

Responding to the 2008 referendum result: addressing the people’s concerns and finding a way forward for Ireland in Europe

34. On 12 June 2008 the people of Ireland voted not to ratify the Lisbon Treaty by 53.4% to 46.6%. The turnout was 53%.

35. Since the referendum, the Irish Government has worked intensively to find a way forward that respects the decision of the people, while respecting also the desire of other Member States to see the Lisbon Treaty enter into force.

36. The Government commissioned research to identify the key concerns that underpinned the no vote; it worked with other parties in the Oireachtas (Parliament) to establish the sub-Committee on Ireland’s Future in the European Union; and it began a process of consultation with other Member States and the EU institutions aimed at identifying a solution.

37. The November 2008 report of the all-party sub-Committee offered a realistic assessment of the challenges facing Ireland in the EU. It concluded that Ireland's best interests are served by remaining at the heart of the European Union. The Committee suggested clarification be secured that "the right of each Member State to decide its own policies in areas of social and ethical sensitivity should continue to be respected." On defence, it suggested that "any practical measure that demonstrated that [Ireland's traditional policy of military neutrality] is and will continue to be protected and respected should be considered." It noted that the Lisbon Treaty changes nothing on tax policy and that "it does appear that having a Commissioner nominated by the Government is a matter of national sensitivity."

38. When it met in December 2008, the European Council noted the concerns identified by the Irish Government and agreed on a set of arrangements designed to allow the Treaty to enter into force by the end of 2009. The
Council agreed that, provided the Treaty enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission will continue to include one national per Member State.

39. The European Council also agreed that, provided the Irish Government commits itself to seeking ratification by the end of October 2009, legal guarantees would be given on:

- taxation;
- Ireland’s traditional policy of military neutrality;
- the right to life, education and the family;

40. In addition, it was agreed that the high importance attached by the Union to the following issues would be confirmed:

- social progress and the protection of workers’ rights;
- public services as an indispensable instrument of social and regional cohesion;
- the responsibility of Member States for the delivery of education and health services; and
- the essential role and wide discretion of national, regional and local Governments in providing, commissioning and organising non-economic services of general interest.

41. The texts of the legal guarantees and the Solemn Declaration on Social Policy, Workers Rights and Public Services were agreed at the European Council on 19 June 2009. They are reproduced at the end of this chapter. The European Council agreed that the legal guarantees on taxation, security defence and the right to life, education and the family, which will take effect on the same date as the Treaty of Lisbon, will be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union as a Protocol at the time of the next EU accession treaty. Protocols form an integral part of the Treaties and, in legal terms, have treaty status.

42. If a second referendum is successful, Ireland’s instrument of ratification, to be lodged with the Italian Government, will refer to both the Treaty and the legally-binding Decision of the European Council (both of which will be registered with the United Nations).

43. The June 2009 European Council also noted a national declaration by Ireland on its participation in the European Union’s common foreign and security policy and on Ireland’s traditional policy of military neutrality. In the event of Ireland’s ratification of the Treaty of Lisbon, this declaration will be lodged with Ireland’s instrument of ratification.

The EU Reform Process: the Government’s Position

The Government took an active part in the debate about the future of Europe which began at the European Convention in 2002 and produced agreement on the Constitutional Treaty during Ireland’s 2004
EU Presidency. The Government was very satisfied with the substance of the Constitutional Treaty and wanted to see it ratified by all 27 Member States.

When it became clear that the Constitutional Treaty could not be ratified, the Government strongly supported the retention of as much as possible of the substance of that agreement.

During the Lisbon Treaty negotiations, Ireland combined with other like-minded Member States to preserve the main substance of the Constitutional Treaty, and especially its institutional elements, while agreeing to certain modifications. These included omitting certain elements of the Constitutional Treaty (notably those elements that gave it a constitutional flavour, for example the EU flag and anthem) and recasting it as a series of amendments to the existing EU Treaties.

Following the June 2008 referendum, the Government sought to find a solution that would respond to and respect the outcome of the referendum while at the same time preserving Ireland’s position as a positive and committed member of the European Union. The severe economic crisis that has unfolded since September 2008 has served to magnify the importance of the EU for Ireland’s economic wellbeing. This has underlined the importance of finding a basis on which Ireland can join with the other EU Member States in ratifying the Lisbon Treaty.

The Government views ratification of the Lisbon Treaty as a vital contribution to our economic recovery.

The Government was very satisfied with the outcome of the European Council in December 2008 and in particular with the decision that the Commission should continue to include one national per Member State. It viewed this as a significant achievement as some other Member States had a strong preference for a smaller Commission.

The European Council in June 2009 delivered fully on the commitments made to Ireland in December 2008. The Government is completely satisfied with the outcome. It considers that the legal guarantees secured at the European Council, together with the Solemn Declaration on Workers’ Rights and Social Policy, provide strong reassurance in respect of the key concerns that affected the outcome of the 2008 referendum. It is also happy that our legal guarantees will in the coming years acquire full Treaty status as a protocol. The Government considers that this package of guarantees provides a highly satisfactory basis for consulting the people on the Lisbon Treaty later this year.

The Government strongly supports the ratification of the Lisbon Treaty. It considers the Treaty will provide an excellent foundation for the work of the European Union for the foreseeable future. The Government believes that the overall package – the Treaty, the guarantees, the solemn declaration and the agreement on the retention of an Irish member of the EU Commission – stands on its merits. It recommends this package strongly and believes that is essential for Ireland’s future. Ratification by the people will send a powerful message to our European partners and to the wider world that Ireland wishes to retain its proud place at the heart of the European Union.
Ireland’s legal guarantees, solemn declaration and national declaration

On 19 June 2009 the Heads of State or Government of the 27 Member States of the European Union declared that the decision (below) “gives legal guarantee that certain matters of concern to the Irish people will be unaffected by the entry into force of the Lisbon Treaty” and that it “is legally binding and will take effect on the date of entry into force of the Lisbon Treaty.”

ANNEX 1


The Heads of State or Government of the 27 Member States of the European Union, whose Governments are signatories of the Treaty of Lisbon,

Taking note of the outcome of the Irish referendum of 12 June 2008 on the Treaty of Lisbon and of the concerns of the Irish people identified by the Taoiseach,

Desiring to address those concerns in conformity with that Treaty,

Having regard to the Conclusions of the European Council of 11-12 December 2008,

Have agreed on the following Decision:

SECTION A
RIGHT TO LIFE, FAMILY AND EDUCATION

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

SECTION B
TAXATION

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

SECTION C
SECURITY AND DEFENCE

The Union’s action on the international scene is guided by the principles of 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’s common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland’s traditional policy of military neutrality.

It will be for Member States – including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality – to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

Nothing in this Section affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

SECTION D
FINAL PROVISIONS

This decision shall take effect on the same date as the Treaty of Lisbon.

ANNEX 2
SOLEMN DECLARATION ON WORKERS’ RIGHTS, SOCIAL POLICY AND OTHER ISSUES

The European Council confirms the high importance which the Union attaches to:

- social progress and the protection of workers’ rights;
- public services;
The Lisbon Treaty and Ireland’s Legal Guarantees

- the responsibility of Member States for the delivery of education and health services;
- the essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest. In doing so, it underlines the importance of respecting the overall framework and provisions of the EU Treaties.

To underline this, it recalls that the Treaties as modified by the Treaty of Lisbon:

- establish an internal market and aim at working 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;
- give expression to the Union’s values;
- recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union in accordance with Article 6 of the Treaty on European Union;
- aim to combat social exclusion and discrimination, and to promote social justice and protection, equality between women and men, solidarity between generations and protection of the rights of the child;
- oblige the Union, when defining and implementing its policies and activities, to 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;
- include, as a shared value of the Union, the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users;
- do not affect in any way the competence of Member States to provide, commission and organise non-economic services of general interest;
- oblige the Union, when defining and implementing its policies and activities, to 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;
- ensure that the Council, when acting in the area of common commercial policy, must act unanimously when negotiating and concluding international agreements in the field of trade in social, education and health services, where those agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them; and
- provide that the Union recognises and promotes the role of the social partners at the level of the European Union, and facilitates dialogue between them, taking account of the diversity of national systems and respecting the autonomy of social partners.

ANNEX 3

NATIONAL DECLARATION BY IRELAND

Ireland reaffirms its attachment to the aims and principles of the Charter of the United Nations, which confers primary responsibility for the maintenance of international peace

Ireland recalls its commitment to the common foreign and security policy of the European Union, as approved on several occasions by the Irish people through referendum.

Ireland confirms that its participation in the European Union’s common foreign and security policy does not prejudice its traditional policy of military neutrality. The Treaty on European Union makes clear that the Union’s security and defence policy shall not prejudice the specific character of the security and defence policy of certain Member States.

In line with its traditional policy of military neutrality, Ireland is not bound by any mutual defence commitment. The Treaty on European Union specifies that any decision by the Union to move to a common defence would have to be taken by unanimous decision of the Member States and adopted in accordance with their respective constitutional requirements. The Constitution of Ireland requires that a referendum be held on the adoption of any such decision applicable to Ireland and this requirement will not be affected should Ireland ratify the Treaty of Lisbon.

Ireland reiterates its commitment to the ideal of peace and friendly cooperation amongst nations and to the principle of the peaceful resolution of international disputes. It reaffirms its strong commitment to conflict prevention, resolution and peacekeeping, and recalls the record of achievement of its personnel, military and civilian, in this regard.

It reiterates that the participation of contingents of the Irish Defence Forces in overseas operations, including those carried out under the European common security and defence policy requires (a) the authorisation of the operation by the Security Council or the General Assembly of the United Nations, (b) the agreement of the Irish Government, and (c) the approval of Dáil Éireann, in accordance with Irish law.

Ireland notes that nothing obliges it to participate in permanent structured cooperation as provided for in the Treaty on European Union. Any decision enabling Ireland to participate will require the approval of Dáil Éireann in accordance with Irish law.

Ireland notes also that nothing obliges it to participate in the European Defence Agency, or in specific projects or programmes initiated under its auspices. Any decision to participate in such projects or programmes will be subject to national decision-making and the approval of Dáil Éireann in accordance with Irish law. Ireland declares that it will participate only in those projects and programmes that contribute to enhancing the capabilities required for participation in UN-mandated missions for peace-keeping, conflict prevention and strengthening international security, in accordance with the principles of the United Nations Charter.

The situation set out in this Declaration would be unaffected by the entry into force of the Treaty of Lisbon. In the event of Ireland’s ratification of the Treaty of Lisbon, this Declaration will be associated with Ireland’s instrument of ratification.
Part 1:
Amendments to the Treaty on European Union
Chapter 2: The Nature, Values and Objectives of the European Union

1. One of the main objectives of the process of EU reform, which has now found expression in the Lisbon Treaty, 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. The first article of the Lisbon Treaty therefore consists of a series of amendments to the Treaty on European Union (also known as the Maastricht Treaty), whose principal objective is to set out the nature of the Union and the unique manner in which it operates.

The European Union as a Community of Values

2. The preamble to the Treaty on European Union, as revised by the Lisbon Treaty, will include for the first time a reference to Europe’s cultural, religious and humanist inheritance, “from which have developed the universal values of inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”.

3. The opening articles of the new Treaty seek to establish the nature of the Union as a community of values, on which the Member States confer competences in order to attain their common objectives.

4. Article 1 of the amended Treaty on European Union will eliminate the old distinction between the European Union and the European Community. This article confirms the establishment of a single legal entity, the European Union, which will in formal legal terms, replace and succeed the European Community once the Lisbon Treaty has been ratified. The European Union will have “legal personality”. The Union’s current laws
and all other aspects of its legal order remain in force.

5. The nature of the Union now established is further clarified as one “on which the Member States confer competences to attain objectives which they have in common”. (Article 1)

6. Article 2 further develops the idea of the Union as a community of values in which human dignity, minority rights and equality are given Treaty recognition for the first time.

Article 2

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

7. Article 49 of the Treaty on European Union provides that any European State which respects the above values and is committed to promoting them may apply to become a member of the Union.

8. Article 3 describes the Union’s objectives:

Article 3

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

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

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

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

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

   It shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced.
4. The Union shall establish an economic and monetary union whose currency is the euro.

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

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

9. The aim of this article is to set out the Union’s core objectives briefly and in an accessible manner. In the negotiation of this text, particular attention was paid to achieving a balanced treatment of the Union’s economic and social objectives. The reference to “full employment” in paragraph 3 above is a significant change from the existing Treaties which mention only “a high level of employment”. The reference to the United Nations Charter, in paragraph 5, was inserted on the basis of a proposal from the Irish Government.

Relations between the Union and the Member States: the Competences of the Union

10. One of the aims that emerged during the negotiations was to define the Union’s competences more clearly. The new Treaty sets out and clarifies the principles underlying the allocation and exercise of the Union’s competences. The fundamental principles relating to EU competence, as set out in Article 5, are conferral, subsidiarity and proportionality:

Article 5

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

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

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

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

The principles of subsidiarity and proportionality are key to understanding the role of the Union and the Member States.

13. 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, including a strong role for national parliaments regarding their application, is attached to the EU Treaties (Protocol on the Application of the Principles of Subsidiarity and Proportionality).

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14. The Treaty also sets out three categories of EU competence: exclusive competence where the Union has the sole right to act (for example, monetary policy in the Eurozone); areas where competence is shared between the Union and the Member States (for example, agriculture and energy policy); and areas where the Union may only take supporting or coordinating action (for example, sport, culture and education). Chapter 7 deals with these issues in more detail.

Relations between the Union and the Member States: the obligations of the Member States

15. Competences which are not conferred upon the Union remain with the Member States. Article 4 makes clear that the Union must respect the national identities of the Member States and their essential State functions. The article states:

The principle of conferral links back to the definition of the Union 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 the Union remain with the Member States.

12. The principle of subsidiarity essentially means that in areas where the Member States and the Union share a competence, action may be taken at Union level only where this is deemed likely to be more effective than action taken at national or regional level. This principle was first written into the EU Treaties by the Maastricht Treaty (1992).
Chapter 2

Article 4

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

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

16. *This article also carries over from the existing Treaties the principle of “sincere cooperation”. This requires the Member States to fulfil their obligations and to refrain from actions which could jeopardise the achievement of the Union’s objectives:*

Article 4

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

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

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

17. *For the first time, provision is made in the Treaty enabling Member States to withdraw from the Union should they wish to do so. The Treaty also carries forward provisions, originally included in the Amsterdam Treaty and amended by the Nice Treaty, allowing for action in 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.*

18. *The European Council may determine that a serious and persistent breach of the Union’s values has 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 this case the Council can, by qualified majority voting, decide to suspend certain of the State’s rights, including its voting rights in the Council.*
The European Union’s Values and Objectives: the Government’s Position

The Government attaches particular importance to the clear and balanced way in which the unique character of the European Union, its relationship with the Member States, and its values and objectives are described in the Lisbon Treaty.

The Treaty’s acknowledgement of the equality of the Member States is especially welcome as is its clear statement of the principle of conferral.

The Government was in favour of an explicit reference to God or to Christianity in the Preamble, but it was not possible to reach a consensus on this. As a compromise, a reference to the Union’s cultural, religious and humanist inheritance was included in the Treaty. This reference has no parallel in the current Treaties. The Government is also pleased that the Treaty explicitly states that the Union shall respect the status of churches and religious organisations under national law. It also welcomes the provision for open, transparent and regular dialogue with churches and religious organisations which is established by the Treaty. This is dealt with in greater detail in Chapter 3.
The Charter of Fundamental Rights

1. The Lisbon Treaty’s treatment of fundamental rights marks a significant advance for the European Union. The Charter of Fundamental Rights was originally adopted on 7 December 2000. The text of the Charter was revised and adopted as a legally-binding text on 12 December 2007. Through Article 6 of the TEU, this revised version will take effect, with the same legal value as the Treaties, upon entry into force of the Lisbon Treaty.

2. While many Member States had been supportive of giving the original Charter legal status, others, including Ireland, believed that, in order for it to become a legally-binding text, some further definition and explanation of its provisions was needed. This work took place at the European Convention and the subsequent 2003-2004 Intergovernmental Conference (IGC). The revised Charter was included in the Constitutional Treaty which was drawn up during Ireland’s 2004 EU Presidency.

3. During the negotiations on the Lisbon Treaty, it was agreed that the text of the Charter would be removed from the Treaty but that it would be given the same legal value as the Treaty.

