

# **The Lisbon Report:** **An analysis of the Lisbon Treaty** **with specific amendments and** **briefings for the House of Lords**

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## Foreword

What follows in this paper we hope will be useful to members of the House of Lords drawing upon the experience of the conduct of the debates in the House of Commons.

The amendments and briefings set out below follow the order in which they were taken in the House of Commons according to the themed debates under the novel and unsatisfactory procedure that was devised by the Government. It may be that the House of Lords will tackle the issues in a different way. However, the Treaty remains the same Treaty unamended, and therefore the following analyses and specific line-by-line amendments and briefings remain as relevant as they were in the House of Commons.

The best record of the amendments that were tabled by the frontbench of the Conservative Party and backbenchers such as myself and David Heathcoat-Amory can be found through the records and martial list of amendments from the commencement of the Committee stage, via the Vote Office and the Public Bill Office, apart from what is set out below. The amendments selected for debate and transcripts for proceedings appear in *Hansard* on the following days: 29 January, 30 January, 5 February, 6 February, 20 February, 25 February, 26 February, 27 February, 3 March, 4 March and 5 March.

Bill Cash, MP,  
*Chairman of the European Foundation*

**Part I – Opposition to the Treaty of Lisbon on: fighting cross-border crime, justice, policing, human trafficking, asylum and immigration (as debated in the House of Commons on Tuesday 29 January 2008)**

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**FIGHTING CROSS-BORDER CRIME: EU CO-DECISION PROCEDURE, QMV, AND EUROPEAN COURT OF JUSTICE JURISDICTION TO BE EXTENDED INTO AREAS OF POLICE AND JUDICIAL COOPERATION  
[ARTICLE 61]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)'.  
'

This is a massive change. The Lisbon Treaty will have several major implications for police and judicial cooperation in criminal matters as co-decision, qualified majority voting and the ECJ's jurisdiction will be extended to this area. The present Title IV of the TEC "Visas, Asylum, Immigration and Other Policies related to Free Movement of Persons" and present Title VI of TEU "Police and Judicial Cooperation in Criminal Matters" has been replaced with Title IV "Area of Freedom, security and Justice." With the Treaty of Amsterdam, "visas, asylum, immigration" were transferred from the intergovernmental to the EC pillar, becoming subject to EU decision-making procedures and the scrutiny of the European Court of Justice. "Police and Judicial Cooperation in Criminal Matters" (third pillar measures) are presently subject to unanimity and therefore the UK has the right of veto. The Lisbon Treaty will abolish the Maastricht Treaty pillar structure and move "Police and Judicial Cooperation in Criminal Matters" to the Treaty on the Functioning of the European Union (the existing EC Treaty). The new title 'Area of Freedom, Security and Justice' brings together the presently dispersed JHA policies under one heading. The Lisbon Treaty will have several major implications for police and judicial cooperation in criminal matters as co-decision procedure, qualified majority voting and the ECJ's jurisdiction will be extended to this area. The 'Community method' is therefore extended to police and judicial cooperation in criminal matters.

The Lisbon Treaty facilitates the Union to develop its own Union action and policies concerning security and justice with the ECJ ensuring that the common area of "Freedom, Security and Justice" is not undermined. The Lisbon Treaty transfers increased powers to the EU institutions in the area of security and justice. QMV at the Council of Ministers and co-decision (ordinary legislative procedure) will be the rule.

Hence, the European Parliament will have a stronger and more influential role. In 1997, the Treaty of Amsterdam incorporated a large part of the former third pillar into the EC Treaty. Consequently, the ECJ's powers concerning Title IV (Visas, Asylum, Immigration, judicial cooperation in civil matters) were established as equivalent to its powers for upholding and interpreting other Community law areas. Nevertheless, its preliminary rulings on jurisdiction concerning these matters, according to Article 68 EC, is restricted to national courts for cases in which there is no judicial remedy. The Lisbon Treaty repeals Article 68 TEC. It is clear that the ECJ will make sure that the common area of "Freedom, Security and Justice" is not undermined.

The rigid EU institutions, under the Treaty provisions, will not take into account the unique nature of British common law. The new Article 61 (1) is similar to present Article 61 although with a stronger wording "The Union shall constitute an area of freedom, security and justice ..." rather than "In order to establish progressively an area of freedom, security and justice, the Council shall adopt ..." Furthermore, the Lisbon Treaty adds the need to respect "fundamental rights and the different legal systems and traditions of the Member States." The European Union institutions will not take into account the special nature of British common law.

