

**CONFERENCE
OF THE REPRESENTATIVES OF THE GOVERNMENTS
OF THE MEMBER STATES**

**Brussels, 5 October 2007
(OR. fr)**

**CIG 3/1/07
REV 1**

NOTE

from: Presidency of the IGC
dated: 5 October 2007
to: Intergovernmental Conference (IGC)

Subject: **IGC 2007**
Draft declarations

**DRAFT
DECLARATIONS**

The Presidency herewith forwards to the Intergovernmental Conference the full text of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, including the Protocols, and the Declarations for the Final Act, as these texts emerged from the proceedings of the Working Party of Legal Experts.

The Presidency will submit this text to the Intergovernmental Conference (Foreign Ministers) meeting in Luxembourg on 15 October 2007, with a view to its final adoption at the Intergovernmental Conference (Heads of State or of Government) meeting in Lisbon on 18 October 2007.

All the language versions of this text are being forwarded to the delegations today, 5 October 2007. In accordance with normal practice, each language version will be finalised by the Council's legal/linguistic experts before the Treaty is signed.

A. DECLARATIONS CONCERNING PROVISIONS OF THE TREATIES

1. Declaration on Article 6(2) of the Treaty on European Union

The Conference agrees that the Union's accession to the European Convention on the Protection of Human Rights and Fundamental Freedoms should be arranged in such a way as to preserve the specific features of Union law. In this connection, the Conference notes the existence of a regular dialogue between the Court of Justice of the European Union and the European Court of Human Rights; such dialogue could be reinforced when the Union accedes to that Convention.

2. Declaration on Articles 9b(5) and (6), 9d(6) and (7) and 9e of the Treaty on European Union

In choosing the persons called upon to hold the offices of President of the European Council, President of the Commission and High Representative of the Union for Foreign Affairs and Security Policy, due account is to be taken of the need to respect the geographical and demographic diversity of the Union and its Member States.

3. Declaration on Article 9c(9) of the Treaty on European Union concerning the European Council decision on the exercise of the Presidency of the Council

The Conference declares that the Council should begin preparing the decision establishing the procedures for implementing the decision on the exercise of the Presidency of the Council as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, and should give its political approval within six months. A draft decision of the European Council, which will be adopted on the date of entry into force of the said Treaty, is set out below:

Draft decision of the European Council on the exercise of the Presidency of the Council

Article 1

1. The Presidency of the Council, with the exception of the Foreign Affairs configuration, shall be held by pre-established groups of three Member States for a period of 18 months. The groups shall be made up on a basis of equal rotation among the Member States, taking into account their diversity and geographical balance within the Union.

2. Each member of the group shall in turn chair for a six-month period all configurations of the Council, with the exception of the Foreign Affairs configuration. The other members of the group shall assist the Chair in all its responsibilities on the basis of a common programme. Members of the team may decide alternative arrangements among themselves.

Article 2

The Committee of Permanent Representatives of the Governments of the Member States shall be chaired by a representative of the Member State chairing the General Affairs Council.

The Chair of the Political and Security Committee shall be held by a representative of the High Representative of the Union for Foreign Affairs and Security Policy.

The chair of the preparatory bodies of the various Council configurations, with the exception of the Foreign Affairs configuration, shall fall to the member of the group chairing the relevant configuration, unless decided otherwise in accordance with Article 4.

Article 3

The General Affairs Council shall ensure consistency and continuity in the work of the different Council configurations in the framework of multiannual programmes in cooperation with the Commission. The Member States holding the Presidency shall take all necessary measures for the organisation and smooth operation of the Council's work, with the assistance of the General Secretariat of the Council.

Article 4

The Council shall adopt a decision establishing the measures for the implementation of this decision.