4. The Lisbon Treaty revises Article 6 of the Treaty on European Union and makes the Charter of Fundamental Rights binding on the Union’s institutions and on the Member States when they are implementing EU law. The full text of the Charter is available on the dedicated Lisbon Treaty website: www.lisbontreaty.ie.
Preamble of the Charter of Fundamental Rights

Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law. It places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice.

5. The Charter sets out, in a consolidated form, those rights that citizens enjoy under:

• the EU Treaties and related case law;
• the European Convention on Human Rights;
• the Social Charters of the Union and the Council of Europe; and
• the constitutional traditions and international obligations common to the Member States.

Contents of Charter

6. The Charter consists of a preamble and fifty-four articles, which are divided into seven sections, or “titles”. The purpose of the Charter was to consolidate the fundamental rights applicable at EU 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 the set of Explanations first prepared during the Convention in 2002-2003.

7. 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.

8. 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 the right to 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.

9. 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.

10. Title IV, “Solidarity”, has twelve articles, relating to (a) workers’ right 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.

11. 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 of residence and (h) diplomatic and consular protection.

12. 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.

13. Title VII differs from the first six Titles in that it contains general provisions governing the interpretation and application of the Charter, rather than substantive rights.

Interpretation and Application of the Charter

Article 51 of the Charter of Fundamental Rights

The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law.

14. The European Court of Justice will only review the actions of the Member States falling within the scope of Union law, including fundamental rights standards. Examples of this would be 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 European directives in the field of environmental protection.

15. 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 as defined in the Treaties”. Accordingly, existing Court of Justice jurisprudence, whereby the Court refuses to look at matters which are the exclusive responsibility of the Member States, will be retained. This means that,
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 be dealt with by the Irish courts and, where appropriate, by the European Court of Human Rights.

16. In common with other human rights instruments, the Charter, as with the Constitution of Ireland, attempts to balance individual rights with the public interest. 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, and must be necessary to meet objectives of general interest or to protect the rights and freedoms of others.

17. Rights recognised in the Charter which derive from other provisions of the Treaties, the European Convention on Human Rights, or the constitutional traditions and international obligations common to the Member States are to be understood and interpreted strictly in line with their meaning in those sources.

18. An important distinction is made between rights and principles. Principles are not capable of being directly reviewed or determined by a court. They may be implemented either by the Union or by the Member States in their legislative or executive acts. They only become significant to the courts when such acts come to be interpreted or reviewed. In the absence of such legal acts, the Court of Justice may not exercise jurisdiction with respect to principles in the Charter. Examples of articles containing principles are those relating to the rights of the elderly, the integration of persons with disabilities and environmental protection.

19. Rights can be reviewed or determined by a court at Union level only if the Union has a competence in the relevant field. The Charter may not be used as a basis for extending the scope of the Court of Justice’s competence.

20. 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.

21. The Explanations attached to the Charter were drawn up to provide 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 of its wording are set out in some detail.

22. 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”.

Article 53 of the Charter of Fundamental Rights

Nothing in this Charter shall be interpreted as restricting or adversely
affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States’ constitutions.

Accession to the European Convention on Human Rights

23. Ireland ratified the European Convention on Human Rights in 1953 and it was incorporated into Irish law in 2003. The existing Treaties already require the Union to respect fundamental rights as guaranteed by the European Convention on Human Rights (ECHR). The ECHR provides minimum standards for the protection of human rights in Europe, but States are free to provide higher standards under their domestic constitutions and legislation. The Lisbon Treaty provides for the accession of the Union 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, the actions of the Union, including its Court of Justice, can be reviewed by 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. This is an additional protection for individuals and does not replace existing protections.

24. Accession to the ECHR will be on the basis of a unanimous decision of the Council, which will enter into force only after it has been approved by the Member States in accordance with their constitutional requirements. Under a Protocol annexed to the EU Treaties by the Lisbon Treaty, accession to the ECHR will have to be brought about in a manner which would not modify the division of competences between the Union and the Member States. Accession cannot affect the individual positions of the Member States with respect to the ECHR.

Other Elements:

General principles of EU law

25. The Treaty states 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.

Right to Life – Article 40.3.3 of the Irish Constitution

26. The Treaty carries forward unchanged the terms of the Protocol on Article 40.3.3 of the Irish Constitution (which deals with the right to life of the unborn) introduced by the Treaty on European Union
(the Maastricht Treaty). The Solemn Declaration interpreting the Protocol also stands and is authoritative.

27. The Protocol (including minor technical adjustments contained in Protocol No. 35 to be annexed to the Lisbon Treaty) reads as follows:

- Protocol on Article 40.3.3 of the Constitution of Ireland
- The High Contracting Parties,
- Have agreed upon the following provision, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:
- Nothing in the Treaties or in the Treaty establishing the European Atomic Energy Community, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

28. Following the June 2008 referendum, the Irish Government secured a legal guarantee that nothing in the Lisbon Treaty attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice, affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3 provided by the Constitution of Ireland. This was an important concession to Ireland and is designed to respond to concerns that emerged during last year’s referendum campaign.

29. Therefore, it is completely clear that nothing in EU law can or will affect the protection of the unborn in Ireland.

Religion and relations with Churches

30. The preamble to the TEU refers to the inspiration drawn 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”.

31. In the Charter of Fundamental Rights reference is made to the “spiritual and moral heritage” of the EU. The Charter explicitly recognises the right of everyone to freedom of religion (Article 10) and that the right of parents to ensure the education and teaching of their children in conformity with their religious convictions, in accordance with national laws, is to be respected (Article 14). The Treaty explicitly states that the Union shall respect the status of churches and religious organisations under national law. This is contained in Article 17 of the TFEU which states that: “The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States”. This article further states that the Union is to maintain an open, transparent and regular dialogue with churches and religious organisations.

32. Following the June 2008 referendum, the Government secured a legal guarantee
that nothing in the Lisbon Treaty attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice, affects in any way the scope and applicability of the protection of the family in Article 41, and the protection of the rights in respect of education in Articles 42, 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

Union Citizenship

33. Since 1992, the Treaties have provided that every national of a Member State shall be a citizen of the Union. The TEU, as amended, clarifies that “citizenship of the Union shall be additional to national citizenship and shall not replace it”.

34. 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 Treaty languages and to obtain a reply in the same language.

35. 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-three languages in which the Treaty is equally authentic and valid.
The EU and fundamental rights: 
The Government’s position

The Government sees the strong, citizen-centred dimension of the Lisbon Treaty as an important advance. Throughout the negotiations that led to the Lisbon Treaty, the Government was keen to make the rights of EU citizens more visible. It took the view, however, that if the Charter was to become legally-binding, its scope and application would need to be defined with appropriate precision. This was achieved during the negotiations when the relevant articles of the Charter were recast and the Charter ‘Explanations’ were given prominence. As a result, the Government is happy to see the Charter being given legal status.

The Government is satisfied that the scope and application of the Charter is adequately defined by the Charter and its Explanations and did not seek to associate Ireland with a UK/Polish Protocol which seeks to clarify the application and justiciability of the Charter vis-à-vis their national laws.


The Government ensured that the Protocol on Article 40.3.3 of the Irish Constitution was carried forward, and secured a legal guarantee clarifying the position on the right to life.

During the negotiations, Ireland was among a number of Member States that pressed for an explicit reference to Europe’s Christian heritage. Other Member States, however, were opposed. As a compromise, a reference to the Union’s cultural, religious and humanist inheritance is included in the preamble to the Treaty on European Union. The Government welcomes the Lisbon Treaty’s explicit acknowledgement of the right to freedom of religion. It values the new EU-level arrangements for dialogue with the churches and religious communities.

At the European Council in June 2009, the Government also secured a legal guarantee on the protection of the family and the protection of the rights in respect of education in the Constitution of Ireland. The Government sees this as an important development, which is aimed at reassuring those that had concerns about these issues during last year’s referendum.

In relation to Union citizenship, the Government values the clear statement that European and national citizenships are complementary in nature.
Chapter 4: Enhancing Democracy and Accountability within the Union

1. An important objective of the treaty reform process was to improve the ways in which European citizens can, individually and collectively, influence the work of the Union’s institutions. Articles 9 to 12 of the TEU as amended by the Lisbon Treaty, deal with the relationship between citizens and the EU institutions. They set out a number of general principles, impose a set of obligations on the Union, and provide assurances and safeguards.

   **Article 9**

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

2. Many of these elements are derived from existing Treaty provisions. In addition, of course, EU citizens enjoy the fundamental rights under the Charter as described in Chapter 3.

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 described by the Treaty as being 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 the Council of Ministers 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.

6. There is a requirement that the EU 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.

Citizens’ Initiative

7. Another innovation in the Treaty is the provision for a citizens’ initiative. At least one million citizens, coming from a significant number of different Member States, may put forward a petition inviting the Commission to bring forward a proposal in any area which comes within the Union’s sphere of responsibility.

8. Arrangements for managing the citizens’ initiative will need to be agreed after the Treaty comes into force. These arrangements will be set down in a regulation which must, amongst other things, specify the minimum number of countries from which the citizens supporting the petition must come. While it is too early to say how extensively or effectively this provision will be used, it clearly has the potential to become quite significant.

The Role of National Parliaments

9. An important objective of the Lisbon Treaty, drawing from years of debate about the future of Europe, is to strengthen the democratic legitimacy of the Union.

10. During the negotiations, it was recognised that the role of national legislatures would be crucial in this respect. The Treaty will give the national parliaments of the Member States a direct input for the first time into European Union legislation. These new provisions are contained in two additional Protocols, one on the role of national parliaments and the other on the application of the principles of subsidiarity and proportionality (these terms are explained below and in the glossary at the end of this White Paper).

11. Following the referendum outcome in June 2008, the Oireachtas established a Sub-Committee to examine Ireland’s future in the European Union. It was chaired by Senator Paschal Donohoe (Fine Gael). Deputy Timmy Dooley (Fianna Fáil) was the Vice-Chairman. The Minister for Foreign Affairs described the Sub-Committee’s work as the Oireachtas’ “most sustained exploration of the issues surrounding
Chapter 4

our membership of the EU since we first joined”. In its report, the Sub-Committee emphasised the need for the Houses of the Oireachtas to engage fully in Ireland’s EU business and recognised the advances that would be brought about in this area by the Lisbon Treaty.

Protocol on Role of National Parliaments

12. The Protocol on the Role of National Parliaments in the European Union, which is annexed to the Treaty, recognises that the manner in which national parliaments scrutinise their governments’ activities within the Union is a matter for each State to determine. 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. In Ireland’s case, both the Dáil and the Seanad will be involved.

13. Under the Protocol, all Commission Green and White Papers, the Commission’s annual legislative programme, and all draft legislation are to be sent directly to national parliaments. This will be done at the same time as they are being sent to the Council and to the European Parliament. The same procedure will apply to the annual report of the Court of Auditors.

14. The agendas for and outcomes of meetings of the Council of Ministers must also go directly to national parliaments at the same time as they go to the Member State governments. Except in cases of urgency, at least eight weeks must elapse between the forwarding to national parliaments of a piece of draft EU legislation and it 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 intended to give national parliaments more time for the consideration and debate of proposals.

15. Additionally, the Treaty provides that national parliaments must have at least six months notice of any intention on the part of the European Council to use the provisions allowing for the simplified revision of certain aspects of the Treaties relating to voting in the Council of Ministers and extension of the co-decision procedure between the Council and the European Parliament (this is described further below).

16. The Protocol also envisages that the European Parliament and national parliaments should together decide on arrangements for promoting regular and effective inter-parliamentary cooperation.
Protocol on Subsidiarity and Proportionality

17. The Protocol on the Application of the Principles of Subsidiarity and Proportionality further develops the role of national parliaments in relation to the implementation of these important principles. The principle of subsidiarity is designed to ensure that the EU takes action only when this is necessary and appropriate.

18. Within eight weeks of the transmission to it of a draft legislative act, 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.

19. If, within eight weeks, at least one third of national parliaments (or of chambers of national parliaments) issue such reasoned opinions, the draft proposal must be reviewed. It may thereafter be maintained, amended or withdrawn. In the case of proposals in the areas of judicial cooperation in criminal matters and police cooperation the threshold is one quarter.

20. If a simple majority of national parliaments take the view that a proposal breaches the principle of subsidiarity, the proposal can be maintained, amended or withdrawn. If the Commission decides to maintain its proposal, it must submit its reasons to the Council and the European Parliament, which will take a majority decision on how to proceed. The European Parliament will act by a majority of votes cast and the Council will act by a majority of 55% of its members.

21. This so-called “yellow card” system is a major development which will bring national parliaments directly into the EU decision-making process. The use which is made of this mechanism will depend on the capacity of national parliaments, individually and collectively, to prepare reasoned opinions within the timescale laid down.

22. 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 on alleged infringements of this principle in laws adopted by the EU. Such actions may be brought by a Member State or notified by it on behalf of its national parliament.

National Parliaments and the Area of Freedom, Security and Justice

23. In recognition of the particular sensitivity of freedom, security and justice matters, the Lisbon Treaty contains a number of specific provisions associating national parliaments more closely with the Union’s activities in this area. As noted above, if one quarter of national parliaments object to a proposal in the area of criminal matters and police cooperation on grounds of subsidiarity, this will trigger the “yellow card” mechanism.
24. National parliaments are to be kept informed of evaluations of the Member States’ implementation of Union policies in the area of freedom, security and justice, in particular to facilitate full application of the principle of mutual recognition. They are also to be kept informed about the work of a standing committee established to promote and strengthen cooperation on internal security.

25. National parliaments will also be involved in the evaluation of the activities of Eurojust and Europol.

The role of National Parliaments with regard to future adjustments to the EU Treaties

26. National parliaments are to be given at least six months’ notice of any intention by the European Council to make certain limited adjustments to the voting rules in the Treaties (under a simplified revision procedure, known as the “general passerelle” arrangement; this arrangement and other mechanisms for future revision of the Treaties are also dealt with in Chapter 12). Any move by the European Council to allow decisions previously determined unanimously to be made by QMV, or to extend the co-decision procedure between the Council and the European Parliament, can be blocked by a single national parliament or by a single government. In addition, future changes to the Treaties involving the conferral of new competences on the Union would be prepared by a Convention in which it is envisaged that national parliaments would be strongly represented.

The role of the European Parliament

27. The Lisbon Treaty also gives a greatly enhanced role to the European Parliament whose Members are directly elected every five years by the citizens of the Union. The Lisbon Treaty gives the European Parliament a significantly strengthened role in relation to the Union’s budget. It also extends greatly the number of areas in which the Parliament is co-legislator with the Council, through the so-called co-decision or “ordinary legislative procedure” (See Annex C). Under co-decision, EU measures have to be agreed both by the Council of Ministers representing the governments of the Member States and by the directly-elected European Parliament. This represents a significant strengthening of democratic accountability within the European Union and is one of the key benefits of the Lisbon Treaty.
Enhancing democracy and accountability within the Union: the Government’s position

The Government attaches particular importance to those elements of the Lisbon Treaty which serve to strengthen democracy and accountability at EU level. In 2004, it presided over negotiations which devised the “yellow card” procedure for use by national parliaments with regard to possible breaches of the subsidiarity principle.

The Lisbon Treaty further strengthens the position of national parliaments and the Government welcomes this outcome. It considers that national parliaments have an invaluable role to play in connecting the Union’s institutions with the interests and aspirations of the people of Europe.

The Government welcomes the extension of the co-decision procedure which confers an increased role on the European Parliament and will strengthen further the Union’s democratic legitimacy.
Chapter 5:
The Union’s Institutions

1. The major purpose of the negotiations leading up to the Lisbon Treaty was to streamline the way in which the Union’s institutions work with a view to improving their efficiency and enabling them to deliver for the people of Europe. The Union’s institutions can only exercise such responsibilities as have been allocated to them by the Member States. Institutional issues were extensively debated throughout the negotiations and proved to be among the most difficult to resolve.