It becomes clear that those Member States exposed to an influx of asylum seekers and illegal immigrants will not be assisted by the European Union. Although a common policy on asylum and immigration has already been half-developed, the new Article 61 (2) expressly calls for "a common policy on asylum, immigration and external border control" and introduces a new requirement for "solidarity between Member States." It is stated that there will be a sharing of burdens and costs between the Member States, which comes at time when the European Parliament and the Commission have been calling for greater solidarity between Member States.

The UK has been surrendering to the EU the sovereign power to control its own borders through the provisions of the existing Treaties. Lisbon also states that the Union "shall ensure the absence of internal border controls for persons." The UK under the protocols attached to the Amsterdam Treaty is already unable to maintain its border controls. The UK is not bound by the Schengen *acquis* but is allowed to opt in to some of it. According to the Protocol on the position of the United Kingdom and Ireland related to the Treaty of Amsterdam, the UK does not take part in the adoption of measures under Title IV (visas, asylum, immigration) or are they bound in any way by them. However, the UK may notify the Council of its wish to take part in the adoption and application of a measure and it is also allowed to opt-in to a measure after it has been adopted. Nevertheless, the British Government has opted into several immigration and asylum measures rather than staying out. Therefore, the UK has been losing its sovereign power to control its own borders to the EU throughout the existing Treaties.

Article 61 (3) which states that "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" is similar to present Article 29 TEU. However these matters are presently intergovernmental but under the Lisbon Treaty, they will be subject to the decision-making procedures under the "community method."

Since this Article demands that the UK mutually recognise judicial and extrajudicial decisions in civil matters, it is implied that there could be potential risks to British citizens accused of crimes since they will have fewer rights. The Lisbon Treaty introduces a new requirement in Article 61 (4) for the Union to “facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.” The principle of mutual recognition is the keystone of judicial cooperation in both civil and criminal matters within the Union. The Lisbon Treaty enhances mutual recognition of judicial decisions and judgments which will be respected and enforced throughout the Union. However in some Member States the accused do not have access to proper advice and can be prevented from conducting an effective defence. Therefore, there are risks to British citizens accused of crimes since they have fewer rights.

The UK, it is said, has the right to choose whether to take part in JHA legislation, although it remains debatable if it is a ‘free choice’ at all - once it has opted in, the UK is subject to the Commission powers of enforcement and to ECJ jurisdiction. The Schengen Protocol – the Protocol on the Position of the UK in respect to the Area of Freedom, Security and Justice – is amended by the Lisbon Treaty. There is already a Protocol on Transitional Provisions with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which has been adopted before the Treaty of Lisbon has entered into force, with special provisions for the UK. Although it remains debatable if it is a ‘free choice’, the UK has the right to choose whether to take part in JHA legislation. Nevertheless, once opting in, UK is subject to the Commission powers of enforcement and to ECJ jurisdiction.

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**FIGHTING CROSS-BORDER CRIME: MEMBER STATES EXPECTED TO DEVELOP  
SUPER-UNION COOPERATION IN FIELD OF NATIONAL SECURITY  
[ARTICLE 61F]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61F*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)’.

This Article pushes for a development of Member State cooperative arrangements under which the drive towards federalist cooperation is first supported actively by the Union as action going beyond EU law, and second that such super-Union cooperative agreements will in turn become EU law. Whereas Article 61E states “This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”, the Lisbon Treaty introduced a new provision, Article 61 F stating that Member States are free “to organise between themselves and under their responsibility such forms of cooperation

and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.”

This provision will open the door for increased EU interference. It is important to note that the Prüm Treaty was designed outside the legal framework of the EU by seven Member States. Neither the Commission nor the other Member States took part in the Prüm Treaty negotiations. However, soon it will be incorporated into EU law. It is obvious that the Contracting States designed the Treaty with the aim of incorporating its provisions into EU law. Therefore, it is implied that a group of Member States reaching an agreement between themselves will subsequently have that agreement incorporated into the EU framework, in much the same way that programmes of enhanced cooperation have operated in the past.

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**FIGHTING CROSS-BORDER CRIME: UNION COMPETENCES EXTENDED TO  
FREEZING OF BANK ACCOUNTS AND FINANCIAL ASSETS IN  
FIGHT AGAINST TERRORISM  
[ARTICLE 61 H]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)’.