4. Declaration on Article 9c(4) of the Treaty on European Union and Article 205(2) of the Treaty on the Functioning of the European Union

The Conference declares that the decision relating to the implementation of Article 9c(4) of the Treaty on European Union and Article 205(2) of the Treaty on the Functioning of the European Union will be adopted by the Council within six months from the date of the signature of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community and will enter into force on the day that Treaty enters into force. The draft decision is set out below:

Draft decision of the Council
relating to the implementation of Article 9c(4) of the Treaty on European Union
and Article 205(2) of the Treaty on the Functioning of the European Union between
1 November 2014 and 31 March 2017 on the one hand, and as from 1 April 2017 on the other

THE COUNCIL OF THE EUROPEAN UNION,

Whereas:

- (1) Provisions should be adopted allowing for a smooth transition from the system for decision-making in the Council by a qualified majority as defined in Article 3(3) of the Protocol on the transitional provisions, which will continue to apply until 31 October 2014, to the voting system provided for in Article 9c(4) of the Treaty on European Union and Article 205(2) of the Treaty on the Functioning of the European Union, which will apply with effect from 1 November 2014, including, during a transitional period until 31 March 2017, specific provisions laid down in Article 3(2) of that Protocol.
- (2) It is recalled that it is the practice of the Council to devote every effort to strengthening the democratic legitimacy of decisions taken by a qualified majority.
- (3) It is judged appropriate to maintain this decision as long as is necessary to ensure smooth transition to the new voting system provided for in the Treaties,

HAS DECIDED AS FOLLOWS:

Section 1

Provisions to be applied from 1 November 2014 to 31 March 2017

Article 1

From 1 November 2014 to 31 March 2017, if members of the Council, representing:

- (a) at least three quarters of the population, or
- (b) at least three quarters of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article 9c(4), first subparagraph, of the Treaty on European Union or Article 205(2) of the Treaty on the Functioning of the European Union, indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 2

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 1.

Article 3

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 2

Provisions to be applied as from 1 April 2017

Article 4

As from 1 April 2017, if members of the Council, representing:

- (a) at least 55 % of the population, or
- (b) at least 55 % of the number of Member States

necessary to constitute a blocking minority resulting from the application of Article 9c(4), first subparagraph, of the Treaty on European Union or Article 205(2) of the Treaty on the Functioning of the European Union, indicate their opposition to the Council adopting an act by a qualified majority, the Council shall discuss the issue.

Article 5

The Council shall, in the course of these discussions, do all in its power to reach, within a reasonable time and without prejudicing obligatory time limits laid down by Union law, a satisfactory solution to address concerns raised by the members of the Council referred to in Article 4.

Article 6

To this end, the President of the Council, with the assistance of the Commission and in compliance with the Rules of Procedure of the Council, shall undertake any initiative necessary to facilitate a wider basis of agreement in the Council. The members of the Council shall lend him or her their assistance.

Section 3
Entry into force and effect of the Decision

Article 7

This Decision shall enter into force on the date of the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community.

It shall take effect on 1 November 2014.

5. Declaration on Article 9d of the Treaty on European Union

The Conference considers that when the Commission no longer includes nationals of all Member States, the Commission should pay particular attention to the need to ensure full transparency in relations with all Member States. Accordingly, the Commission should liaise closely with all Member States, whether or not they have a national serving as member of the Commission, and in this context pay special attention to the need to share information and consult with all Member States.

The Conference also considers that the Commission should take all the necessary measures to ensure that political, social and economic realities in all Member States, including those which have no national serving as member of the Commission, are fully taken into account. These measures should include ensuring that the position of those Member States is addressed by appropriate organisational arrangements.

6. Declaration on Article 9d(6) and (7) of the Treaty on European Union

The Conference considers that, in accordance with the provisions of the Treaties, the European Parliament and the European Council are jointly responsible for the smooth running of the process leading to the election of the President of the European Commission. Prior to the decision of the European Council, representatives of the European Parliament and of the European Council will thus conduct the necessary consultations in the framework deemed the most appropriate. These consultations will focus on the backgrounds of the candidates for President of the Commission, taking account of the elections to the European Parliament, in accordance with the first subparagraph of Article 9d(7). The arrangements for such consultations may be determined, in due course, by common accord between the European Parliament and the European Council.

7. Declaration on Article 249b of the Treaty on the Functioning of the European Union

The Conference takes note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.

8. Declaration on Article 188r of the Treaty on the Functioning of the European Union

Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a Member State which is the object of a terrorist attack or the victim of natural or man-made disaster, none of the provisions of Article 188r is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligation towards that Member State.