2. The European Parliament’s decision-making role has been strengthened substantially. This, together with the increased role given to national parliaments by the Treaty, marks an important increase in the powers of politicians directly elected by the Union’s citizens. The Treaty provides for the creation of the posts of President of the European Council and of High Representative of the Union for Foreign Affairs and Security Policy, as well as the change to a double majority voting system in the Council. Important changes were made in respect of the composition of the Commission and as regards the Presidency of the Council. At the same time, the overall institutional balance, which has served the Union well, has remained largely intact. The operation of the Union’s institutions reflects the unique character of the Union, a body within which 27 sovereign States work together in areas defined by the EU Treaties in pursuit of their shared values and interests. Much of the detail contained in the existing Treaties has been carried forward with little or no amendment. Changes to the composition of the Commission secured by Ireland after the June 2008 referendum are explained later in this chapter.
The Institutional Framework

3. Article 13 of the TEU defines the Union’s institutional framework as comprising the European Parliament, the European Council, the Council of Ministers, the European Commission, the Court of Justice of the European Union, the European Central Bank, and the Court of Auditors.

4. Article 13, TEU also provides for the European Parliament, the Council and the Commission to be assisted by the Economic and Social Committee and the Committee of the Regions acting in an advisory capacity.

The European Parliament

5. The European Parliament is the EU institution directly elected by the citizens of the Union. It legislates jointly with the Council and sets the Union’s budget. It also has a wide range of accountability and supervisory functions, and offers a platform for general political debate. Under the Treaty, it also elects the President of the Commission.

6. As described in Chapter 8 on decision-making, the Lisbon Treaty extends the number of areas in which the Parliament is co-legislator with the Council. This is now called the “ordinary legislative procedure”. Annex C includes a list of articles extending the Parliament’s powers as a joint legislator with the Council of Ministers. Under the Lisbon Treaty, the Parliament’s role in shaping the Union’s budget is also amended and expanded (see Chapter 10 on the Union’s finances).

7. A major focus of the negotiations was the size and composition of the Parliament. The Nice Treaty provided for a Parliament of 732 members (subsequently re-adjusted to 736 members), with 12 seats allocated to Ireland. For the 2004-2009 session Ireland had 13 rather than 12 MEPs because of transition measures linked to the accession to the Union by Bulgaria and Romania in January 2007, when the overall number of MEPs rose temporarily to 785.

8. The 2009 European elections were then conducted under the terms set by the Nice Treaty. 736 MEPs were elected, including 12 Irish MEPs for the 2009-2014 session. If the Lisbon Treaty were to come into effect, the size of the Parliament would be increased to 751 members, with 12 countries gaining a total of 18 seats, and with one country, Germany, losing three seats. Ireland would be unaffected and would retain 12 seats.

9. The European Council decided in December 2008 that, if the Treaty of Lisbon enters into force at a date after the June 2009 elections, transitional measures would be adopted in accordance with the necessary legal procedures. These measures would increase the size of the Parliament in order to allocate 18 extra seats to the 12 Member States who stand to gain seats under the Lisbon Treaty arrangements. Germany, the one country which would lose 3 seats under the Lisbon Treaty would, however, not have to do so until 2014 at the end of the current session.
of the European Parliament. During this transitional period the European Parliament would thus have 754 members. From 2014 onwards, the Parliament would have 751 MEPs.

10. The Lisbon Treaty’s new provisions on the Parliament, set out in Article 14, TEU have four main elements:

• There is a minimum seat threshold per country of six MEPs (in response to pressure from the smallest Member States);

• There will be a ceiling of 96 members per country (For example, this will mean a reduction from 99 MEPs for Germany under the Nice Treaty to 96 MEPs under the Lisbon Treaty);

• The overall maximum number of members is 751, including the President;

• Representation in the Parliament will broadly reflect a Member State’s population, but will be weighted in favour of countries with smaller populations. Thus Ireland, with a population of 4.3 million, will have 12 MEPs while Germany, with a population of 82 million, will be entitled to 96 MEPs (this works out at 1 seat for approximately 358,000 people for Ireland and 1 for approximately 854,000 for Germany).

The European Council

11. The European Council is the forum within which the Heads of State or Government of the EU meet, together with the President of the European Commission, to discuss important EU matters. Under the Lisbon Treaty, the European Council is given the status of an institution of the European Union. The functions and composition of the European Council are described in Article 15, TEU. 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”.

12. Under the Lisbon Treaty, the members of the European Council will be the Heads of State or Government of the Member States and the President of the Commission, together with the European Council President. The High Representative of the Union for Foreign Affairs and Security Policy 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 and 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 Heads of State or Government can participate.

13. Article 15, TEU provides for the establishment of a new post of President of the European Council. This position and the nature of its responsibilities were the subject of active debate.

14. The President of the European Council will play essentially the same role as the
rotating chair of the European Council under the existing EU Treaties. This role is to act as chair and to drive forward the work of the European Council, facilitating cohesion and consensus; to ensure the preparation and continuity of the European Council’s work, but in cooperation 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. This will allow for continuity in the Union’s dialogue with major powers and other regional groupings.

15. 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, i.e. the maximum period in office will be five years. It is stipulated that he or she may not simultaneously hold a national office.

The Council of Ministers

16. The Council of Ministers is the institution where the representatives of the Member States’ governments meet and act as a body. The Treaty defines the Council’s role as exercising, jointly with the Parliament, legislative and budgetary functions, and carrying out policy-making and co-ordinating functions as laid down in the Treaty.

17. 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.

18. Article 16 of the Treaty states that the Council is to meet in different configurations, reflecting the different policy areas within the Union competences. At present there are nine such Council formations, e.g. the Agriculture Council, bringing together all Ministers for Agriculture in each of the Member States. Other Council configurations are to be established through a unanimous European Council decision.

19. Under the Lisbon Treaty, the current General Affairs and External Relations Council is to be split into the General Affairs Council and the Foreign Affairs Council. The General Affairs Council will have a coordinating role and is to prepare meetings of the European Council, in liaison with the President of the European Council. Under the strategic guidance of the European Council, the Foreign Affairs Council is to elaborate the Union’s external action.

20. 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 within the Union.

21. Regarding future arrangements for the Presidency of the Council, the Treaty provides that the Presidency of Council configurations, other than the Foreign Affairs Council, is to be held by the Member States on the basis of equal rotation between the Member States. This continues existing Presidency arrangements.
Chapter 5

22. The Foreign Affairs Council is to be chaired by the High Representative of the Union for Foreign Affairs and Security Policy.

23. While the Treaty’s treatment of the rotating Presidency is brief, the Member States decided that they should reach more detailed agreement on the main elements of the new system. A Declaration (number 9), annexed to the Intergovernmental Conference’s Final Act, therefore includes a draft of that decision.

24. The draft decision provides for a team Presidency composed of groups of three Member States for an 18-month period. The groups are to be formed 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 than the Foreign Affairs Council). The other members of the group are to provide assistance on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

25. 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, should the Treaty enter into force. Ireland is to be teamed with Greece and Lithuania between January 2013 and June 2014 and will be in the chair during the first half of 2013.

26. 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.

27. The Council will continue to be served by a full-time Secretary-General, who will be appointed by the European Council.

Voting in the Council of Ministers

28. Decisions in the Council are normally taken by qualified majority voting (QMV). As explained in Chapter 8, the use of QMV is further extended by the Lisbon Treaty, although unanimity continues to apply in some important areas, including defence and taxation. Agreeing the arrangements for QMV decisions was the single most difficult and contentious issue in the negotiations.

29. The Lisbon Treaty introduces from 1 November 2014 a new system of double majority voting, under which a qualified majority normally consists of at least 55% of the Member States comprising at least 65% of the population of the Union (Article 16.4, TEU). Other aspects of the system are described below.

30. Since the establishment of the European Communities in 1957, a system of weighted voting has been employed. In such a system, each Member State has a certain number of votes (the number of votes allocated to a Member State is determined by the size of its population,
with an adjustment that leads to relative over-representation of the countries with small populations). Under the existing arrangements, a qualified majority requires a certain number of votes in favour (over time this threshold has normally been about 70% of the total) and from a certain number of Member States. Normally, a simple majority of the number of Member States is required, currently 14 of the 27 members.

31. The Nice Treaty retained the system of weighted voting, but made a number of changes, which were subsequently criticised for being too complex. Moreover, it was felt it would be much harder for majorities to be assembled and thus for the Council to make decisions.

32. The Lisbon Treaty provides for a new “double majority” voting system. Under this system a proposal would require the support both of a majority of Member States and of a substantial majority of the Union’s population. This was seen as simpler, more efficient and easier to explain. It also better reflects the dual nature of the Union as a Union of States and of peoples. From November 2014, a qualified majority will be defined as at least 55% of the Member States (i.e. 15 Member States in a Union of 27 Member States) comprising at least 65% of the population of the Union.

33. In the relatively few cases where a proposal does not come from the Commission or the High Representative for Foreign Affairs and Security Policy, the number of Member States which must support such a proposal, in line with the current Treaties, rises to 72%.

34. An additional element, introduced to reassure smaller and medium-sized Member States, was the requirement that a blocking minority should comprise at least four Member States (this would prevent three of the biggest four from blocking on their own, which they could otherwise do).

35. A transitional period will also apply between 1 November 2014 and 31 March 2017, during which time any Member State may request that a decision to be taken by QMV be subject to the current voting arrangements as agreed at Nice, rather than the new double majority system.

36. In order to continue to seek maximum consensus for Council decisions, it was further agreed that from 1 April 2017, if a measure is opposed by members of the Council representing at least 55% of the population or 55% of the Member States needed to constitute a blocking minority, further discussions are to take place in an effort to achieve wider agreement.

**European Commission**

37. The European Commission is the institution charged with having regard to the interests of the Union as a whole, rather than those of national governments or the electorates of any particular Member State. They are required to be independent in the exercise of their
functions. Accordingly, the members of the Commission do not represent national interests. This aspect of the Commission was intended to ensure that the interests of the large Member States did not prevail over those of the small. Article 17, TEU makes changes to the composition of the Commission. It also slightly alters the method of appointment of its President.

38. The duties of the Commission, its collegiate nature, and the requirements imposed on individual Commissioners are essentially unchanged. Under the Treaty, the Commission:

- promotes the general interest of the Union;
- oversees the application of Union law;
- executes the Union budget, and manages programmes;
- proposes legislation;
- represents the Union externally, other than in the foreign policy area;
- initiates annual and multi-annual programming for the Union.

39. The composition of the Commission has been a major issue of debate within the Union since the negotiations on the Amsterdam Treaty (1997). From 1957 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 each of the smaller Member States. As the Union grew, so too did the Commission.

40. Many felt that the Commission was becoming too large and unwieldy, and that it risked becoming weaker and less cohesive. Others argued that it was important to maintain at least one Commissioner per Member State, as a means of ensuring that the Commission would be aware of issues in all Member States and would thereby enjoy greater public confidence. The Nice Treaty provided, though, that once 27 Member States have joined the Union, the number of Commissioners shall be less than the number of Member States from the date on which the next Commission takes up its duties.

41. The composition of the Commission was again the subject of considerable discussion in the negotiations, 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 stressed the importance of ensuring the equal rotation of Commissioners among Member States.

42. Agreement was eventually reached on maintaining one Commissioner per Member State until 2014 (i.e. for the lifetimes of the current Commission and the next one). The Lisbon Treaty envisaged that, membership of the Commission would then be equal to two-thirds of the number of Member States, unless the European Council decided
unanimously to adjust this number. As under Nice, there would have been strictly equal rotation among Member States.

43. Following the June 2008 referendum, the Government raised the concerns of the Irish people about the planned changes to the composition of the Commission with its European partners. As a consequence, the European Council agreed that provided the Lisbon Treaty enters into force, a decision will be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State. This was a significant concession to Ireland as some Member States considered that a smaller Commission would be more effective.

44. The appointment of the President of the European Commission was also widely debated in the European Convention which recommended that the President be elected by the European Parliament, but on the basis of a single nomination made by the European Council (acting by QMV). This recommendation was accepted and is provided for in the Treaty. The European Council is required to take into account the elections to the European Parliament and to hold appropriate consultations.

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

46. After the Commission President is elected, he or she, with the Council, will agree on nominees for the other Commission posts. As is now the case, the Parliament will then vote on the Commission as a body, following which the Commission is formally appointed by the European Council.

47. 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 High Representative of the Union for Foreign Affairs and Security Policy

48. The creation of the post of High Representative of the Union for Foreign Affairs and Security Policy is one of the Treaty’s main institutional innovations. The Treaty provides for 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 external policy matters, both directly and in a co-ordinating capacity.

49. Under the Treaty, the High Representative is to be appointed by the European Council, acting by QMV, and with the agreement of the President of the Commission.
50. 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 High Representative’s role are described in Chapter 6). The High Representative is also to chair the Foreign Affairs configuration of the Council of Ministers.

51. The High Representative is to be a Vice-President of the Commission, with responsibility both for external relations and the co-ordination of external action generally. The powers of the European Parliament in respect of the High Representative are contained in Article 17, TEU. Essentially, under the Lisbon Treaty, the High Representative, along with the Commission President and the other members of the Commission, would be subject as a body to a “vote of consent” by the Parliament, following which they shall be appointed by the European Council (acting by QMV).

52. Should the Commission be subject to a vote of censure by the Parliament, and thus be forced to resign as a body, the High Representative would only be obliged to resign from his or her Commission duties (he or she can separately be obliged to resign as High Representative on the request of the Commission President, but only with the agreement (again by QMV) of the European Council).

53. The High Representative 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 Treaty, by the Council acting on a proposal from the High Representative and with the consent of the Commission.

The Court of Justice of the European Union

54. The Court of Justice is charged with interpretation and application of the EU’s Treaties, as agreed by the Member States, and the laws made under those Treaties by the Union’s institutions, ensuring that they do not overstep the bounds of the competences conferred on them by the Member States. The Treaty makes no major changes to the current Treaty arrangements in regard to the Court, which were in any event revised by the Nice Treaty. Article 19, TEU 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 Treaties 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).
Without altering the rules of the Treaties, which provide for a minimum of eight advocates-general, and in response to a request from Poland, the 2007 Intergovernmental Conference made provision in a Declaration (number 38) annexed to its Final Act for a future increase in the number of Advocates-General from eight to eleven.

55. One innovation, spelled out in Article 255, TFEU is the establishment of a seven-person panel to offer opinions on the suitability of candidates for judgeships and advocates-generalships.

56. Other changes worth noting include:

- a shortening of the procedure for imposing fines on Member States not in compliance with Court judgments;
- greater provision for the use of QMV by the Council in amending less fundamental aspects of the Court’s Statute;
- 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.

57. It is made clear that the Court 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 – the Court has the power to rule on the legality of restrictive measures (sanctions, freezing of assets) taken against natural or legal persons (as is currently the case, the Court will also ensure that the boundary between the CFSP and other elements of Union competence is respected).

58. 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.

59. The Court will have full jurisdiction in regard to the Treaty’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. For a transitional period of five years, however, this extended jurisdiction will not apply to existing measures taken in the field of judicial cooperation in criminal matters and police cooperation.

Other Institutions and Bodies

60. The Treaty maintains the functions and structure of the European Central Bank (ECB) largely unchanged. The primary objective of the European System of Central Banks (ESCB) – the ECB and national central banks of the EU – is to maintain price stability. The basic task of the ESCB, is to define and implement,
61. 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.

62. The **European Investment Bank (EIB)** is the European Union’s long-term lending institution. The Treaty 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).

63. 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”. 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

64. The Treaty itself provides for different dates of entry into force of the various institutional provisions. Some are due to take effect from the date of entry into force of the Treaty (Presidency of the European Council, High Representative of the Union for Foreign Affairs and Security Policy, Council Presidency). The new voting arrangements will take effect from 1 November 2014, with the transition period outlined in paragraph 35 above.

65. A **Protocol on Transitional Provisions** (see Annex A) addresses several of the other issues involved in the transition to the new Treaty. The European Council agreed in December 2008 on transitional measures concerning the composition of the European Parliament.

66. The terms of office of the existing Secretary-General/High Representative and the Deputy Secretary-General of the Council will expire on the entry into force of the Treaty.
The Union’s Institutions: the Government’s position

Throughout the negotiations, the Government’s overriding approach was to ensure that the overall institutional balances, and in particular, the interests of smaller Member States, should be adequately protected. At the same time, it recognised the need to achieve greater effectiveness.

The Government attached particular importance to the maintenance of absolute equality between the Member States in regard to the composition of the Commission. Following the June 2008 referendum, the Government pressed for changes with regard to the composition of the European Commission. It pointed out that the result of our referendum highlighted a strong desire that we retain the right to nominate an Irish person to the European Commission. In December 2008, the European Council agreed that, provided the Lisbon Treaty enters into force, a decision will be taken to ensure that the Commission will continue to include one national of each Member State. The Government sees this as a significant achievement which addresses a key concern of the Irish people.