The present Article 60 TEC belongs to the chapter on Capital and Payments and relates to measures against third countries with regard to capital movements and payments. This Article is replaced by Article 61 H. The Lisbon Treaty extends the Union’s competence in terms of the EU fight against terrorism. This new provision confers on the Union powers to adopt measures limiting the economic activities of “natural or legal persons, groups or non-State entities” considered to be terrorists. The Union is now provided with a clear legal base to impose financial sanctions such as freezing of funds, financial assets or economic gains against terrorists.

The Council acting by QMV, and the European Parliament through the ordinary legislative procedure (co-decision) acting by means of Regulations will define “a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.” On a proposal from the Commission, the Council will adopt measures to implement such a framework.

This Article calls for the adoption of “legal safeguards.” It should be mentioned that there is a UK Declaration attached to the Lisbon Treaty whereby the Government has already stated that it intends to take part in the adoption of all proposals made under Article 61 H of the TFEU, so the UK would not be exempt from this proposal.

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**FIGHTING CROSS-BORDER CRIME: EU GAINS NEW COMPETENCIES IN UK  
ADMINISTRATION OF JUSTICE  
[ARTICLE 65]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 3 Judicial cooperation in civil matters, Article 65*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 66, replacement Chapter 3 and Article 65 TEC (TFEU) relating to judicial cooperation in civil matters; and

(ii)’.

This Article will lead to fundamental changes to the way in which the EU governs judicial cooperation in civil matters amongst the 27 Member States. Whereas the existing Article 65 TEC provides for simple “measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken ... for the proper functioning of the internal market”, the new Article 65 (1) recognises the principle of mutual recognition of judicial and extrajudicial decisions as a fundamental cornerstone of judicial cooperation in civil matters.

It is of direct relevance that at the Tampere European Council in 1999, EU leaders stressed that “Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights”, hence the European Council endorsed “the principle of mutual recognition which, in its view, would become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgments and to other decisions of judicial authorities.” It means that judicial decisions shall be recognised and enforced in another Member State. This is not in Britain’s interest – it is not in its interests to equate the justice or politics of one state with the other since the British government and society is culturally distinct and its Parliament unique. The British people must be governed by one Parliament (in Westminster) and its people must experience themselves to be the authors of their own laws in their national courts and everyday life. The principle of enhanced mutual recognition of European-based judicial decisions and judgements does not translate into the UK’s democratic political realities. This provision must be rejected.

The new Article 65 (1) states that “The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases. Such cooperation may include the

adoption of measures for the approximation of the laws and regulations of the Member States.” This new provision expressly refers to “measures for the approximation of the laws and regulations of the Member States.” This is very important, especially as the fields in which the Union may adopt such measures have been widened.

Presently, the Council, acting by QMV, together with the European Parliament through the ordinary legislative procedure (co-decision procedure) shall adopt measures concerning the judicial cooperation in civil matters with a cross border dimension. Although it was arguable that the criterion of the internal market has been artificial (particularly in regards to the Council Regulation concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility), under the present Article 65 TEC, measures concerning the judicial cooperation in civil matters having a cross-border dimension can only be adopted “in so far as necessary for the proper functioning of the internal market.” This changes under the Lisbon Treaty and the limitation is removed.

The removal of a limitation means that Europe will gain new competencies in the administration of justice. Under the new Article 65 (2), such measures in judicial cooperation shall be adopted “particularly when necessary for the proper functioning of the internal market.” The new Article 65 (2) is based on Article 65 TEC, by which accordingly, the Union will adopt measures aimed at ensuring “the mutual recognition and enforcement between Member States of judgments and of decisions in extrajudicial cases, the cross-border service of judicial and extrajudicial documents, the compatibility of the rules applicable in the Member States concerning “conflict of laws and of jurisdiction, cooperation in the taking of evidence, the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.” The Lisbon Treaty added to this list measures, supposedly aimed at ensuring effective access to justice, the development of alternative methods of dispute settlement and support for the training of the judiciary and judicial staff. In fact, a Council Directive aimed at improving access to justice in cross-border disputes by establishing minimum common rules relating to legal aid has already been adopted. Obviously, measures concerning the training of the judiciary and judicial staff have financial implications, given that all such projects will be funded by the EU budget. The UK will pay its share of the revised budget – the cost of which is still unknown.