9. Declaration on Article 15a of the Treaty on the Functioning of the European Union

The Conference declares that, whenever rules on protection of personal data to be adopted on the basis of Article 15a could have direct implications for national security, due account will have to be taken of the specific characteristics of the matter. It recalls that the legislation presently applicable (see in particular Directive 95/46/EC) includes specific derogations in this regard.

10. Declaration on Article 7a of the Treaty on European Union

The Union will take into account the particular situation of small-sized countries which maintain specific relations of proximity with it.

11. Declaration on Article 8 of the Treaty on the Functioning of the European Union

The Conference agrees that, in its general efforts to eliminate inequalities between women and men, the Union will aim in its different policies to combat all kinds of domestic violence. The Member States should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.

12. Declaration on Articles 42 and 69b
of the Treaty on the Functioning of the European Union

The Conference considers that in the event that a draft legislative act based on Article 69b(2) would affect important aspects of the social security system of a Member State, including its scope, cost or financial structure, or would affect the financial balance of that system as set out in the second paragraph of Article 42, the interests of that Member State will be duly taken into account.

13. Declaration on Articles 67a and 188k
of the Treaty on the Functioning of the European Union

The Conference recalls that the respect for fundamental rights and freedoms implies, in particular, that proper attention is given to the protection and observance of the due process rights of the individuals or entities concerned. For this purpose and in order to guarantee a thorough judicial review of decisions subjecting an individual or entity to restrictive measures, such decisions must be based on clear and distinct criteria. These criteria should be tailored to the specifics of each restrictive measure.

14. Declaration on Article 87(2)(c)
of the Treaty on the Functioning of the European Union

The Conference notes that Article 87(2)(c) shall be interpreted in accordance with the existing case law of the Court of Justice of the European Union regarding the applicability of the provisions to aid granted to certain areas of the Federal Republic of Germany affected by the former division of Germany.

15. Declaration on Article 104
of the Treaty on the Functioning of the European Union

With regard to Article 104, the Conference confirms that raising growth potential and securing sound budgetary positions are the two pillars of the economic and fiscal policy of the Union and the Member States. The Stability and Growth Pact is an important tool to achieve these goals.

The Conference reaffirms its commitment to the provisions concerning the Stability and Growth Pact as the framework for the coordination of budgetary policies in the Member States.

The Conference confirms that a rule-based system is the best guarantee for commitments to be enforced and for all Member States to be treated equally.

Within this framework, the Conference also reaffirms its commitment to the goals of the Lisbon Strategy: job creation, structural reforms, and social cohesion.

The Union aims at achieving balanced economic growth and price stability. Economic and budgetary policies thus need to set the right priorities towards economic reforms, innovation, competitiveness and strengthening of private investment and consumption in phases of weak economic growth. This should be reflected in the orientations of budgetary decisions at the national and Union level in particular through restructuring of public revenue and expenditure while respecting budgetary discipline in accordance with the Treaties and the Stability and Growth Pact.

Budgetary and economic challenges facing the Member States underline the importance of sound budgetary policy throughout the economic cycle.

The Conference agrees that Member States should use periods of economic recovery actively to consolidate public finances and improve their budgetary positions. The objective is to gradually achieve a budgetary surplus in good times which creates the necessary room to accommodate economic downturns and thus contribute to the long-term sustainability of public finances.

The Member States look forward to possible proposals of the Commission as well as further contributions of Member States with regard to strengthening and clarifying the implementation of the Stability and Growth Pact. The Member States will take all necessary measures to raise the growth potential of their economies. Improved economic policy coordination could support this objective. This Declaration does not prejudge the future debate on the Stability and Growth Pact.

16. Declaration on Article 140 of the Treaty on the Functioning of the European Union

The Conference confirms that the policies described in Article 140 fall essentially within the competence of the Member States. Measures to provide encouragement and promote coordination to be taken at Union level in accordance with this Article shall be of a complementary nature. They shall serve to strengthen cooperation between Member States and not to harmonise national systems. The guarantees and practices existing in each Member State as regards the responsibility of the social partners will not be affected.

This Declaration is without prejudice to the provisions of the Treaties conferring competence on the Union, including in social matters.