The Government agrees with the creation of the post of President of the European Council and is satisfied that the role is appropriately defined. This new post will provide for greater continuity and should make the vital work of the European Council more productive. The role of the European Council President will be to chair and steer its deliberations and not to exercise any executive powers.

The Government supports the establishment of the post of High Representative of the Union for Foreign Affairs and Security Policy. It sees this as an important step towards greater coherence in the Union’s external profile. A good balance has been struck between the various dimensions of this post.

On the definition of qualified majority voting, the Government is satisfied that Ireland’s capacity to safeguard its interests will not be materially affected by the move to a double majority arrangement. It recognises the advantages of the new system in terms of clarity and the overall efficiency of decision-making. Decisions cannot be taken under the Lisbon Treaty unless they command genuine support from the majority of Member States representing a significant majority of the Union’s population. The Government sees the double majority system as an appropriate reflection of the distinctive nature of the Union which draws together in a unique manner both the States and the peoples of Europe.
Chapter 6: The Union’s External Policies

1. 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 supports the shared values and objectives of the Union and its Member States, including Ireland, and draws 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. During the negotiations, Member States looked at ways to enhance the effectiveness, coherence and visibility of the Union in the outside world. They wished to ensure that the Union was adequately equipped to carry out its international responsibilities.

3. The Lisbon Treaty 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 unchanged.

External Action - General Approach

4. The Common Foreign and Security Policy (CFSP), which encompasses the Union’s security and defence policy, is different from other aspects of the Union’s external action. Decision-making remains primarily on a unanimous basis. It should be noted that qualified majority voting (QMV) cannot be applied to decisions having military or defence implications – such decisions must always be taken unanimously. The Commission’s role is relatively minor. Moreover, the CFSP, including all defence matters, remains outside the jurisdiction of the Court of Justice, although the Court will be given power with regard to the rights of persons, bodies or companies.
that are subject to EU sanctions. The largely political and intergovernmental character of the CFSP is retained in the Lisbon Treaty.

5. The establishment of the post of High Representative for Foreign Affairs and Security Policy is one of the important institutional changes contained in the Lisbon Treaty. The High Representative will put into effect the CFSP along with Member States, as mandated by the Council. He or she will also be responsible for the implementation of aspects of external relations, including development policy and humanitarian assistance, now handled by the Commission. Serving simultaneously as a Commission Vice-President, he or she will have a coordinating role in respect of issues with an international dimension, such as development aid. The High Representative will also carry out the role – currently undertaken by the Foreign Minister of the Member State holding the rotating Council Presidency – of chairing the Foreign Affairs Council and representing the Union abroad. Equally, the newly-created President of the European Council will have a role in representing the Union at his or her level. These new arrangements will lend continuity to the Union’s external representation.

6. The establishment of the post of High Representative for Foreign Affairs and Security Policy is intended to enhance the coherence and international visibility of the Union. It does not detract from the competences of the Foreign Ministers of the Member States who will remain responsible for conducting their own States’ national foreign policies. In addition, Union policy in all areas of external action will continue to be determined by the Council of Ministers and the European Council, which are made up of Member States’ Ministers and Heads of State or Government respectively.

7. The High Representative is to be assisted by a new European External Action Service, made up of diplomats seconded from the Member States, and officials from the Commission and the Council Secretariat (see Chapter 5).

Article 21 TEU: General Provisions on the Union’s 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; and

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

8. The Lisbon Treaty expresses clearly the principles and objectives of the Union’s external action. Irish proposals during the drafting process ensured a strong emphasis on multilateral cooperation, the role of the United Nations, on conflict prevention and on poverty eradication as the primary aim of development policy, consistent with the principles and priorities of our foreign policy.

9. The need for consistency in 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 (CFSP)

10. Under the Lisbon Treaty, the High Representative will 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).

11. 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 the Member States’ Foreign Ministers and Heads of State or Government meeting in the Council of Ministers or European Council.

12. Under the Lisbon Treaty, as at present, the CFSP covers all areas of foreign and security policy, although Member States have not been able to reach a common approach to each and every aspect of foreign and security policy. Member States continue to be under an obligation to support the CFSP actively and unreservedly, in a spirit of loyalty and mutual solidarity. They are to 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.

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

14. Proposals or initiatives regarding the CFSP may be submitted to the Council by any Member State, by the High Representative for Foreign Affairs and Security Policy on his or her own, or by the High Representative with the support of the Commission.

15. At present, unanimity is the general rule for decisions in the area of the CFSP, and the Lisbon Treaty does not significantly alter this. Although there were calls to extend the use of QMV, the Member States agreed that, in an area of such great importance, closely linked to national sovereignty, it would be inappropriate to use QMV as the norm. Accordingly, unanimity remains the general rule for decision making, and QMV cannot be applied to decisions having military or defence implications. Such decisions must always be taken unanimously. There is, however, 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 with which it may disagree; in these cases a decision shall not apply to the Member State concerned.

16. 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;
17. The Lisbon Treaty provides for a limited expansion of QMV, by adding to this list decisions made on the basis of a proposal by the High Representative for Foreign Affairs and Security Policy which has been specifically (and unanimously) requested by the European Council.

18. 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.

19. The European Council is also able to decide unanimously that decisions in other specified cases should in future be taken by QMV. However, any decision to move to QMV in a particular area would require the unanimous approval of all Member States in the first instance. It should be noted that QMV cannot be applied to decisions having military or defence implications. Such decisions must always be taken unanimously.

20. The role of the European Parliament in regard to the CFSP remains consultative. The Court of Justice has essentially no jurisdiction over the CFSP, including all defence matters, except on issues relating to the boundary between the CFSP and other EU policies (as is currently the case) and, as described above, in relation to sanctions.

21. 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 High Representative for Foreign Affairs and Security Policy, rather than the Presidency, which currently has this responsibility.

22. Member States which are members of the UN Security Council remain obliged to concert 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 High Representative for Foreign Affairs and Security Policy be asked to present agreed Union positions at the Security Council.

23. Current arrangements relating to Member State diplomatic and consular cooperation stand. EU citizens travelling abroad can continue to avail of consular assistance from other Member States where their country is not represented.

24. 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 at present chaired by the Member State holding the Council
Presidency. Under the Lisbon Treaty, it will be chaired by a representative of the High Representative for Foreign Affairs and Security Policy.

25. Administrative expenditure relating to the implementation of the CFSP is charged to the Union budget, as normally are operating expenses except for expenditure arising from operations having military or defence implications. These costs are borne by the participating Member States, save where the Council unanimously decides otherwise. In such cases, common costs are borne by Member States in proportion to Gross National Income. A Member State which has used the constructive abstention mechanism in relation to a particular operation (see paragraph 15 above) is exempted from contributing to the costs of that operation.

26. 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 crisis management operations (see paragraphs 40 - 45 below).

27. Two Declarations annexed to the Final Act of the IGC provide further explanations as to the role and competences of the High Representative for Foreign Affairs and Security Policy, and the Union’s External Action Service. Declaration 13 notes that the establishment of these posts, and the wider CFSP provisions in the Treaty “do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations.”

28. The Declaration also recalls that the provisions governing the Common Security and Defence Policy “do not prejudice the specific character of the security and defence policy of the Member States”. This provision is an explicit acknowledgement of the diversity of Member States’ policies in this area, including Ireland’s traditional policy of military neutrality. The primacy of the United Nations for the maintenance of international peace and security is also recognised.

29. Declaration 14 adds that the new provisions “will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations”.

30. The Decision on Ireland’s legal guarantees, adopted at the June 2009 European Council states that “the Treaty of Lisbon does not affect or prejudice Ireland’s traditional policy of military neutrality.”
Common Security and Defence Policy

31. In the Lisbon Treaty, the title “Common Security and Defence Policy” replaces the formula “European Security and Defence Policy (ESDP)” which is currently in use. The European Union’s 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 Union. It does so by drawing on the civilian and military capabilities of the Member States.

32. The horrors of the wars in the Former Yugoslavia in the 1990s, and events such as the massacre in Srebrenica gave political impetus to making 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. The Union has undertaken a wide variety of crisis management missions aimed at preventing conflicts and maintaining or restoring peace and stability. There is a very significant civilian and humanitarian dimension to the EU security and defence policy which is reflected in the fact that two thirds of operations, launched by the EU, have been civilian missions. All EU missions have been undertaken at the invitation of the host country and the vast majority of them have been at the request of the UN Security Council.

Through these operations, the EU has sought to protect refugees in Chad; counter piracy and ensure the delivery of essential humanitarian food aid to the people of Somalia; train Afghan, Bosnian and Palestinian civil police; build judicial systems in Kosovo and in Iraq; reform the security forces in the DR Congo; and monitor the peace in Georgia and in Aceh, Indonesia.

ESDP/Crisis Management Missions to Date

EU Civilian missions (13)

Current civilian missions
- Police Mission in Bosnia-Herzegovina (EUPM) *
- Rule of law mission in Kosovo (EULEX KOSOVO) *
- Monitoring Mission in Georgia (EUMM Georgia) *
- Police Mission in the Occupied Palestinian Territory (EUPOL COPPS) *
- Border Assistance Mission at Rafah, Gaza (EU BAM Rafah) *
- Rule of Law Mission for Iraq (Eujust Lex) *
- Police Mission in Afghanistan (EUPOL AFGHANISTAN) *
- Police Mission in DR Congo (EUPOL RD CONGO)

Completed civilian missions
- Police Advisory Team in FYR Macedonia (EUPAT)
- Police Mission in FYR Macedonia (Proxima)
- Rule of Law Mission in Georgia (Eujust Themis)
The Union’s External Policies

- Police Mission in Kinshasa, DR Congo (EUPOL Kinshasa)
- Aceh Monitoring Mission, Indonesia (AMM)

EU Mixed civilian-military missions (3)

Current mixed missions
- Security Sector Reform Mission in Guinea-Bissau (EU SSR Guinea-Bissau)
- Security Sector Reform Mission in DR Congo (EUSEC RD Congo)

Completed mixed missions
- Support to African Union Mission (AMIS) in Darfur, Sudan

EU Military missions (6)

Current military missions
- Stabilisation Mission in Bosnia and Herzegovina (EUFOR Althea) *
- Naval Anti-Piracy Mission off the Somali coast (EU NAVFOR Somalia) *

Completed military missions
- Refugee and humanitarian actor protection in Chad, CAR (EUFOR TCHAD/RCA) *
- Stabilisation Mission in FYR Macedonia (Concordia)
- Short-term stabilisation Mission in DR Congo (Artemis)
- Support Operation to UN during 2006 elections (EUFOR RD Congo)

*denotes Irish participation in Mission

defence implications must be taken unanimously,
b) all Union operations are undertaken in accordance with the principles of the United Nations Charter,
c) each Member State has a sovereign right to determine whether and to what extent it should take part in any given action.

These principles remain unchanged in the Lisbon Treaty.

34. Article 42 TEU sets out the key provisions of the Lisbon Treaty in regard to the common security and defence policy. These are further outlined in Article 43 TEU, and associated protocols.

Article 42 TEU: The 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.

33. The key principles of the Union’s security and defence policy include the following:

a) all Union decisions with military or
Military neutrality

35. The provisions of the Lisbon Treaty in the security and defence area are fully consistent with Ireland’s traditional policy of military neutrality. This is stated explicitly in the Decision adopted at the June 2009 European Council which will be attached to the Treaties as a Protocol at a later date. In the Treaties, the existing statement that the Union’s policy in this area “shall not prejudice the specific character of the security and defence policy of certain Member States” is maintained, along with the requirement for unanimity in relation to the launching of any mission. In order to remain fully consistent with the differing security and defence traditions of all the Member States, the Treaty also recognises the position of those Member States that are members of NATO.

36. The twenty-sixth amendment to our Constitution, approved by the people as part of the ratification of the Nice Treaty in October 2002, prohibits the State from entering into a common defence established under the Treaties. The wording of the proposed Constitutional amendment permitting ratification of the Lisbon Treaty carries this provision forward.

37. Ireland’s national position was specifically recognised by all Member States in the Seville Declarations of 2002, which noted that the Treaty on European Union “does not impose any binding mutual defence commitments. Nor does the development of the Union’s capacity to conduct humanitarian and crisis management tasks involve the establishment of a European army.”

38. Following the June 2008 Referendum, the Irish Government secured a legal guarantee on security and defence issues. It explicitly guarantees that the Lisbon Treaty does not affect or prejudice Ireland’s traditional policy of military neutrality. It also states that the Lisbon Treaty does not provide for the creation of a European army or for conscription to any military formation, nor does it affect the right of Ireland to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

39. The June 2009 European Council also took cognisance of a national declaration made by Ireland. The declaration reiterated that the participation of contingents of the Irish Defence Forces in overseas operations, including those carried out under the European common security and defence policy, requires (a) the authorisation of the operation by the Security Council or the General Assembly of the United Nations, (b) the agreement of the Irish Government, and (c) the approval of Dáil Éireann, in accordance with Irish law. Subject to the outcome of the referendum, this declaration will be associated with the Irish instrument of ratification of the Lisbon Treaty.
Article 43 TEU - Crisis management tasks

40. Article 43 TEU relates to the crisis management tasks, otherwise known as the 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.

41. The Lisbon Treaty 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.

Each of these tasks may also contribute to combating terrorism.

42. In referring to disarmament, military advice, conflict prevention and post-conflict stabilisation, the Lisbon Treaty provides a more complete description than the current Treaties of what is involved in the Union’s crisis management actions. Indeed, all of these tasks are already being undertaken under the existing treaties. Furthermore, the Lisbon Treaty 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.

43. Under Article 42(5) TEU 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 High Representative for Foreign Affairs and Security Policy, is to manage the task. However, at the insistence of Ireland and others, the Council as a whole must be kept regularly informed. Any decision on amending the objective, scope or conditions of the task is for the Council to take, again acting unanimously.

44. Irish participation in any given Petersberg task will remain for Ireland alone to decide. The Government have made clear that the “triple lock” provisions – requiring a Government decision, Dáil approval, and UN authorisation – will continue to apply in relation to service abroad by contingents of the Irish Defence Forces. The national declaration made by Ireland in June 2009 repeats these requirements. In the event of Ireland ratifying the Lisbon Treaty, this declaration will be associated with Ireland’s instrument of ratification.

45. The legal guarantee secured by the Irish Government in this area confirms that it will be a matter for Ireland to decide whether or not to participate in any military operation.
Article 42 TEU - Common Defence

46. Article 42(2) TEU essentially carries forward the existing Treaty provision on the possibility of the development of an EU common defence. The Treaty states 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 require to be taken by unanimity, providing Ireland with the right to veto any such proposal. There is no proposal for the creation of a common defence, nor is there any prospect of such a proposal in the foreseeable future.

47. The Constitution of Ireland precludes Irish membership of a common defence established under the Treaties. The Government proposes to carry forward this provision in the Constitutional amendment to allow for ratification of the Lisbon Treaty. Ireland could not be part of an EU common defence, therefore, unless the people were to decide, at some time in the future in a separate referendum, to remove this provision from the Constitution.

48. The legal guarantee secured by the Irish Government in this area confirms that any decision to move to a common defence will require a unanimous decision of the European Council. In that event, the guarantee continues that it would be a matter for each Member State to decide, in accordance with the provisions of the Lisbon Treaty and their respective constitutional requirements, whether or not to adopt a common defence.

Article 42 TEU - Mutual Assistance

49. Article 42 TEU establishes an obligation of aid and assistance to any Member State which is the victim of armed aggression on its territory. The Article does not specify how this obligation is to be put into effect. Importantly, the obligation of aid and assistance is qualified by the requirement that it shall not prejudice the specific character of the security and defence policy of certain Member States. This clause was inserted originally at the behest of Ireland, Finland, Sweden and Austria. This ensures that Ireland cannot be required to provide any aid or assistance which would be inconsistent with its traditional policy of military neutrality. It would be for Ireland to take its own sovereign decision on 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. The Article also states that “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”. This provision simply reflects the reality that many members of the EU are also members of NATO and that those countries may fulfil any obligation of mutual assistance through
that organisation in accordance with the obligations of collective defence they have agreed among themselves under the NATO treaties.

50 Furthermore, the legal guarantee secured by Ireland makes it clear that it will be for Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality, to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Article 42(3) TEU - Capabilities / European Defence Agency

51 In the Lisbon Treaty, Member States undertake to make civilian and military capabilities available to the Union to contribute to the peace support and crisis management objectives defined by the Council. In Article 42(3)TEU they undertake "progressively to improve their military capabilities" for this purpose. But no specific requirements as to the level of military spending are involved, nor is there any requirement to increase such spending.