Presently, EU decision-making concerning family law is subject to unanimity and the consultation procedure. The Lisbon Treaty in Article 65 (3) TFEU maintains the requirement that measures concerning family law with cross-border implications shall be adopted by the Council acting unanimously after consulting the European Parliament. However, under the present Article 67(2) TEC, the Council acting unanimously after consulting the European Parliament, is allowed to apply QMV and co-decision procedures to family law, after the transition period of five years in which the Treaty of Amsterdam has entered into force. Under Article 65 (3) of the Lisbon Treaty, the Council acting unanimously and after consulting the European Parliament may move those aspects of family law with cross border implications from unanimity and consultation procedure to QMV and ordinary legislative procedure (co-decision). In this move, the European Parliament will have a larger influential role and the Member States will lose their veto powers. The Lisbon Treaty introduces the requirement of notification of the proposal to the National Parliaments. However, the Government must allow sufficient

time for the Parliament to vote against such proposals – otherwise it goes through automatically.

This provision entails further harmonisation of aspects of procedural law and the harmonisation of conflicting laws and rules in the absence of choice by the parties. It is likely to also lead to massive harmonisation of rules of national substantive law such as substantive law on divorce, contract law, and national law governing succession and wills which are currently and entirely within the power of Member States.

A difficulty concerning these measures is cross-border implications – the measures are likely to affect the work of national legal and administrative systems. Moreover, the Commission is likely to put forward proposals that affect purely national situations. The UK has the right to choose whether to be bound by measures on judicial cooperation in civil matters yet if it decides to opt in to a draft measure, there is no going back and because such measures are decided by QMV and co-decision, the UK during the negotiations would be powerless in preventing disadvantageous amendments. There would be no “emergency brake” available. This is very important, taking into account the different UK legal tradition has in contrast to the rest of Europe. This severely jeopardises the entire basis of the UK legal system and it must therefore be rejected.

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**FIGHTING CROSS-BORDER CRIME: FUNDAMENTAL CHANGE IN ABOLITION OF  
PILLAR STRUCTURE WILL LEAD TO FUNDAMENTAL CHANGE  
IN UK CRIMINAL JUSTICE SYSTEM  
[ARTICLE 69A]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 4 – Judicial cooperation in criminal matters, Article 69A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 67, inserted Chapter 4 and Articles 69A to 69E TEC (TFEU) relating to judicial cooperation in criminal matters; and

(ii)’.

The Lisbon Treaty will establish a massive and “fundamental change” to the structure of the European Union: it will abolish the pillar structure and move third pillar matters (police and judicial cooperation in criminal matters) to the EC Treaty (to be renamed Treaty on the functioning of the European Union). This will have serious implications because decision-making on police and judicial cooperation would no longer be intergovernmental and it will be subjected to the Community method. Judicial cooperation in criminal matters and police cooperation, will come within the scope of the Union’s overall legal and judicial framework. The co-decision procedure and qualified majority voting will be the rule in making decisions.

The current EU Third Pillar legal instruments such as framework decisions and common positions will disappear. The following EC instruments will be used: regulations, directives and decisions. The ECJ will have full jurisdiction to review and interpret measures on judicial cooperation in criminal matters and police cooperation. The Treaty of Amsterdam provided the ECJ with jurisdiction over certain third pillar measures. Hence, under existing Article 35 TEU, the ECJ acquired jurisdiction to give preliminary rulings on interpretation and validity of framework decisions, decisions and conventions adopted under Title VI (police and judicial cooperation in criminal matters) however only to the courts of a Member State which has expressly accepted such jurisdiction. The UK has not submitted a declaration under Article 35 TEU – thus it does not accept the jurisdiction of the Court to give preliminary rulings on such matters.

Moreover, the ECJ acquired jurisdiction “to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission” on the same grounds as those in Article 230 EC. With the collapse of the pillar structure there is no corresponding provision to Article 46 TEU which limits the ECJ jurisdiction regarding third pillar matters. The ECJ will take greater control over UK affairs. Article 35 TEU will be repealed, unifying and increasing the jurisdiction of the Court. Hence, national courts “against whose decisions there is no judicial remedy under national law” will be obliged to refer a question to the ECJ concerning criminal and police cooperation. The Lisbon Treaty brings judicial co-operation in criminal law and police co-operation within the general framework of judicial control as applies to other areas of EU law. The ECJ will have full jurisdiction and not solely the power to give preliminary rulings.

