



# The EU Treaty

**IN PLAIN  
ENGLISH**  
BROUGHT TO YOU BY THE  
**Conservatives**

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# The new EU Treaty in plain English: Ten key points

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## **Foreword:**

Last month Giuliano Amato, former Italian Prime Minister, current Italian interior minister and vice-president of the body that drafted the original Constitution, gave his explanation as to why the new EU Treaty was so unreadable. He explained that the people who drafted this new Treaty

‘decided that the document should be unreadable. If it is unreadable, it is not constitutional, that was the sort of perception. Where they got this perception from is a mystery to me ... Because if this is the kind of document that the IGC will produce, any Prime Minister – imagine the UK Prime Minister – can go to the Commons and say “look, you see, it’s absolutely unreadable, it’s the typical Brussels treaty, nothing new, no need for a referendum”.

Should you succeed in understanding it at first sight there might be some reason for a referendum, because it would mean that there is something new’ (Giuliano Amato speaking at the Centre for European Reform, 12 July 2007).

The purpose of this pamphlet is to put the key points of the Treaty into plain English, so that they can be understood at first sight. Then people can form their own judgment about whether there should be a referendum.

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## 1) The new Treaty and the EU Constitution

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### What it says:

The IGC Mandate, paragraph 4: As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the TEU and the Treaty on the Functioning of the Union, as specified in this mandate. Modifications to these innovations introduced as a result of the consultations held with the Member States over the past 6 months are clearly indicated below.

### In plain English:

Everything that was in the EU Constitution is in this Treaty, unless it specifies otherwise.

### Explanation:

Paragraphs 1, 4 and 18 state that everything that was new in the EU Constitution (the 'innovations') will be in the new Treaty, unless specified otherwise (the 'modifications'). There are very few such 'modifications'.

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## 2) Labour's claim: the Constitution's been dropped

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### What it says:

Paragraph 1 of the IGC mandate: 'The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned.'

### In plain English:

The EU Constitution's name has changed and it is now much harder to understand, but the content has stayed the same.

### Explanation:

As the Spanish foreign minister has said: 'I believe that 98% of the content, of what we consider the substance of the Constitutional Treaty, is to be found in the future EU Treaty. The wrapping has been changed, but not the content' (Miguel Angel Moratinos, El Pais, 23 July 2007). Gordon Brown has made much of this sentence in the mandate, but he fails to point to the very next sentence that follows (see explanation, section 1). The substance has not changed, as almost every European leader has attested.

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## 3) A new EU president

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### What it says:

Article 9b, The European Council and its President

6. The President of the European Council:
  - (a) shall chair it and drive forward its work;
  - (b) shall ensure the preparation and continuity of the work of the European Council in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council;
  - (c) shall endeavour to facilitate cohesion and consensus within the European Council;
  - (d) shall present a report to the European Parliament after each of the meetings of the European Council.

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

### In plain English:

Instead of nation states taking it in turns to chair the EU, a new EU President will be in charge of the EU's agenda. He is also supposed to speak to the rest of the world in our name.

### Explanation:

The EU's agenda is currently set by its Member States, who take it in turn to chair EU ministers' meetings and set the agenda – no longer: under the new EU Treaty, as with the Constitution, a powerful new President would be in charge. He also has a rather undefined foreign policy role. However the intention is clear: as far as the outside world is concerned, he is meant to be 'Mr Europe'.

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## 4) An EU foreign minister

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### What it says:

Article 9e: The High Representative of the Union for Foreign Affairs and Security Policy

1. The European Council, acting by a qualified majority, with the agreement of the President of the Commission, shall appoint the High Representative of the Union for Foreign Affairs and Security Policy. The European Council may end his or her term of office by the same procedure.
2. The High Representative shall conduct the Union's common foreign and security policy. He or she shall contribute by his or her proposals to the development of that policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.
3. The High Representative shall preside over the Foreign Affairs Council.

### In plain English:

The EU will have a foreign minister. He will chair foreign ministers' meetings, have his own diplomatic service and will even, under some circumstances, speak for us at the UN Security Council. Our own voice in the world will be less important.

### Explanation:

The High Representative is the EU Constitution's foreign minister in all but name, as the Irish Prime Minister, among others, has said. The diplomatic service will be called the external action service.

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## 5) Our foreign policy 'safeguard'

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### What it says:

The IGC will agree on the following Declaration: "The Conference underlines that the provisions in the Treaty on European Union covering the Common Foreign and Security Policy, including the creation of the office of High Representative of the Union for Foreign Affairs and Security Policy and the establishment of an External Action Service, do not affect the responsibilities of the Member States, as they currently exist, for the formulation and conduct of their foreign policy nor of their national representation in third countries and international organisations."

### In plain English:

We have been given guarantees about the independence of our foreign policy, but they are not legally binding. In fact, they may be all but worthless.

### Explanation:

According to the Commons European Scrutiny Committee's legal adviser, it 'may be meaningless'. The safeguard is a declaration, which is not legally binding. It is not part of the Treaty proper.

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## 6) A single legal personality

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### What it says:

'The following new Article 32 shall be inserted: Article 32 Legal personality  
The Union shall have legal personality.'

### In plain English:

For the first time the EU will be able to sign treaties on our behalf in its own right.

### Explanation:

Organisations like the EU can only make international agreements if they have legal personality. Previously only the European Community part of the EU has had legal personality, so while the EU has been able to be party to treaties in areas like trade and the environment, it has not been allowed to take part in agreements in areas like criminal justice, e.g. extradition, or foreign policy generally. The Labour Government blocked attempts to give the EU a single legal personality at Amsterdam and Nice because it was concerned that the use of such powers could be 'potentially damaging' to Britain's interests. Nothing has happened to allay those concerns and yet the Government has given way on this crucial point. It is also an essential prerequisite for statehood.