52 Articles 42 and 45 TEU set out the role of the European Defence Agency (EDA). This was established in 2004 under the existing Treaties. Its purpose is to assist and support the Member States to develop the necessary capabilities to undertake the peace support and crisis management operations envisaged in the Petersberg Tasks (see para 40 above). While Ireland participates in the general framework of the EDA, this imposes no obligation to participate in or contribute to any specific EDA projects. Participation in specific EDA projects – for example, research into force protection measures – is entirely voluntary and is for national decision on a case-by-case basis.

53 The legal guarantee secured by Ireland provides that this is a matter for each Member State to decide, in accordance with the provisions of the Lisbon Treaty and any domestic legal requirements, whether to participate in the European Defence Agency. Ireland’s national Declaration of 19 June 2009 states that Irish participation in the EDA will be subject to national decision-making and the approval of Dáil Éireann in accordance with Irish law.

Article 42 and 43 TEU - Permanent structured cooperation

54 A further innovation introduced by the Lisbon Treaty is the provision made in Article 42 TEU for permanent structured cooperation 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”.

55 As set out in Article 43 TEU and the associated Protocol, structured cooperation involves a range of commitments to develop higher-end military capabilities for ESDP missions and to more extensive cooperation in
such areas as training, equipment, and logistics.

56. Participation in structured cooperation is open to all Member States on an opt-in basis – i.e. there is no obligation to participate. Following the entry into force of the Lisbon Treaty, those Member States which meet these criteria and wish to participate shall so indicate. The Council within three months is 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 participating Member State is no longer meeting the criteria for participation.

57. Decisions about membership of the structured cooperation group are to be by QMV. All other decisions and recommendations in permanent structured cooperation require unanimity.

58. The detailed arrangements for the operation of permanent structured cooperation have yet to be worked out. However, the important thing from Ireland’s perspective is that participation is entirely voluntary. There is no obligation on Ireland to take part in permanent structured cooperation. We can opt in or remain outside as we wish.

59. The legal guarantee secured by Ireland confirms that it is a matter for each Member State to decide, in accordance with the provisions of the Lisbon Treaty and any domestic legal requirements, whether to participate in permanent structured cooperation. Ireland’s national declaration of 19 June states that nothing obliges Ireland to participate in permanent structured cooperation as provided for in the Treaty on European Union. Any decision enabling Ireland to participate will require the approval of Dáil Éireann in accordance with Irish law.

Solidarity Clause

60. The Lisbon Treaty includes a “solidarity clause” (Article 222 TFEU) 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 bombings 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 in such instances.

61. 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 man-made disaster.
62. Arrangements for implementing the solidarity clause are to be set out in a Council decision on the joint proposal of the Commission and the High Representative for Foreign Affairs and Security Policy. Decisions having defence implications must be taken unanimously. A Member State has the right to choose the most appropriate means to comply with its solidarity commitment 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 and our traditional policy of military neutrality.

63. The legal guarantee secured by Ireland provides that it will be for Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality, to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Development cooperation and Humanitarian Aid

64. Existing provisions in regard to development cooperation and economic, financial and technical cooperation 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 policy and the development cooperation policies of the Member States will be complementary and mutually reinforcing.

65. For the first time, there are provisions directly covering humanitarian aid. Operations under this heading are intended to provide assistance, relief and protection for people in third countries who are affected by 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.

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

International Agreements

67. The Lisbon Treaty 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 High Representative for Foreign Affairs and Security Policy, depending on the subject) and concludes agreements.

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

69. QMV is the normal decision-making method except in relation to matters which are subject to unanimity internally,
Chapter 6

in the case of accession or association agreements and the agreement whereby the Union will accede to the European Convention on Human Rights (this is described in further detail in Chapter 3). Special arrangements govern the Common Commercial Policy, as described below.

Common Commercial Policy

70. 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 international trade negotiations, the Commission negotiates on behalf of the Union, subject to a mandate given it by the Member States.

71. The Lisbon Treaty in Article 206-207 TFEU 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. This reflects the growing importance of outward investment from Europe in a globalised world. Additionally, the EU is increasingly involved in negotiating Free Trade Agreements with other countries and regions. These Agreements contain provisions about what rules will apply to investment by EU companies in other countries and vice versa. The European Parliament is given an enhanced co-decision role in the adoption of measures defining the framework for implementing the Common Commercial Policy.

72. The aspect of the Common Commercial Policy which was most extensively discussed in the negotiations 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.

73. In the Lisbon Treaty, 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.

74. It is made clear that the exercise of the Union’s competences in the Common Commercial Policy cannot affect the division of competences between the Union and the Member States.

75. 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.

The Union’s External Policies: the Government’s position

The Government wished to see the Union adequately equipped to play a role internationally in support of shared values and objectives. The Government supported proposals to enhance the coherence and effectiveness of the Union’s external relations, notably the appointment of a High Representative for Foreign Affairs and Security Policy. 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. The Government are satisfied that they did so successfully, and this has been made explicit by the legal guarantee secured by Ireland at the June 2009 European Council. In its national declaration of 19 June 2009, Ireland reaffirmed its commitment to the common foreign and security policy and recalled its strong commitment to conflict prevention, resolution and peacekeeping, as illustrated most recently by the leading role played by the Irish defence forces in the UN-mandated EU mission in Chad and the Central African Republic.
Part 2:
Amendments to the Treaty establishing the European Community
Article 1

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

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

Categories of Competence

4. Chapter 2 of this White Paper described the three key principles of conferral, subsidiarity and proportionality, which are central to the allocation and exercise of competences.
5. Building on these principles, the Lisbon Treaty defines three broad areas of Union competence. These can be described respectively as exclusive competence, shared competence and supporting competence. Under each heading there is a listing of the competences concerned.

6. In a small number of areas where it enjoys exclusive competence, the Union alone may legislate, unless it delegates responsibility to the Member States to do so. These areas 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: this does not affect the internal division of competences between the Member States and the Union).

7. 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, although when the Union has legislated in relation to a specific aspect of that area the Member States may not do so. The principal areas of shared competence are:

- the EU's 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 coordinate 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. This threefold 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 are therefore listed 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 cooperation and humanitarian aid, where 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 of the Treaties relating to each area”. These provisions frequently include considerable detail and represent the outcome of careful negotiations between the Member States in successive Intergovernmental Conferences. The headline listings are, therefore, only a guide to the Union’s competences. In reality, some areas can involve far more substantial Union action than 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 a considerable volume 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, the Lisbon Treaty 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. These are: 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); and administrative cooperation. Of these, tourism, energy and civil protection were previously mentioned as being among the Union’s tasks 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.

13. Article 191 of the TFEU is amended to include for the first time in the Treaties a reference to the promotion of measures to combat climate change as part of the Union’s environmental competence. This reference was included at the request of the Irish Government. It will give the Union a specific basis for promoting international action against climate change.
**Flexibility**

14. The Lisbon Treaty also carries forward from the existing Treaties the so-called “flexibility clause” (Article 352 TFEU). This provides for action by the Union to attain one of the objectives set out in the Treaties, but where the Treaties have not provided the necessary powers. In these cases, the Council of Ministers, acting unanimously on a proposal from the European Commission and after obtaining the consent of the European Parliament, can adopt the appropriate measures. The European Commission is required to draw national parliaments’ attention to any such proposals. Such measures shall not entail harmonisation of Member States’ laws or regulations in cases where the Treaties exclude such harmonisation. Neither can the “flexibility clause” be used to serve as a basis for achieving objectives pertaining to the common foreign and security policy.

15. The maintenance of a requirement for a unanimous decision by the Member States, and the involvement of national parliaments, both provide safeguards to ensure the proper use of the flexibility provision. The requirement that any action must be within the scope of policies already defined in the Treaties provides an additional safeguard.

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**The Functioning of the European Union – Categories of Competence**

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**The Functioning of the European Union: the Government’s position**

The Government favours a clearer demarcation between the powers of the Union and those of the Member States. It is satisfied that the Treaty clarifies the scope of the Union’s competences in a helpful manner. The definition of three broad categories of competences represents a major improvement on the existing position.

The new policy areas incorporated into the Lisbon Treaty are all desirable additions to the Union’s responsibilities. The Government particularly welcomes the fact that its proposal to include wording on climate change was accepted by our EU partners. This is the first time that climate change has been included in an EU Treaty. The Government also welcomes the new Treaty article on energy policy. Energy security and climate change are two policy areas where the EU has a distinctive role to play. These are areas where the EU has the capacity to be more effective than the efforts of individual States.
1. One of the objectives of the reform process leading to the Lisbon Treaty was simplifying the Union’s decision-making procedures. This chapter describes the Union’s arrangements for decision-making as modified by the provisions of the Lisbon Treaty.

2. The Lisbon Treaty further extends the use of qualified majority voting (QMV), which is already the most common decision-making method in the Council. A further extension of the European Parliament’s legislative powers is provided for in many policy areas. This move is designed to strengthen the democratic character of EU decisions.

3. The Treaty also makes certain changes to the existing arrangements for “enhanced cooperation”, whereby groups of Member States can be permitted to take forward cooperation within the Union framework.

The Union’s Legal Acts

4. The Treaty on the Functioning of the European Union also describes the types of legal instrument which the institutions may adopt in order to exercise the Union’s competences:

- A regulation has general application and is legally-binding and directly applicable in all Member States.
- A directive is legally-binding, but gives Member States flexibility as to how the prescribed results are to be achieved.
- A decision is legally-binding, but only on those to whom it is addressed.
- Recommendations and opinions as their names suggest, are non-binding.

What is QMV?
Ordinary Legislative Procedure

5. While several exceptions are allowed for, the “ordinary legislative procedure”, as defined in the Treaties, involves an equal role for the Council and the Parliament in the adoption of regulations, directives and decisions. It 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 the Parliament. On occasion, the Parliament’s role is only consultative (these issues are further discussed below).

6. The new system of “double majority” voting will give proportionate weight to population, but will also give an equal say to each Member State. Under the system, a majority in the Council must normally comprise at least 55% of the Member States, representing at least 65% of the Union’s population. This is described in detail in Chapter 5, on the Union’s institutions.

7. 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 to the Commission or to prevent the entry into force of a given regulation.

8. 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 decided not by unanimity but by QMV.

Overall Balance of Decision-Making Procedures

9. As described above, the Lisbon Treaty provides that the “ordinary legislative procedure” involves co-decision between the Council and the Parliament, with QMV in the Council. Previous EU Treaties have progressively extended QMV and co-decision. During the various negotiations that culminated in the Lisbon Treaty, the degree to which there should be a further expansion of both QMV and co-decision was a major theme.

10. There was broad consensus that the extension of both QMV and co-decision was desirable, in particular to facilitate decision-making in an enlarged Union and to increase democratic control over legislation. Some Member States favoured the near-universal application of QMV. However, various individual policy areas continued to be sensitive for one or more of the Member States.

11. The European Convention, which met in 2002 and 2003, proposed the further extension of QMV, but accepted that
certain decisions should remain subject to unanimity (e.g. defence matters and most aspects of taxation).

12. During the negotiations, key issues for decision included the arrangements to be applied in relation to taxation, the Own Resources system, judicial cooperation in criminal matters, and the adoption of the Union’s multi-annual financial framework. The outcomes in each case, as reflected in the Lisbon Treaty, are described in the Chapters on the policies concerned.

13. The overall extent 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 the areas of social security and judicial cooperation in criminal matters).

Articles where voting arrangements are changed by the Lisbon Treaty

14. Annex B 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. Annex C lists all of the articles which either involve some change to co-decision, or which are new and where co-decision between the European Parliament and the Council of Ministers is the standard decision-making method.

15. In qualitative terms, areas where there are 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 cooperation in criminal matters (where Ireland has an opt-out, but will participate on a case-by-case basis); the structure of Eurojust and Europol; urgent financial aid to third countries; and support measures in the field of culture.

16. Major policy areas which will continue to be governed by unanimity in Council 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.

17. In the institutional area, some significant issues are subject to QMV. These include major appointments and arrangements for the Council Presidency. Others, including the future composition of the European Parliament, will continue to be decided by unanimity.

18. Areas where there has been a significant shift to co-decision between Council and the European Parliament include: freedom, security and justice issues generally; major policy aspects of the Common Agricultural Policy; some aspects of the jurisdiction and operation of the European Court of Justice; staff regulations; and implementing decisions in the Common Commercial Policy.
Areas where the European Parliament’s role is extended in the legislative process are listed in Annex C.

**Future Changes in Decision-Making Procedure**

19. The Lisbon Treaty also includes a range of provisions allowing for possible changes to be made to decision-making procedures at a future date. While a limited number of these so-called "passerelles" already exist, the possible scope for such changes in the future is now enhanced.

20. During the negotiations, there was pressure for a simpler system of future Treaty revision to be devised. While many Member States, including Ireland, successfully opposed the idea of making Treaty revision other than on a unanimous basis, the need for some greater degree of flexibility was acknowledged.

21. Consequently, the Lisbon Treaty includes, as a simplified revision procedure, a "general passerelle" which enables the European Council to decide to change decision-making procedures in a particular policy area from unanimity to QMV. This may not apply to decisions with military implications or in the field of defence.

   In such cases, the European Council must act by unanimity. Moreover, any proposal to use this "general passerelle" must be notified to all national parliaments at least six months in advance. Any national parliament can veto such a move. This gives a significant additional power to each national parliament.

22. Specific provisions allowing for a possible move from unanimity to QMV are included in the following areas:

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

   Under the proposed constitutional amendment, the prior approval of both Houses of the Oireachtas will be required to exercise a passerelle.

23. Chapter 12 provides further information on the different "passerelle" clauses contained in the Lisbon Treaty.

**Enhanced Cooperation**

24. The Lisbon Treaty simplifies somewhat the existing provisions for "enhanced cooperation". These provisions lay down the conditions under which a group of Member States can be permitted to proceed with a proposal for "enhanced cooperation" between them. However, the current provisions for enhanced cooperation have never been used.
25. The Lisbon Treaty 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 Treaties and with Union law, must not undermine the internal market or economic, social or territorial cohesion, constitute a barrier to trade or distort competition.

26. Enhanced cooperation may be authorised only as a last resort, when it has been 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.

27. A minimum of nine Member States must wish to take part in an enhanced cooperation group. In general, authorisation to move to enhanced cooperation 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.

28. Member States wishing to establish enhanced cooperation between themselves in the framework of the common foreign and security policy must seek the opinion of both the High Representative of the Union for Foreign Affairs and Security Policy and the Commission. In the CFSP area, authorisation to proceed with enhanced cooperation requires unanimity in the Council. Unlike in the Treaty of Nice, there is no prohibition on the use of enhanced cooperation in defence matters. However, as the Treaties already allow for a range of specific arrangements with regard to defence, it is not clear whether the general enhanced cooperation provisions would be used in this area (See Chapter 6 on Common Security and Defence Policy).

29. The Treaty makes clear that enhanced cooperation 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 cooperation group. While there is a clear presumption that the participation of a new member will be confirmed by the existing members of the group, 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).

30. Unless there is a unanimous Council decision to the contrary, expenditure on enhanced cooperation, other than normal administrative expenditure, is for the participating Member States to bear.

31. As a rule, decision-making within enhanced cooperation 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 cooperation group. However, provision is made for a so-called “mini-passerelle” within enhanced cooperation, similar
to the general passerelle provision (see paras 21 – 23 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.

**Decision-making:**
**The Government's position**

The Government strongly supports the changes to the Union's decision-making procedures provided for by the Lisbon Treaty. The Government favours the extension of qualified majority voting and of co-decision as important for the more effective functioning of the European Union. During the negotiations it successfully insisted on retaining unanimous voting for a number of important matters, including defence and taxation. The legal guarantees obtained by Ireland make it clear that nothing in the Lisbon Treaty makes any change of any kind to the extent or operation of the EU’s competence in relation to taxation.

The Government also accepted the inclusion of a “general passerelle” arrangement subject to a number of important conditions which were met.

The Government agreed to a certain relaxation of the conditions for the establishment of enhanced cooperation, provided that the essential safeguards provided for in previous Treaties were maintained. Under the terms of the proposed constitutional amendment, a decision to participate in enhanced cooperation would require the prior approval of both Houses of the Oireachtas.
1. One of the key objectives of the Union is to offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime. This area of freedom, security and justice covers visas, asylum and immigration policy; judicial cooperation in civil law; judicial cooperation in criminal law; and police cooperation.