17. Declaration on Article 158
of the Treaty on the Functioning of the European Union

The Conference considers that the reference in Article 158 to island regions can include island States in their entirety, subject to the necessary criteria being met.

18. Declaration on Article 78
of the Treaty on the Functioning of the European Union

The Conference notes that the provisions of Article 78 shall be applied in accordance with the current practice. The terms "such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division" shall be interpreted in accordance with the existing case law of the Court of Justice of the European Union.

19. Declaration on Article 163
of the Treaty on the Functioning of the European Union

The Conference agrees that the Union's action in the area of research and technological development will pay due respect to the fundamental orientations and choices of the research policies of the Member States.

20. Declaration on Article 176a
of the Treaty on the Functioning of the European Union

The Conference believes that Article 176a does not affect the right of the Member States to take the necessary measures to ensure their energy supply under the conditions provided for in Article 297.

21. Declaration on Article 69(1), second subparagraph,
of the Treaty on the Functioning of the European Union

The Conference considers that the regulations referred to in the second subparagraph of Article 69(1) of the Treaty on the Functioning of the European Union should take into account national rules and practices relating to the initiation of criminal investigations.

22. Declaration on Article 13a of the Treaty on European Union

The Conference declares that, as soon as the Treaty amending the Treaty on European Union and the Treaty establishing the European Community is signed, the Secretary-General of the Council, High Representative for the common foreign and security policy, the Commission and the Member States should begin preparatory work on the European External Action Service.

23. Declaration on Article 188n of the Treaty on the Functioning of the European Union concerning the negotiation and conclusion of international agreements by Member States relating to the area of freedom, security and justice

The Conference confirms that Member States may negotiate and conclude agreements with third countries or international organisations in the areas covered by Chapters 3, 4 and 5 of Title IV of Part Three insofar as such agreements comply with Union law.

24. Declaration on Article 280d of the Treaty on the Functioning of the European Union

The Conference declares that Member States may indicate, when they make a request to establish enhanced cooperation, if they intend already at that stage to make use of Article 280h providing for the extension of qualified majority voting or to have recourse to the ordinary legislative procedure.

25. Declaration on Article 311(6) of the Treaty on the Functioning of the European Union

The High Contracting Parties agree that the European Council, pursuant to Article 311(6), will take a decision leading to the modification of the status of Mayotte with regard to the Union in order to make this territory an outermost region within the meaning of Article 311(1) and Article 299, when the French authorities notify the European Council and the Commission that the evolution currently under way in the internal status of the island so allows.

26. Declaration on Article 40(2) of the Treaty on European Union

The Conference considers that the possibility of producing translations of the Treaties in the languages mentioned in Article 40(2) contributes to fulfilling the objective of respecting the Union's rich cultural and linguistic diversity as set forth in the fourth subparagraph of Article 3(3). In this context, the Conference confirms the attachment of the Union to the cultural diversity of Europe and the special attention it will continue to pay to these and other languages.

The Conference recommends that those Member States wishing to avail themselves of the possibility recognised in Article 40(2) communicate to the Council, within six months from the date of the signature of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, the language or languages into which translations of the Treaties will be made.

27. Declaration concerning primacy

The Conference recalls that, in accordance with well settled case law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.

The Conference has also decided to attach as an Annex to this Final Act the Opinion of the Council Legal Service on the primacy of EC law as set out in 11197/07 (JUR 260):

"Opinion of the Council Legal Service of 22 June 2007

It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case law (Costa/ENEL, 15 July 1964, Case 6/641¹) there was no mention of primacy in the treaty. It is still the case today. The fact that the principle of primacy will not be included in the future treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice."

¹ *"It follows (...) that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question."*

28. Declaration in relation to the delimitation of competences

The Conference underlines that, in accordance with the system of division of competences between the Union and the Member States as provided for in the Treaty on European Union and the Treaty on the Functioning of the European Union, competences not conferred upon the Union in the Treaties remain with the Member States.

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. The latter situation arises when the relevant EU institutions decide to repeal a legislative act, in particular better to ensure constant respect for the principles of subsidiarity and proportionality. The Council may, at the initiative of one or several of its members (representatives of Member States) and in accordance with Article 208 of the Treaty on the Functioning of the European Union, request the Commission to submit proposals for repealing a legislative act.