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## 7) The Charter of Fundamental Rights

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### What it says:

Article 6: Fundamental rights

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

Article 1 (footnote 19 to the IGC mandate)

1. The Charter does not extend the ability of the Court of Justice, or any court or tribunal of the United Kingdom, to find that the laws, regulations or administrative provisions, practices or action of the United Kingdom are inconsistent with the fundamental rights, freedoms and principles that it reaffirms.
2. In particular, and for the avoidance of doubt, nothing in [Title IV] of the Charter creates justiciable rights applicable to the United Kingdom except in so far as the United Kingdom has provided for such rights in its national law.

### In plain English:

By various back door legal routes we could see EU judges deciding more of our laws, particularly over asylum laws and criminal justice system.

### Explanation:

Article 6 makes the Charter legally binding. The UK's 'opt-out' is less than meets the eye: there are ways the Charter, which described judicially enforceable rights for EU citizens, could come in through the back door, as one of the European Court of Justice's advocates-general has said he expects to happen. One way is that EU judges are under an obligation to interpret EU law the same throughout the EU – so the 'opt-out' could be discounted. Another is through cross-border cases. The Swedish Prime Minister has described it as a 'clarification ... not an opt-out'. He is probably right.

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## 8) The ratchet clause

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### What it says:

An Article 33 shall be inserted to replace Article 48: Article 33 Treaty revision procedures

### *Simplified revision procedures*

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

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

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

### In plain English:

Every surviving national veto outside defence could be abolished without the need for a new treaty. Instead of the rigmarole of an intergovernmental conference and a bill in parliament, vital national vetoes could be dropped after only a short debate in Parliament.

### Explanation:

Currently the abolition of a national veto would require an intergovernmental conference, followed by a bill in Parliament to amend the 1972 European Communities Act. This enforces a proper degree of significance and scrutiny on the process. But this short-cut could be used by a Government that wanted to avoid debate but was willing to hand over sovereignty with a way to ram through changes on the quick. For instance, before coming to office Labour promised to keep unanimity over all aspects of home affairs, but they had to pass the Treaty of Amsterdam through Parliament to reverse this promise in asylum and immigration. With the ratchet clause they would have been able to do simply after a short debate in Parliament.

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## 9) The loss of vetoes and expansion of the EU's powers.

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### What it says:

Paragraph 18 of the IGC mandate: The innovations as agreed in the 2004 IGC will be inserted into the Treaty by way of specific modifications in the usual manner. They concern the categories and areas of competences, the scope of qualified majority voting and of codecision, the distinction between legislative and non legislative acts, provisions inter alia on the Area of freedom, security and justice, the solidarity clause, the improvements to the governance of the euro, horizontal provisions such as the social clause, specific provisions such as public services, space, energy, civil protection, humanitarian aid, public health, sport, tourism, outermost regions, administrative cooperation, financial provisions (own resources, multiannual financial framework, new budgetary procedure).

### In plain English:

The EU gains more powers over a long list of policies. These policies include most of the 60 odd areas where the new Treaty would abolish national vetoes. Some are relatively unimportant, but others are not, such as energy and professional qualifications.

### Explanation:

This paragraph alone mandates the intergovernmental conference to enact almost all the increases of EU power (technically competence) that were in the original EU Constitution. The other areas – such as on foreign policy – are dealt with elsewhere.

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## 10) New EU powers on criminal law

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### What it says:

Articles 29 to 39 of Title VI of the EU Treaty, which relate to judicial cooperation in criminal matters and to police cooperation, shall be replaced by Articles [III-257 to III-264 and III-270 to III-277] of the Treaty on the Functioning of the Union; they shall be amended as set out in Article 2, points 61, 64 and 65, of this Treaty. The heading of the Title shall be deleted and its number shall become the number of the Title on final provisions.

### In plain English:

EU judges – who have a strong record of using the EU's rulebook to increase the EU's powers – will now be able to rule on EU agreements over criminal justice and policing. If Britain opts into new laws in this area it would no longer have a veto to block damaging changes.

### Explanation:

Up till now all British governments had insisted that criminal justice and policing should be strictly intergovernmental. This clause in the Treaty abolishes this area's intergovernmental status. As elsewhere, the Government's safeguard is riddled with holes: it fails to block the European Court of Justice's (ECJ) new jurisdiction and it is less than a veto – if we opt into new laws we cannot opt out and we would no longer have a veto to block them if they were amended against our interests by other countries or the European Parliament.

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## So where is the promised referendum?

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### What Labour have said:

- Labour's 2005 election manifesto: 'We will put it [the EU Constitution] to the British people in a referendum and campaign whole-heartedly for a "Yes" vote'.
- Tony Blair's promises on a referendum: 'What you can't do is have a situation where you get a rejection of the treaty and then you just bring it back with a few amendments and say we will have another go'.  
'We don't know what is going to happen in France, but we will have a referendum on the constitution in any event - and that is a government promise.'
- Gordon Brown on Labour's 2005 election manifesto: 'The manifesto is what we put to the public. We've got to honour that manifesto. That is an issue of trust for me with the electorate'.

### In plain English:

We promised you a referendum but even though this is almost exactly the same hand-over of powers to the EU we are going to try and wriggle out of having one.

The British people were promised a referendum. That promise must be kept. It is a matter of trust.