2. While the Lisbon Treaty does not make major changes to most of the Union’s internal policies, it substantially amends the current provisions in the area of freedom, security and justice (also known as Justice and Home Affairs). This was one of the few areas where significant additional issues arose for Ireland in the Lisbon Treaty as compared with the Constitutional Treaty.

3. In the 2007 Intergovernmental Conference (IGC), discussions took place in relation to the position of Ireland and the UK in the area of freedom, security and justice. As a result, Ireland and the UK secured specific arrangements in relation to their participation in measures in this area. In particular, it was agreed that the Protocol which currently provides for an opt-in arrangement for Ireland and the UK with regard to cooperation in relation to border checks, asylum, immigration and judicial cooperation in civil matters should be extended to cover judicial cooperation in criminal matters and police cooperation (the Ireland-UK Protocol). Further information on Ireland’s position is contained at the end of this chapter.
General Provisions

4. The Union’s competence in the area of freedom, security and justice is shared with the Member States. The overall objectives of the Union in these areas are as follows:

Article 67, TFEU

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 Title, stateless persons shall be treated as third-country nationals.

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

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

6. Another distinctive institutional feature of the judicial cooperation in criminal matters and police cooperation 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.

7. National parliaments are given a particular role in ensuring that measures dealing with judicial cooperation in criminal matters and police cooperation comply with the principle of subsidiarity. In the area of freedom, security and justice, it requires only a quarter of national parliaments, as opposed to a third generally, to object to a proposal and thus require it to be reconsidered.

8. There is provision in the Treaty for peer review of the effectiveness of the implementation of Union policies by the Member States. Administrative cooperation between Member States is also envisaged.
9. A new standing committee to promote and strengthen operational cooperation in internal security matters is provided for in the Treaty. However, the responsibilities of the Member States for the maintenance of law and order and internal security are unaffected by the Lisbon Treaty. Furthermore, they may organise between themselves forms of cooperation and coordination with regard to national security.

10. The Court of Justice is given greater jurisdiction over the area of freedom, security and justice. There is to be a five year transitional period during which the Court will not have this extended jurisdiction over existing measures in the areas of judicial cooperation in criminal matters and police cooperation. After five years, this transitional period will come to an end for all Member States with the exception of the UK.

**Freezing of Terrorist Assets**

11. A new provision, building on existing treaty provisions, will allow for administrative measures to be taken with regard to capital movements and payments, such as freezing of financial assets, funds and economic gains belonging to or owned or held by individuals or, for example, companies, where this is necessary to prevent and combat terrorism. Ireland has not opted-out of EU cooperation on the freezing of terrorist assets and will automatically be bound by measures in this area.

**Border Checks, Asylum and Immigration**

12. The Treaty’s provisions in these areas are aimed more at consolidating and clarifying current arrangements than at introducing major change. In keeping with existing arrangements, 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, including the prior approval of both Houses of the Oireachtas. These arrangements are currently dealt with in two separate Protocols: the Schengen Protocol and the Ireland-UK Protocol in the area of Freedom, Security and Justice. It was agreed, in the 2007 IGC, that provisions would be added to both Protocols concerning future measures which build on or amend measures already taken.

13. The Schengen Protocol will provide that Ireland and the UK are, as a rule, to be bound by measures building on existing measures that they have opted into. Where either country decides not to participate in a building measure, and where this might undermine the coherence of EU action, the original measure may cease to apply to the State in question. The Ireland-UK Protocol contains similar arrangements.

14. In regard to border checks, the Union’s policy ensures that there are no controls on persons crossing internal frontiers, that proper checks are carried out at the Union’s external frontiers, and that an integrated external border management system is developed.
15. 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 Lisbon Treaty’s 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.

16. Immigration policy is to be 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.

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

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

19. 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.

20. 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.

21. Legal measures in these areas are all to be adopted by the ordinary legislative procedure (QMV in the Council and co-decision with the European Parliament) – thus giving an enhanced role to the European Parliament.

Civil Law

22. The Treaty also deals with judicial cooperation in civil matters with cross-border implications. As with the areas of border checks, asylum and immigration, Ireland and the UK are not required to take part in measures under this section of the Treaty, but can choose to opt-in to measures on a case-by-case basis and this arrangement will continue.
23. 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.

24. The Treaty allows for measures to support the implementation of this principle, covering matters such as 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.

25. Following current practice, decision-making in this area is normally by the ordinary legislative procedure (QMV in the Council and co-decision with the European Parliament). However, family law matters with cross-border implications are to be decided unanimously in the Council following consultation with 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, but any such agreement is subject to veto by national parliaments.

26. Following the June 2008 referendum, Ireland secured a legal guarantee which confirms that nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of the Lisbon Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the family in Article 41 provided by the Constitution of Ireland.

Criminal Law

27. Judicial cooperation in criminal matters is to be based on the principle of mutual recognition of judgments 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.

28. Minimum rules may be established so as to facilitate mutual recognition, judicial cooperation in criminal matters and police cooperation with a cross-border dimension. The differences between the legal traditions and systems of the Member States must be taken into account in such rules. 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.

29. 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.
30. The Lisbon Treaty provides generally for measures to be adopted by the ordinary legislative procedure. This involves a change from current arrangements in this area, whereby legislation is adopted by unanimity, following consultation with the European Parliament.

31. It was also provided that particular arrangements still apply in certain cases. Hence:

• Where a Member State considers that a draft measure 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” mechanism);

• The European Council shall, within four months, in the case of consensus, send the draft back to the Council for further consideration and decision in the usual way;

• If the European Council cannot agree and at least one third of the Member States wish to proceed, then they may, within the same time-frame, move to enhanced cooperation in the area covered by the measure by notifying the European Parliament, the Council and the Commission accordingly (the provisions concerning enhanced cooperation are set out in Chapter 8 on decision-making).

32. Minimum rules may be established 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.

33. The areas of crime covered 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.

34. Other types of crime may be added to this list by unanimous decision of the Council after obtaining the consent of the European Parliament. Under the terms of the proposed constitutional amendment, this would require the prior approval of both Houses of the Oireachtas.

35. 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.

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

37. The Treaty 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 legal measures governing Eurojust are to be agreed by the ordinary legislative procedure. The European Parliament and national parliaments are to be involved in evaluating Eurojust’s activities.
38. During negotiations on the Treaty, opinion was divided on the necessity of establishing a single European Public Prosecutor (EPP), with the right to conduct prosecutions in national courts with regard to (a) offences against the Union’s financial interests and (b) serious cross-border crime generally. 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. It was agreed also that, if unanimous agreement could not be reached, a minimum of nine Member States could establish an EPP, whose remit would apply only to them. The scope of the EPP would be confined to offences against the Union’s financial interests. By a further unanimous decision the European Council could extend its powers, in respect of those participating Member States, to serious cross-border crime. Under the terms of the proposed constitutional amendment, a decision to establish the EPP or to extend his/her powers would require the prior approval of both Houses of the Oireachtas.

40. Europol, which supports such cooperation, is also provided for in the Treaty. Europol was set up in 1994. It dealt initially with the fight against drugs. Under the Lisbon Treaty, Europol’s mission will be to support and strengthen the action by the Member States’ police authorities and other law enforcement services in preventing and combating serious cross-border crime, terrorism and other crimes, such as counterfeiting the Euro. It is to be scrutinised by the European Parliament and by national parliaments.

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

Police cooperation

39. The Union will continue to promote cooperation between national police and other law enforcement services. Any laws concerning cooperation in operational matters will require unanimity, after consultation with the European Parliament.
Freedom, Security and Justice: the Government’s position

In 2007, the Government decided that it would be appropriate for Ireland to avail of an extended opt-in arrangement with regard to judicial cooperation in criminal matters and police cooperation. This means that measures concerning freedom, security and justice will not apply automatically to Ireland, which can participate in proposals on a case-by-case basis. At the same time, the Government decided that, in keeping with its strong commitment to the Union, Ireland should make a political declaration stating its firm intention to participate, to the maximum extent possible, in proposals concerning judicial cooperation in criminal matters and police cooperation. The declaration, which has been published with the new Treaty, further states that this undertaking on the part of Ireland will apply, in particular, in the area of police cooperation.

The approach adopted by the Government reflects the fact that the area of freedom, security and justice is a very sensitive one, especially because, in the fields of substantive criminal law and criminal procedure, our legal system is quite different from those of most other EU Member States. The UK has a similar legal system to ours and has chosen to apply broadly similar opt-in arrangements.

The Government is satisfied that Ireland’s interests will be met by these arrangements, which offer an important degree of flexibility. As stated in the Government’s declaration, the overall approach will be that Ireland will opt into measures in this area. Under the terms of the proposed constitutional amendment, opting-in would require the prior approval of both Houses of the Oireachtas.

The Government has also given a commitment that it will review the operation of Ireland’s freedom, security and justice arrangements after a period of three years. The Ireland-UK Protocol gives Ireland the option to end the arrangement provided for in that Protocol.

The Government is satisfied that the legal guarantee secured in June 2009 ensures that nothing in the provisions of the Lisbon Treaty in the area of freedom, security and justice affects in any way the scope and applicability of the protection of the family in Article 41 provided by the Constitution of Ireland.
Chapter 10: The Union’s Finances

1. The essential elements of the existing system of Union finances are not changed by the Lisbon Treaty, but there are some innovations which are detailed in Article 312 of the TFEU. For the first time, multi-annual financial planning is provided for in the Treaties. This gives a Treaty 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.

   Basic Principles

2. The Treaty 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 multi-annual financial framework;
   • The Union and the Member States to combat fraud and other illegal activities affecting the Union’s interests.
Own Resources

3. The Treaty provides that the Union shall be equipped with the means necessary to achieve its objectives and carry through its policies. Its budget is to be financed wholly from its own resources, i.e. revenues that the Union receives to finance its operations.

4. The “Own Resources” system is to be defined by a decision 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 among 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.

5. There was considerable debate during the negotiations about whether Own Resources decisions should in future be adopted by QMV or should continue to require unanimity. In the end, unanimity was maintained for the main Own Resources decision. However, the Treaty allows for the implementing measures, such as how Own Resources are to be made available and accounted for, to be decided by QMV.

Multi-annual Financial Framework

6. Since the late 1980s, the Union’s budget has operated within a multi-annual financial framework, which sets out the broad allocation of funding over a period of years and within which the annual EU budget is framed. This has allowed for long-term planning, for example of agricultural and structural funds’ expenditure.

7. Until now, the multi-annual financial framework has not been provided for in the Treaties. It has been the subject of a political agreement between the EU institutions, but under the Lisbon Treaty it will now be provided for in the Treaty.

8. The multi-annual financial framework will 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.

9. During the negotiations, while some Member States were in favour of the framework agreement being adopted by QMV, others were strongly opposed. It was agreed to make it subject to unanimity in Council, with the consent of the European Parliament.

10. However, provision is also made for the European Council to decide by unanimity at some future point that QMV should be used for decisions on the EU’s financial framework.
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Annual Budget

11. Within the overall parameters set down by the multi-annual financial framework, the annual budget will determine the details of the Union’s expenditure. The European Parliament’s role in the budgetary process - acting jointly with the Council - is one of its most significant powers.

12. The current procedures for establishing the budget are complex. During the negotiations some favoured 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 Treaties, the vast bulk of which is CAP spending) effectively rests with the Council. The European Parliament, on the other hand, effectively has the final say with regard to non-compulsory expenditure.

13. Some Member States also favoured a simplified single procedure covering all types of expenditure. However, 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.

14. The Treaty represents a compromise approach. 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. The result is then 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.

The Union’s finances: the Government’s position

The Government is supportive of the inclusion in the Treaty of a specific reference to the multi-annual financial framework and the simplification of the budgetary procedure. The Government is also satisfied with the abolition of the distinction between obligatory and non-obligatory expenditure, as payments to third parties (including in the CAP context) remain legally protected.

The Government strongly favours the retention of unanimity for Own Resources decisions. The Government’s position is that, since Own Resources could take the form of tax-like revenues, retaining unanimity is essential and consistent with Ireland’s position on EU decision-making on taxation.
1. Many provisions of the EU Treaties relate to the Union’s internal policies – those concerned with economic, social and other issues.

2. With some exceptions, most internal policies were not subject to detailed debate in the negotiations that led to the Lisbon Treaty. Many of the relevant articles will be carried forward from existing Treaty provisions, subject to only minor wording changes.

3. The most substantial changes relate to the Area of Freedom, Security and Justice and are dealt with in Chapter 9.

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 these areas. The new areas 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 cooperation.

   There is also a new provision for regulations in regard to services of general interest.

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

Horizontal Provisions

6. A number of provisions in the Lisbon Treaty set out general objectives or considerations which are to be reflected in specific policies set out elsewhere. These include:

- combating inequality, and the promotion of equality, between women and men (Article 2, TEU);
- environmental protection requirements and the goal of sustainable development (Article 3, TEU);
- combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (Article 10, TFEU);
- the requirements of animal welfare (Article 13, TFEU)

7. The Treaty adds a requirement on the Union to take into account social policy objectives, as follows:

Article 9, TFEU

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

Services of General Interest

8. A Protocol deals with the shared values of the Union in respect of 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, in Article 14, TFEU, that regulations 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. The Treaty leaves provisions relating to the free movement of persons, services, goods and capital, and competition and state aids 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, instead of 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

What are ‘services of general interest’?
by consensus (this is what is called an “emergency brake”) (Article 48, TFEU).

- Decisions on measures making it easier to take up and pursue activities as a self-employed person move entirely to QMV (Article 53, TFEU).
- For the first time there is an Article making specific provision for the establishment of uniform intellectual property rights (Article 118, TFEU) (the Union has heretofore operated on the basis of the “implied powers” flexibility).

**Taxation**

10. During the negotiations, there was much debate on whether the Union’s competence in the area of taxation should be increased and whether decisions in this area should continue to be taken solely by unanimity. While some of those involved wanted to move at least partly to QMV, a number of Member States, including Ireland, argued strongly that no change to the existing Treaty provisions was warranted.

11. The Intergovernmental Conference (IGC) eventually decided to maintain the current Treaty articles unchanged, thereby maintaining unanimous decision-making in all cases and removing a proposed provision in relation to corporation tax.

12. Furthermore, following the June 2008 referendum, Ireland secured a legal guarantee which makes it clear that nothing in the Lisbon Treaty makes any change of any kind for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

**Economic and Monetary Policy**

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

14. The Commission’s role in monitoring the economic policies of the Member States has been enhanced.

15. The Commission may now issue a warning directly to a Member State where it believes that its economic policies are not consistent with the agreed Broad Economic Policy Guidelines (Article 121, TFEU). Recommendations in such a case remain a matter for the Council to decide, based on a proposal from the Commission, and on a qualified majority of the members of the Council, other than the Member State concerned.

16. The economic policy objectives and obligations currently contained in the Treaties regarding the ratio between government deficit and gross domestic product (GDP) and the ratio between government debt and GDP are unchanged. The Commission may now directly address an opinion to the Member State concerned if it considers that an excessive deficit exists or may occur. It remains a matter for the Council to decide if such an excessive deficit exists. Any such decision or related recommendation for corrective action will now be based on a qualified majority...
of the members of the Council other than the Member State concerned.

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 Eurogroup, which is currently informal and is therefore not required to await the entry into force of the Lisbon Treaty, selected as its first permanent chair Jean-Claude Juncker, the Prime Minister and Finance Minister of Luxembourg).

19. There was debate during the negotiations 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.

Environment (Climate Change)

20. At the 2007 IGC, Member States agreed to a proposal by Ireland that the article dealing with environment be amended to take account of the growing threat of climate change. Article 191, TFEU provides for EU policy on the environment “promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change”.

Energy

21. For the first time, a specific article on energy is included (Article 194, TFEU), though the Union has previously been involved in this area in pursuit of its general economic objectives.

22. Energy policy will, in a spirit of solidarity between Member States, aim to ensure the functioning of the energy market; ensure security of supply; promote energy efficiency and energy saving; promote the development of new and renewable forms of energy; and promote the interconnection of energy networks.

23. 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.

24. 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.
Economic, Social and Territorial Cohesion

25. It was agreed that the provisions aimed at reducing disparities in the levels of development of the various regions should be strengthened. The Treaty provides that 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” (Article 174, TFEU).