Equally, the representatives of the governments of the Member States, meeting in an Intergovernmental Conference, in accordance with the ordinary revision procedure provided for in Article 33(2) to (5) of the Treaty on European Union, may decide to amend the Treaties, including either to increase or to reduce the competences conferred on the Union in the said Treaties.

29. Declaration concerning the Charter of Fundamental Rights

The Charter of Fundamental Rights, which has legally binding force, confirms the fundamental rights guaranteed by the European Convention on Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States.

The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined by the Treaties.

30. Declaration concerning the common foreign and security policy

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

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

It stresses that the EU and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its Members for the maintenance of international peace and security.

31. Declaration concerning the common foreign and security policy

In addition to the specific rules and procedures referred to in paragraph 1 of Article 11 of the Treaty on European Union, the Conference underlines that the provisions covering the Common Foreign and Security Policy including in relation to the High Representative of the Union for Foreign Affairs and Security Policy and the External Action Service will not affect the existing legal basis, responsibilities, and powers of each Member State in relation to the formulation and conduct of its foreign policy, its national diplomatic service, relations with third countries and participation in international organisations, including a Member State's membership of the Security Council of the UN.

The Conference also notes that the provisions covering the Common Foreign and Security Policy do not give new powers to the Commission to initiate decisions nor do they increase the role of the European Parliament.

The Conference also recalls that the provisions governing the Common Security and Defence Policy do not prejudice the specific character of the security and defence policy of the Member States.

32. Declaration concerning the legal personality of the European Union

The Conference confirms that the fact that the European Union has a legal personality will not in any way authorise the Union to legislate or to act beyond the competences conferred upon it by the Member States in the Treaties.

33. Declaration on the second paragraph of Article 42 of the Treaty on the Functioning of the European Union

The Conference recalls that in that case, in accordance with Article 9b(4), the European Council acts by consensus.

34. Declaration on the protection of personal data
in the fields of judicial cooperation in criminal matters and police cooperation

The Conference acknowledges that specific rules on the protection of personal data and the free movement of such data in the fields of judicial cooperation in criminal matters and police cooperation based on Article 15a of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields.

35. Declaration on Article 152(4)(c)
of the Treaty on the Functioning of the European Union

The Conference declares that the measures to be adopted pursuant to Article 152(4)(c) must meet common safety concerns and aim to set high standards of quality and safety where national standards affecting the internal market would otherwise prevent a high level of human health protection being achieved.

36. Declaration on Article 308
of the Treaty on the Functioning of the European Union

The Conference declares that the reference in Article 308(1) of the Treaty on the Functioning of the European Union to objectives of the Union refers to the objectives as set out in Article 3(2) and (3) of the Treaty on European Union and to the objectives of Article 3(5) with respect to external action under Title V of Part Three, of that Treaty. It is therefore excluded that an action based on Article 308 of the Treaty on the Functioning of the European Union would only pursue objectives set out in Article 3(1) of the Treaty on European Union. In this connection, the Conference notes that in accordance with Article 17(1) of the Treaty on European Union, legislative acts may not be adopted in the area of the Common Foreign and Security Policy.

37. Declaration on Article 308
of the Treaty on the Functioning of the European Union

The Conference underlines that, in accordance with the settled case law of the Court of Justice of the European Union, Article 308 of the Treaty on the Functioning of the European Union, being an integral part of an institutional system based on the principle of conferred powers, cannot serve as a basis for widening the scope of Union powers beyond the general framework created by the provisions of the Treaties as a whole and, in particular, by those that define the tasks and the activities of the Union. In any event, this Article cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose.

38. Declaration on practical measures to be taken upon the entry into force of the Treaty amending the Treaty on European Union and the Treaty establishing the European Community as regards the Presidency of the European Council and of the Foreign Affairs Council

In the event that the Treaty amending the Treaty on European Union and the Treaty establishing the European Community enters into force later than 1 January 2009, the Conference requests the competent authorities of the Member State holding the six-monthly Presidency of the Council at that time, on the one hand, and the person elected President of the European Council and the person appointed High Representative of the Union for Foreign Affairs and Security Policy, on the other hand, to take the necessary specific measures, in consultation with the following six-monthly Presidency, to allow an efficient handover of the material and organisational aspects of the Presidency of the European Council and of the Foreign Affairs Council.

39. Declaration on non-participation by a Member State in a measure based on Title IV of Part Three of the Treaty on the Functioning of the European Union

The Conference declares that, where a Member State opts not to participate in a measure based on Title IV of Part Three of the Treaty on the Functioning of the European Union, the Council will hold a thorough discussion on the possible implications and effects of that Member State's non-participation in the measure.

In addition, any Member State may ask the Commission to examine the situation on the basis of Article 96 of the Treaty on the Functioning of the European Union.

The above paragraphs are without prejudice to the entitlement of a Member State to refer the matter to the European Council.

B. DECLARATIONS CONCERNING
PROTOCOLS ANNEXED TO THE TREATIES

39a. Declaration concerning Article 10 of the Protocol on transitional provisions

The Conference invites the European Parliament, the Council and the Commission, within their respective powers, to seek to adopt, in appropriate cases and as far as possible within the five-year period referred to in Article 10(3) of the Protocol on transitional provisions, legal acts amending or replacing the acts referred to in Article 10(1) of that Protocol.

39b. Declaration on Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference notes that where a Member State has made a notification under Article 5(2) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union that it does not wish to take part in a proposal or initiative, that notification may be withdrawn at any moment before the adoption of the measure building upon the Schengen *acquis*.

39c. Declaration on Article 5(2) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference declares that whenever the United Kingdom or Ireland indicates to the Council its intention not to participate in a measure building upon a part of the Schengen *acquis* in which it participates, the Council will have a full discussion on the possible implications of the non-participation of that Member State in that measure. The discussion within the Council should be conducted in the light of the indications given by the Commission concerning the relationship between the proposal and the Schengen *acquis*.

39d. Declaration on Article 5(3) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference recalls that if the Council does not take a decision after a first substantive discussion of the matter, the Commission may present an amended proposal for a further substantive re-examination by the Council within the deadline of 4 months.

39e. Declaration on Article 5(3), (4) and (5) of the Protocol on the Schengen *acquis* integrated into the framework of the European Union

The Conference notes that the conditions to be determined in the decision referred to in paragraphs 3, 4 or 5 of Article 5 of the Protocol on the Schengen *acquis* integrated into the framework of the European Union may determine that the Member State concerned shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in some or all of the *acquis* referred to in any decision taken by the Council pursuant to Article 4 of the said Protocol.

40. Declaration concerning the Protocol on the position of Denmark

The Conference notes that with respect to legal acts to be adopted by the Council acting alone or jointly with the European Parliament and containing provisions applicable to Denmark as well as provisions not applicable to Denmark because they have a legal basis to which Part I of the Protocol on the position of Denmark applies, Denmark declares that it will not use its voting right to prevent the adoption of the provisions which are not applicable to Denmark.

Furthermore, the Conference notes that on the basis of the Declaration by the Conference on Article 188r, Denmark declares that Danish participation in actions or legal acts pursuant to Article 188r will take place in accordance with Part I and Part II of the Protocol on the position of Denmark.

41. Declaration concerning Italy

The Conference notes that the Protocol on Italy annexed in 1957 to the Treaty establishing the European Economic Community, as amended upon adoption of the Treaty on European Union, stated that:

"THE HIGH CONTRACTING PARTIES,

DESIRING to settle certain particular problems relating to Italy,

HAVE AGREED UPON the following provisions, which shall be annexed to this Treaty:

THE MEMBER STATES OF THE COMMUNITY

TAKE NOTE of the fact that the Italian Government is carrying out a ten-year programme of economic expansion designed to rectify the disequilibria in the structure of the Italian economy, in particular by providing an infrastructure for the less developed areas in Southern Italy and in the Italian islands and by creating new jobs in order to eliminate unemployment;

RECALL that the principles and objectives of this programme of the Italian Government have been considered and approved by organisations for international cooperation of which the Member States are members;

RECOGNISE that it is in their common interest that the objectives of the Italian programme should be attained;