Agriculture and Fisheries

26. Apart from changes to the decision making procedure, only limited changes are made in regard to agriculture and fisheries, which are contained in Articles 38-44, TFEU. The objectives of the Common Agricultural Policy (CAP), which will now explicitly include the Common Fisheries Policy (CFP), are as established by the original Treaty.

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

28. In relation to agriculture and fisheries, the main change is that the European Parliament has gained a greater role as a co-legislator with the Council in making the basic laws or framework laws establishing the Common Agricultural and Fisheries Policies. 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.

Research and Development & Space Policy

30. 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 “European research area”). A Declaration (number 34) annexed to the Final Act states that the Union’s action will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

31. The Treaty allows the Council and Parliament to legislate for a European space programme (Article 189, TFEU).
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.

33. Article 168, TFEU 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 Treaty provides for a greater role for the Union in monitoring and combating serious cross-border threats to health (e.g. communicable diseases such as Influenza A (H1N1)). 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” (Article 168(5), TFEU).

Sport

37. A commitment that the Union “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” has been included in the Lisbon Treaty (Article 165, TFEU).

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”.

Youth

39. The Union encourages the development of youth exchanges and the Treaty provides for the first time that the Union’s action shall be aimed at “encouraging the participation of young people in democratic life in Europe” (Article 165, TFEU).

40. The Treaty also provides that a European Voluntary Humanitarian Aid Corps shall be set up (Article 214, TFEU). The Corps will operate within a framework for joint contributions from young Europeans to the humanitarian aid operations of the Union.

Tourism

36. A new provision (Article 195, TFEU) requires the Union to complement action by Member States in the tourism sector. This is aimed at encouraging a favourable tourism environment and the exchange of good practice between the Member States.
Civil Protection

41. A new provision (Article 196, TFEU) 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 cooperation is also an objective.

Administrative cooperation

42. Another new provision (Article 197, TFEU), inspired by the experience of successive enlargements, aims to support cooperation between Member States’ administrations in order to improve their capacity to implement Union law. Such cooperation, which is to be voluntary, can include the exchange of information, the secondment of officials, and supporting training schemes.

Other Areas

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

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

Solemn Declaration on Workers’ Rights and Social Policy

44. Following the June 2008 referendum, Ireland secured a Solemn Declaration on workers’ rights and social policy. In the declaration, the EU re-iterated the high importance which the Union, amongst its other aims and values, attaches to:

- Social progress and the protection of workers’ rights;
- Public services;
- The responsibility of Member States for the delivery of education and health services;
- The essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest.
The Union’s Internal Policies: the Government’s position

The Government believes that the negotiations correctly avoided a root-and-branch overhaul of all internal policies. The Government is particularly pleased that the essential elements 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 would remain subject to unanimity. Ireland’s legal guarantee in this area confirms that nothing in the Lisbon Treaty makes any change of any kind for any Member State to the extent or operation of the competence of the European Union in relation to taxation.

The Government pressed strongly for the inclusion of the new Social Clause (Article 9, TFEU) which obliges the Union to take account of social objectives, including the guarantee of adequate social protection, and the fight against social exclusion. The Government welcomes the changes made in relation to energy, climate change, public health, sport and the new provision encouraging the participation of young people in democratic life in Europe.

After the June 2008 referendum, the Government negotiated a Solemn Declaration by the European Union on workers’ rights and social policy.
1. This chapter covers some further aspects of the Lisbon Treaty not covered in previous chapters.

**Future Treaty change**

2. It is the ambition of the signatories that the Lisbon Treaty will serve the European Union for many years to come. Provision is, however, made for future amendment. This is provided for in Article 48 of the TEU.

3. Under the *ordinary revision procedure*, amendments will be made, as is the case under the current Treaties, by a conference of Member State Governments (an Intergovernmental Conference, or IGC). Any amendment 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. Many Member States would continue to ratify by parliamentary procedure, similarly, in Ireland’s case, any proposal that would currently require an amendment to the Constitution of Ireland would still be submitted to the people for decision in a referendum.

4. However, the Treaty, reflecting the general view that the European Convention which preceded the 2003–2004 IGC was a welcome and successful innovation, provides that normally such a conference of Member State governments is to be prepared by a similar Convention. Such a Convention would bring together representatives of governments, national parliaments, the European Parliament and the Commission.
Chapter 12

5. Any Member State, the European Parliament or the Commission may submit proposals for amendment of the Treaty. 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. During the negotiations, there was some pressure for an easier system of amendment in some cases, such as changes to the scope of power given to the Union in each policy area. It was suggested by some that these latter changes could be made by less than unanimous agreement among the Member States.

8. Many others, including Ireland, maintained that it was unacceptable that future change could be made against the wishes of one or more Member States. These arguments were accepted.

9. It was also agreed to establish a simplified revision procedure to apply in certain limited and defined circumstances. Under this procedure, there is provision for the European Council unanimously to agree amendments to articles dealing with the internal policies of the Union. However, such amendments cannot increase the Union’s competences. Moreover, as is the case with the ordinary revision procedure, such amendments must be approved by all Member States in accordance with their respective constitutional requirements.

10. It was also agreed to provide a further simplified revision procedure, known as the “general passerelle” arrangement (as set out in Chapter 8 on decision-making). Under this arrangement 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. The Treaty states that any decision to move to QMV or to the ordinary legislative procedure must have the unanimous agreement of the European Council. In addition to the veto held by any Head of State or Government at the European Council, any national parliament can veto such a change. This procedure deals solely with changes to decision-making procedures; accordingly, no new powers may be conferred on the Union under this provision. It cannot be used to change institutional arrangements, for example. The Treaty specifically states that this arrangement “shall not apply to decisions with military implications or those in the area of defence”.

11. Under the terms of the proposed constitutional amendment, any proposal to avail of a passerelle clause would
require the prior approval of both Houses of the Oireachtas.

**Future Treaty Change: the Government's position**

All future change to the Treaties will continue to require the support of all Member States. The Government is satisfied that the simplified revision procedure with respect to the internal policy procedures of the Union provides any such change will only take effect once all Member States have so agreed, in accordance with their constitutional requirements. It is satisfied that both the Government and the Oireachtas may veto any proposed change under the general passerelle procedure and that the procedure does not apply “to decisions with military implications or those in the area of defence”.

**Languages**

12. As with previous Treaties, the Lisbon Treaty lists all of the languages in which its texts are legally valid. These languages include Irish. Since 2007, Irish has been recognised as an official and working language of the European Union. There are 23 such languages.

**Euratom**

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

14. During the negotiations, some Member States, including Ireland, 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 in the article in the Treaty dealing with energy.

15. Others, however, clearly opposed any change, taking the view that this was a distinct, complex, and technical subject which it was not appropriate to deal with. Accordingly, the Treaty simply contains a Protocol, maintaining Euratom as a separate legal entity and making minimal technical changes to it.

16. Ireland, together with Germany, Austria, Hungary and Sweden made a Declaration (number 54) annexed to the 2007 IGC’s Final Act 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.

**Euratom: the Government’s position**

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.
Annex A
Annex B
Annex C
Glossary
A Protocol is a text annexed to a Treaty or Treaties that usually expands upon an issue contained in that Treaty or Treaties. It has the same legal standing and force as a Treaty. The Lisbon Treaty contains eleven new Protocols and amends some Protocols from previous Treaties.

**Protocols to be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and, where applicable, to the Treaty establishing the European Atomic Energy Community**

**Protocol (No. 1) on the role of National Parliaments in the European Union**
This Protocol is dealt with in detail in Chapter 2 on “The Nature, Values and Objectives of the European Union” and Chapter 4 on “Enhancing Democracy and Accountability within the Union”.

**Protocol (No. 2) on the application of the principles of subsidiarity and proportionality**
This Protocol is dealt with in detail in Chapter 4 on “Enhancing Democracy and Accountability within the Union”.

**Protocol (No. 8) relating to Article 6 (2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms**
This Protocol sets out in more detail issues relevant to the Union’s accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms. See also Chapter 3 on “The European Union, Fundamental Rights and the Citizen”.

**Protocol (No. 9) on the Decision of the Council relating to the implementation of Article 16(4) of the Treaty on European Union and Article 238(2) of the**

**Treaty on the Functioning of the European Union between 1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other.**
This Protocol provides for the transitional arrangements between the existing rules of Qualified Majority Voting and those provided for in the Lisbon Treaty. See also Chapter 5 on “The Union’s Institutions”.

**Protocol (No. 10) on permanent structured cooperation established by Article 42 of the Treaty on European Union**
This Protocol sets out the arrangements relating to structured cooperation in security and defence. This is dealt with in detail in Chapter 6 on “The Union’s External Policies”.

**Protocol (No. 14) 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 on “The Union’s Internal Policies”.

**Protocol (No. 25) on the exercise of Shared Competence**
This Protocol provides clarification that in areas where competence is shared the Union is limited to specific parts of those areas, not the area as a whole. See further Chapter 7 on “The Functioning of the European Union: Categories of Competence”.

**Protocol (No. 26) on Services of General Interest**
This Protocol provides that services of general economic interest are subject to the rules of the internal market while noting users’ preferences may differ, taking into consideration different geographical, social or cultural situations. Non-economic services are not covered by the rules of the single market and competition, and are not subject to specific EU
legislation. Further information can be found in Chapter 11 on “The Union’s Internal Policies”.

Protocol (No. 27) on the Internal Market and Competition

This Protocol provides that the Union may take action to ensure that competition is not distorted within the internal market. Further information can be found in Chapter 11 on “The Union’s Internal Policies”.

Protocol (No. 30) on the application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom

This Protocol deals with the application of the Charter in Poland and the UK. See also Chapter 3 on “The European Union, Fundamental Rights and the Citizen”.

Protocol (No. 36) on transitional provisions

This Protocol provides for transitional arrangements relating to the functioning of the institutions in the period immediately following the entry into force of the Treaty. See also Chapter 5 on “The Union’s Institutions”.

Pre-existing Protocols which have been amended or renumbered by the Lisbon Treaty:

- Protocol (No. 3) on the statute of the Court of Justice of the European Union
- Protocol (No. 4) on the statute of the European System of Central Banks and of the European Central Bank
- Protocol (No. 5) on the statute of the European Investment Bank
- Protocol (No. 6) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union
- Protocol (No. 7) on the privileges and immunities of the European Union
- Protocol (No. 11) on Article 42 of the Treaty on European Union
- Protocol (No. 12) on the excessive deficit procedure
- Protocol (No. 13) on the convergence criteria
- Protocol (No. 15) on certain provisions relating to the United Kingdom of Great Britain and Northern Ireland
- Protocol (No. 16) on certain provisions relating to Denmark
- Protocol (No. 17) on Denmark
- Protocol (No. 18) on France
- Protocol (No. 19) on the Schengen acquis integrated into the framework of the European Union
- Protocol (No. 20) on the application of certain aspects of Article 26 of the Treaty on the Functioning of the European Union to the United Kingdom and to Ireland
- Protocol (No. 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice
- Protocol (No. 22) on the position of Denmark
- Protocol (No. 23) on external relations of the Member States with regard to the crossing of external borders
- Protocol (No. 24) on asylum for nationals of Member States of the European Union
- Protocol (No. 28) on economic, social and territorial cohesion
- Protocol (No. 29) on the system of public broadcasting in the Member States
- Protocol (No. 31) concerning imports into the European Union of petroleum products refined in the Netherlands Antilles
- Protocol (No. 32) on the acquisition of property in Denmark
- Protocol (No. 33) concerning Article 157 of the Treaty on the Functioning of the European Union
- Protocol (No. 34) on special arrangements for Greenland
- Protocol (No. 35) on Article 40.3.3 of the Constitution of Ireland
Annex A

- Protocol (No. 37) on the financial consequences of the expiry of the ECSC treaty and on the Research fund for Coal and Steel

There is also a Protocol to the Lisbon Treaty which provides for technical adaptations of the Treaty establishing the European Atomic Energy Community (EAEC).

In a Declaration (number 54) annexed to the Final Act of the IGC adopting the Lisbon Treaty, the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They, therefore, support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible. See also Chapter 12 on “Other Issues”.

On 19 June 2009, the European Council decided that at the time of the conclusion of the next accession Treaty, Ireland’s legal guarantees (see chapter 1) will be attached as a Protocol to the Treaty on European Union and the Treaty on the Functioning of the European Union.

Declarations concerning provisions of the Lisbon Treaty

Declarations have political force, but are not legally binding. There are joint Declarations, based on common accord, and unilateral Declarations made by one or more Member States. However, they are important as a statement of the intentions of the drafters.

A. Declarations concerning provisions of the Treaties

1. Declaration concerning the Charter of Fundamental Rights of the European Union
2. Declaration on Article 6(2) of the Treaty on European Union
3. Declaration on Article 8 of the Treaty on European Union
4. Declaration on the composition of the European Parliament
5. Declaration on the political agreement by the European Council concerning the draft Decision on the composition of the European Parliament
6. Declaration on Article 15(5) and (6), Article 17(6) and (7), and Article 18 of the Treaty on European Union
7. Declaration on Article 16(4) of the Treaty on European Union and Article 238(2) of the Treaty on the Functioning of the European Union
8. Declaration on practical measures to be taken upon the entry into force of the Treaty of Lisbon as regards the Presidency of the European Council and of the Foreign Affairs Council
9. Declaration on Article 16(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council
10. Declaration on Article 17 of the Treaty on European Union
11. Declaration on Article 17(6) and (7) of the Treaty on European Union
12. Declaration on Article 18 of the Treaty on European Union
13. Declaration concerning the common foreign and security policy
14. Declaration concerning the common foreign and security policy
15. Declaration on Article 27 of the Treaty on European Union
16. Declaration on Article 55(2) of the Treaty on European Union
17. Declaration concerning primacy
18. Declaration in relation to the delimitation of competences
19. Declaration on Article 8 of the Treaty on the Functioning of the European Union
20. Declaration on Article 16 of the Treaty on the Functioning of the European Union
21. Declaration on the protection of personal data in the fields of judicial co-operation in criminal matters and police co-operation
22. Declaration on Articles 48 and 79 of the Treaty on the Functioning of the European Union
23. Declaration on the second paragraph of Article 48 of the Treaty on the Functioning of the European Union
24. Declaration concerning the legal personality of the European Union
25. Declaration on Articles 75 and 215 of the Treaty on the Functioning of the European Union
26. Declaration on non-participation by a Member State in a measure based on Title V of Part Three of the Treaty on the Functioning of the European Union
27. Declaration on Article 85(1), second subparagraph, of the Treaty on the Functioning of the European Union
28. Declaration on Article 98 of the Treaty on the Functioning of the European Union
29. Declaration on Article 107(2)(c) of the Treaty on the Functioning of the European Union
30. Declaration on Article 126 of the Treaty on the Functioning of the European Union
31. Declaration on Article 156 of the Treaty on the Functioning of the European Union
32. Declaration on Article 168(4)(c) of the Treaty on the Functioning of the European Union
33. Declaration on Article 174 of the Treaty on the Functioning of the European Union
34. Declaration on Article 179 of the Treaty on the Functioning of the European Union
35. Declaration on Article 194 of the Treaty on the Functioning of the European Union
36. Declaration on Article 218 of the Treaty on the Functioning of the European Union concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice
37. Declaration on Article 222 of the Treaty on the Functioning of the European Union
38. Declaration on Article 252 of the Treaty on the Functioning of the European Union regarding the number of Advocates-General in the Court of Justice
39. Declaration on Article 290 of the Treaty on the Functioning of the European Union
40. Declaration on Article 329 of the Treaty on the Functioning of the European Union
41. Declaration on Article 352 of the Treaty on the Functioning of the European Union
42. Declaration on Article 352 of the Treaty on the Functioning of the European Union
43. Declaration on Article 355(6) of the Treaty on the Functioning of the European Union
B. Declarations concerning Protocols annexed to the Treaties

44. Declaration on Article 5 of the Protocol on the Schengen acquis integrated into the framework of the European Union

45. Declaration on Article 5(2) of the Protocol on the Schengen acquis integrated into the framework of the European Union

46. Declaration on Article 5(3) of the Protocol on the Schengen acquis integrated into the framework of the European Union

47. Declaration on Article 5(3), (4) and (5) of the Protocol on the Schengen acquis integrated into the framework of the European Union

48. Declaration concerning the Protocol on the position of Denmark

49. Declaration concerning Italy

50. Declaration concerning Article 10 of the Protocol on transitional provisions

C. Declarations by Member States

51. Declaration by the Kingdom of Belgium on national Parliaments

52. Declaration by the Kingdom of Belgium, the Republic of Bulgaria, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the Italian Republic, the Republic of Cyprus, the Republic of Lithuania, the Grand-Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Republic of Austria, the Portuguese Republic, Romania, the Republic of Slovenia, and the Slovak Republic on the symbols of the European Union

53. Declaration by the Czech Republic on the Charter of Fundamental Rights of the European Union

54. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden

55. Declaration by the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland

56. Declaration by Ireland on Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice

57. Declaration by the Italian Republic on the composition of the European Parliament

58. Declaration by the Republic of Latvia, the Republic of Hungary and the Republic of Malta on the spelling of the name of the single currency in the Treaties

59. Declaration by the Kingdom of the Netherlands on Article 312 of the Treaty on the Functioning of the European Union

60. Declaration by the Kingdom of the Netherlands on Article 355 of the Treaty on the Functioning of the European Union

61. Declaration by the Republic of Poland on the Charter of Fundamental Rights of the European Union

62. Declaration by the Republic of Poland concerning the Protocol on the application of the Charter of Fundamental Rights of the European Union in relation to Poland and the United Kingdom

63. Declaration by the United Kingdom of Great Britain and Northern Ireland on the definition of the term “nationals”

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

65. Declaration by the United Kingdom of Great Britain and Northern Ireland on Article 75 of the Treaty on the Functioning of the European Union
This Annex indicates existing 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, and which will be subject to QMV. 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.