AGREE, in order to facilitate the accomplishment of this task by the Italian Government, to recommend to the institutions of the Community that they should employ all the methods and procedures provided in this Treaty and, in particular, make appropriate use of the resources of the European Investment Bank and the European Social Fund;

ARE OF THE OPINION that the institutions of the Community should, in applying this Treaty, take account of the sustained effort to be made by the Italian economy in the coming years and of the desirability of avoiding dangerous stresses in particular within the balance of payments or the level of employment, which might jeopardise the application of this Treaty in Italy;

RECOGNISE that in the event of Articles 109h and 109i being applied it will be necessary to take care that any measures required of the Italian Government do not prejudice the completion of its programme for economic expansion and for raising the standard of living of the population."

C. DECLARATIONS BY MEMBER STATES

Furthermore, the Conference has noted the declarations listed hereafter and annexed to this Final Act:

42. Declaration by the Kingdom of the Netherlands on Article 270a of the Treaty on the Functioning of the European Union

The Kingdom of the Netherlands will agree to a decision as referred to in the second subparagraph of Article 270a(2) of the Treaty on the Functioning of the European Union once a revision of the European regulation referred to in the third paragraph of Article 269 of that Treaty has provided the Netherlands with a satisfactory solution for its excessive negative net payment position vis-à-vis the Union budget.

43. Declaration by the Kingdom of the Netherlands on Article 311 of the Treaty on the Functioning of the European Union

The Kingdom of the Netherlands declares that an initiative for a decision, as referred to in Article 311(6) aimed at amending the status of the Netherlands Antilles and/or Aruba with regard to the Union, will be submitted only on the basis of a decision taken in conformity with the Charter for the Kingdom of the Netherlands.

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

Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.

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

The Treaties apply to Gibraltar as a European territory for whose external relations a Member State is responsible. This shall not imply changes in the respective positions of the Member States concerned.

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

In respect of the Treaties and the Treaty establishing the European Atomic Energy Community, and in any of the acts deriving from those Treaties or continued in force by those Treaties, the United Kingdom reiterates the Declaration it made on 31 December 1982 on the definition of the term "nationals" with the exception that the reference to "British Dependent Territories Citizens" shall be read as meaning "British overseas territories citizens".

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

Spain notes that, under Article 17b of the Treaty on the Functioning of the European Union, every national of a Member State shall be a citizen of the Union. Spain also notes that, under the current state of European integration reflected in the Treaty amending the Treaty on European Union and the Treaty establishing the European Community, only nationals of Member States are entitled to the specific rights of European citizenship unless Union law expressly provides otherwise. In that respect, Spain notes, finally, that under Articles 9a and 8a of the Treaty on European Union, the European Parliament currently represents the citizens of the Union.

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

The United Kingdom notes that Article 9a of the Treaty on European Union and other provisions of the Treaties are not intended to change the basis for the franchise for elections to the European Parliament.

49. Declaration by the Kingdom of Belgium on national Parliaments

Belgium wishes to make clear that, in accordance with its constitutional law, not only the Chamber of Representatives and Senate of the Federal Parliament but also the parliamentary assemblies of the Communities and the Regions act, in terms of the competences exercised by the Union, as components of the national parliamentary system or chambers of the national Parliament.

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

Without prejudice to the unified spelling of the name of the single currency of the European Union referred to in the Treaties as displayed on the banknotes and on the coins, Latvia and Hungary declare that the spelling of the name of the single currency, including its derivatives as applied throughout the Latvian and Hungarian text of the Treaties, has no effect on the existing rules of the Latvian and the Hungarian languages.

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

The Charter does not affect in any way the right of Member States to legislate in the sphere of public morality, family law, as well as the protection of human dignity and respect for human physical and moral integrity.

52. Declaration by the United Kingdom on Article 67a of the Treaty
on the Functioning of the European Union

The United Kingdom fully supports robust action with regard to adopting financial sanctions designed to prevent and combat terrorism and related activities. Therefore, the United Kingdom declares that it intends to exercise its right under Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice to take part in the adoption of all proposals made under Article 67a of the Treaty on the Functioning of the European Union.

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

The Republic of Poland declares that, having regard to the tradition of social movement of "Solidarity" and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union.