**Treaty on European Union**

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<td>Adoption of the list of configurations of the Council of Ministers by the European Council (new possibility)</td>
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<td>Art 18</td>
<td>Appointment of the High Representative by the European Council, with the approval of the President of the Commission (new post)</td>
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<td>Role of the High Representative in CFSP implementing measures (new – with emergency brake)</td>
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<td>Art 46</td>
<td>Decisions establishing permanent structured cooperation, suspending or accepting new members (new)</td>
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<td>Art 50</td>
<td>Conclusion of a withdrawal agreement of a Union Member State after the approval of the European Parliament and on the request of the State concerned (new)</td>
</tr>
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**Treaty on the Functioning of the European Union**

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<td>Art 74</td>
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<td>Art 77</td>
<td>Measures concerning border checks (Ireland is not obliged to participate but may opt-in on a case-by-case basis – existing arrangement)</td>
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<td>Art 78</td>
<td>Measures concerning a common European asylum system (Ireland is not obliged to participate but may opt-in on a case-by-case basis – existing arrangement)</td>
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<tr>
<td>Art 79</td>
<td>Aspects of Immigration Policy (Ireland is not obliged to participate but may opt-in on a case-by-case basis – existing arrangement)</td>
</tr>
</tbody>
</table>
Annex B

Art 82 Judicial co-operation in criminal procedural matters (with emergency brake) (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 83 Minimum rules for criminal offences and sanctions (with emergency brake) (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 84 Crime prevention (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 85 Regulations concerning Eurojust's structure, operation, field of action and tasks (aspects) (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 87 Police co-operation (aspects) (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 88 Europol (Ireland is not obliged to participate but may opt-in on a case-by-case basis – new arrangement)

Art 91 Establishment of rules concerning transport

Art 98 Provisions enabling repeal of this Article on transport policy as it affects areas of Germany affected by its past division

Art 107 Provisions enabling repeal of the aspects of this article related to state aids policy and the effects of the past division of Germany

Art 118 Measures concerning the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the EU (new)

Art 126 Certain measures relating to the Broad Economic Guidelines and excessive deficit procedure

Art 129 Amendment of some articles of the Statute of the European System of Central Banks

Art 133 Measures necessary for use of the Euro after consulting the European Central Bank (new)

Art 140 Procedure for entry into the Euro (new)

Art 165 Incentive measures in the field of sport (new)

Art 167 Incentive measures in the cultural field

Art 182 European Research Area (new possibility)

Art 189 Measures necessary to draw up a European Space Policy that may take the form of a European Space Programme (new)

Art 194 Measures relating to energy policy (new)

Art 195 Tourism (new)

Art 196 Civil Protection – Measures necessary for the achievement of objectives relating to cooperation between Member States in order to improve the effectiveness of systems for preventing and protecting against natural and manmade disasters, excluding any harmonisation measure (new)

Art 207 Aspects of the common commercial policy

Art 213 Urgent aid to third countries (new)

Art 214 Humanitarian aid operations (new)

Art 222 Implementation of the solidarity clause in the event of a terrorist attack or a disaster (except if the decision has defence implications) (new)
Art 235 Decision by the European Council on the Presidency of Council configurations (other than that of Foreign Affairs) (new)

Art 255 Judicial Appointments Panel (new)

Art 257 Establishment of specialised courts

Art 281 Amendment of aspects of the ECJ Statute

Art 283 Appointment of the president, vice-president and members of the ECB Governing Council by the European Council

Art 291 Rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (Comitology)

Art 298 Principles of European Administration (new)

Art 300 Changes to composition of the Committee of the Regions and Economic and Social Committee (new possibility)

Art 311 Implementation of own resources decisions (new)

Art 322 Internal Financial Regulations
Annex C

Areas where the European Parliament will co-decide under the Treaty on the Functioning of the European Union (TFEU)

Article 14
Services of general economic interest (new legal base to take decisions)

Article 15(3)
Limitations on the right of access to documents (currently co-decision)

Article 16(2)
Rules relating to personal data (currently co-decision)

Article 18
Rules to prohibit discrimination (currently co-decision)

Article 19(2)
Incentive measures to support action by Member States to combat discrimination (currently co-decision)

Article 21(2)
Measures to facilitate the free movement of persons between Member States (currently co-decision)

Article 24
Citizens’ initiative (new legal base)

Article 33
Customs co-operation (currently co-decision)

Article 42
Application of competition rules to common agricultural policy (currently consultation of Parliament)

Article 43(2)
Common organisation of agricultural markets (currently consultation of Parliament)

Article 46
Free movement of workers (currently co-decision)

Article 48
Social security measures for Community migrant workers (currently co-decision)

Article 50(1)
Freedom of establishment (currently co-decision)

Article 51(2)
Deciding which activities are exempt from freedom of establishment provisions (currently European Parliament has no say)

Article 52(2)
Coordination for special treatment of foreign nationals on grounds of public policy, security and health (currently co-decision)

Article 53(1)
Self-employment and mutual recognition of diplomas & certificates; co-ordination of provisions between Member States (currently co-decision)

Article 56(2)
Extending free movement of services rights to third country nationals (currently European Parliament has no say)

Article 59(1)
Liberalisation of specific services (currently consultation of Parliament)

Article 64(2)
Adopting measures on free movement of capital (currently European Parliament has no say)

Article 75
Freezing of funds and assets in fight against terrorism (currently European Parliament is informed of the Council’s decision)
Areas where the European Parliament will co-decide under the Treaty on the Functioning of the European Union (TFEU)

Article 77(2)
Common visa policy, management of external borders, free movement of third-country nationals (currently co-decision)

Article 78
Asylum, subsidiary protection and temporary protection of third country nationals (currently co-decision)

Article 79(2)(a)
Entry and residence, long-term visas; residence permits; family reunion (currently consultation of Parliament)

Article 79(1); 79(2) (b), (c) and (d); 79(3); 79(4); 79(5)
Common immigration policy; definition of rights for third country nationals; removal and repatriation; combating trafficking in persons; readmission agreements (currently co-decision)

Article 81
Mutual recognition and enforcement of judgments, evidence, access to justice, etc. (currently co-decision, with the exception of family law aspects which require consultation of Parliament)

Article 82
Judicial co-operation in criminal matters, minimum rules for rights of accused, victims, admissibility of evidence (currently consultation of Parliament)

Article 83(1)
Minimum rules for definition of certain crimes (currently consultation of Parliament)

Article 83(2)
Minimum rules regarding the definition of offences and sanctions in an area which has been subject to harmonisation measures (where co-decision is used for the adoption of the harmonising measure in question) (currently consultation of Parliament)

Article 84
Crime prevention (new legal base)

Article 85
Eurojust (currently consultation of Parliament)

Article 87
Information, training, common investigative techniques for police co-operation (currently consultation of Parliament)

Article 88
Europol’s structure, operation, field of action and tasks (currently consultation of Parliament)

Article 91
Transport policy (currently consultation of Parliament)

Article 100
Rules relating to rail, road and inland waterway transport (currently no role for Parliament)

Article 114
Approximation of national provisions which have as their object the establishment and functioning of the internal market (currently co-decision)

Article 116
Framework laws to prevent distorted competition (currently European Parliament has no say)

Article 118
Laws for uniform intellectual property rights (new legal base)

Article 121
Rules for monitoring the economies of Member States (currently consultation of Parliament)
Article 129
Amending certain provisions of the Statute of the European System of Central Banks and of the European Central Bank (currently assent of Parliament required)

Article 133
Measures for the use of the euro as the single currency (new legal base)

Article 149
Incentive measures for co-operation between Member States in the field of employment (currently consultation of Parliament)

Article 153 (1)(a), (b), (e), (h), (i), (j), (k) and (2)
Workers' rights; minimum standards and co-operation for the achievement of these rights (currently co-decision)

Article 157(3)
Equality of men and women in the workplace (currently co-decision)

Article 164
Regulations for European Social Fund (currently co-decision)

Article 165
Education (currently co-decision)

Article 165
Sport (new legal base)

Article 166
Vocational training (currently co-decision)

Article 167
Cultural respect and diversity (currently co-decision)

Article 168
Public health (currently co-decision, but expanded legal base to enable monitoring, early warning of and combating cross-border threats to health)

Article 169
Consumer protection (currently co-decision)

Article 172
Trans-European networks for transport, telecommunications and energy (currently co-decision)

Article 173
Competitiveness of industry (currently co-decision)

Article 175
Specific actions outside the structural funds (currently co-decision)

Article 177
Tasks of structural funds (currently assent of Parliament required)

Article 178
Implementing measures, Regional Development Fund (currently co-decision)

Article 182
Multiannual framework programme setting out all the scientific and technological objectives of the Union – implementation of the European research area (new legal base)

Article 188
Adoption of supplementary programmes (currently co-decision)

Article 189
Space policy (new legal base)

Article 192
Environmental policy (currently co-decision)
Areas where the European Parliament will co-decide under the Treaty on the Functioning of the European Union (TFEU)

**Article 194**
Energy (new legal base)

**Article 195**
Tourism (new legal base)

**Article 196**
Civil protection (new legal base)

**Article 197(2)**
Administrative co-operation (new legal base)

**Article 207(2)**
Framework for implementing the common commercial policy (currently Parliament has no say)

**Article 209**
Development co-operation policy (currently co-decision)

**Article 212**
Financial, technical and economic co-operation, including financial assistance, to third countries (excluding developing countries) (currently consultation of Parliament)

**Article 214**
Humanitarian aid (new legal base)

**Article 224**
Regulations for political parties at European level (currently co-decision)

**Article 257**
Establishment of specialised courts (currently consultation of Parliament)

**Article 281**
Amending ECJ Statute at the request of the ECJ and after consultation with the Commission, or after a proposal with the Commission and in consultation with the ECJ (currently consultation of Parliament)

**Article 291**
Rules for Member States’ control over the Commission’s exercise of implementing powers (currently Parliament’s opinion is required)

**Article 298**
European public service (new legal base)

**Article 322**
Financial rules determining, in particular, the budget procedure (currently consultation of Parliament)

**Article 325**
Combating fraud (currently co-decision)

**Article 336**
Staff regulations (currently consultation of Parliament where its officials and servants are concerned)

**Article 338**
Measures for the production of statistics (currently co-decision)
ACQUIS
The term “acquis” is used in the EU to refer to the body of EU law that has built up since the original Treaties entered into force in 1958.

CHARTER OF FUNDAMENTAL RIGHTS
The Charter of Fundamental Rights was originally adopted as a political declaration by the European Union institutions in December 2000. The text of the Charter was revised, to make it suitable as a legally-binding text, and it was re-adopted by the institutions. Through Article 6 of the TEU, this revised version will take effect, with the same legal value as the Treaties, upon entry into force of the Lisbon Treaty. The Charter sets out, in a consolidated way, those rights which 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.

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.

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 (CFSP) is an important component of the Union’s external action, under which 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 Treaties remain with the Member States.

CONSTITUTIONAL TREATY
The Constitutional Treaty was signed by Heads of State and Government in Rome in October 2004, having been agreed under the Irish Presidency in June 2004. The Treaty was preceded by the European Convention and an Intergovernmental Conference. The Constitutional Treaty was ratified by twenty Member States (following successful referendums in two of them). However, following unsuccessful referendums in France and the Netherlands it became clear that it would not be ratified by all Member States.

COREPER
The Permanent Representatives Committee or “COREPER” is responsible for preparing the work of the Council of the European Union. It consists of the Member States’ Ambassadors to the European Union (“Permanent Representatives”) and is chaired by the Member State which holds the Council Presidency.

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.

COUNCIL OF EUROPE
The Council of Europe, based in Strasbourg, France, now covers virtually the entire European continent, with its 47 member countries. All EU countries are also members of the Council of Europe, but it is totally separate from the EU. Founded on 5 May 1949 by 10 countries, including Ireland, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals.

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 Lisbon Treaty, it will consist of the Court of Justice (the highest court), the General Court (formerly known as the Court of First Instance) and specialised courts.

DECLARATION
A statement by one or more Member States (or by an Intergovernmental Conference) explaining its/their approach to matters contained in a Treaty. 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.

EMERGENCY BRAKE
The “emergency brake” allows a Member State to request, in certain circumstances that, for “vital and stated reasons of national policy”, the adoption of a proposal by QMV be suspended and the proposal referred to the European Council. The European Council, which acts by unanimity in such matters, can decide either to request the Commission, or the group of Member States who initiated the proposal, to redraft the proposal. Alternatively the European Council, with the agreement of all Member States, can decide to approve the suspended proposal.

ENHANCED CO-OPERATION
Enhanced co-operation allows a group of Member States to choose to co-operate on a specific matter, subject to certain conditions and safeguards, in areas in which the Union does not hold exclusive competence.

EURATOM
The name given to the European Atomic Energy Community, and to the 1957 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 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 2002 to 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 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 12 MEPs in the elections in June 2009.

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.

GREEN PAPER

Green papers are discussion papers published by the Commission on a specific policy area. Primarily they are documents addressed to interested parties - organisations and individuals - who are invited to participate in a process of consultation and debate. In some cases they provide an impetus for subsequent legislation.

INTERGOVERNMENTAL CONFERENCE (IGC)

Changes to EU Treaties are agreed unanimously at an Intergovernmental Conference. Major changes are agreed in a meeting of the Heads of State or Government of all Member States.

LEGAL ACT

A “legal act” is a tool the Union may use to implement its policy decisions. In some cases this is “legislative”, i.e. it must be adopted by the “Ordinary Legislative Procedure” or a “Special Legislative Procedure”. In other cases it is “non-legislative”, i.e. other procedures are used to adopt it.

LEGAL PERSONALITY

A company or international organisation having “legal personality” is a legal entity recognised as a “person” before the law. This means that the entity has the capacity to perform legally binding acts and to bear legal responsibility.

ORDINARY LEGISLATIVE PROCEDURE

The “Ordinary Legislative Procedure” is a means by which a “legislative act” may be adopted. It involves a decision being taken by “Qualified Majority Voting” in the Council and “co-decision” between the Council and the European Parliament.

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).

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 Lisbon Treaty 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 or Treaties, which usually expands upon or explains a given topic. It has the same legal force as a Treaty.

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 Lisbon Treaty, a new system of “double majority” voting will apply from 1 November 2014. 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 1997. 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. Ireland and the UK have applied to participate in the police and judicial co-operation elements of the Schengen acquis but have not sought to participate in the external border measures.

SPECIAL LEGISLATIVE PROCEDURE
The term “Special Legislative Procedure” applies to the adoption of a legislative act in a manner other than the “Ordinary Legislative Procedure”, e.g. it may involve a unanimous vote in the Council, or consultation with the European Parliament.

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.

WHITE PAPER
White Papers are documents containing proposals for Community action in a specific area. They sometimes follow a Green Paper published to launch a consultation process at European level. While Green Papers set out a range of ideas presented for public discussion and debate, White Papers contain an official set of proposals in specific policy areas and are used as vehicles for their development.