Presently, the Commission does not have the right to submit an application to the European Court of Justice where a Member State has not fulfilled its obligations as far as the implementation of EU legislation in this area concerned. Under the terms of the Lisbon Treaty, the Commission will have power to bring infringement proceedings against Member States before the ECJ, on police and judicial cooperation in criminal matters. However, Article 240b of the Lisbon Treaty states “In exercising its powers regarding the provisions of Chapters 4 and 5 of Title IV of Part Three relating to the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.” Hence, the restriction on the jurisdiction of the Court presently provided by Article 35(5) TEU is maintained. The right of legislative initiative is still shared between the Commission and the Member States, yet the Lisbon Treaty introduces a limitation since a proposal must be presented by over a quarter of the Member States. This will greatly reduce the number of Member State initiatives. This will significantly reduce the UK’s right of legislative initiative.

Unlike this new Article in the Lisbon Treaty, the existing Article 31 TEU, on judicial cooperation in criminal matters, has not provided for the principle of mutual recognition of judicial decisions in criminal matters. The Tampere European Council called on the Member States to make the principle of mutual recognition the cornerstone of judicial cooperation both in civil and in criminal matters. This means that once a decision has been taken by a judicial authority of one Member State, this decision must be recognised and enforced in other Member States, with as minor control as possible, as if it were a national decision. It is based on mutual confidence that Member States shall have

respect in each other systems. In 2001 the EU adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters. This programme led to the adoption of legislation such as the Framework decision on the European arrest warrant and the Framework decision on the execution in the European Union of orders freezing property or evidence. There are other measures to be adopted on the basis of the mutual recognition principle and Article 31 TEU such as the *Framework Decision on the Application of the Principle of Mutual Recognition on Confiscation Orders*, a *Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties* and the *European Evidence Warrant* has all been discussed by the Justice and Home Affairs Councils. They all rule over the way in which the UK must take into account convictions in the course of new criminal proceedings and on the European enforcement order and transfer of sentenced persons between Member States of the EU.

Now, mutual recognition will take prime place in the new Lisbon Treaty. With it, we must now accept that UK citizens can now be arrested for non-UK crimes and tried under non-UK law. The new Article 69 A (1) states that “Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 69 B.” Hence, the Lisbon Treaty enshrines the principle of mutual recognition of judicial decisions in criminal matters. However, whereas the abovementioned measures were adopted by unanimity in the Council and through the consultation procedure, future measures based on this principle will be adopted through the co-decision procedure and by QMV in the Council. These measures will affect fundamental issues of sovereignty and will be adopted by QMV rather than through unanimity. Therefore, it will be easier to adopt measures based on the principle of mutual recognition of judicial decisions – this will lead to extreme cases of injustice such as the arbitrary administration of the European arrest warrant, which replaced the previous cooperative extradition procedures between the EU’s Member States. The European arrest warrant is executed by the Member States on the basis of the principle of mutual recognition which means that the judicial authority decision of a Member State for the arrest of a person should be recognised and executed in the other EU Member States. Dual criminality – which means that the act in question must be a crime not only in the country in which it took place but also in the country of surrender – was abolished for 32 categories of offences. Under the European arrest warrant, someone could be extradited from Britain for offences which are crimes in another EU Member State but not in the UK. UK citizens will be arrested for non-UK crimes and tried under non-UK law. That is completely unacceptable.

Moreover, judicial cooperation in criminal matters will also cover the approximation of laws and regulations of the Member States concerning criminal proceedings and the definition of criminal offences and sanctions.

The Council, acting by QMV, and the European Parliament through the ordinary legislative procedure (co-decision procedure) may adopt measures to “lay down rules and procedures for ensuring recognition through the Union of all forms of judgments and judicial decisions.” This provision expands the existing Article 31(1)(c) TEU, which provides that “common action on judicial cooperation in criminal matters” shall ensure “compatibility in rules applicable in Member States as may be necessary to improve such cooperation.” The new provision will imply mutual recognition of non-custodial pre-trial supervision measures in the investigation procedure, mutual recognition of final

judgments which implies mutual information on convictions (exchanging information on convictions), enforcement of criminal penalties, enforcement of non-custodial measures, suspended sentences, mutual recognition of disqualifications. This provision would prevent any judgment from the courts of another EU Member State from being challenged in the UK courts, with grave consequences for individuals, businesses and legal system in the United Kingdom. It is a fact that the different Member States have different criminal systems, some Member States have low standards for the rights of the accused, and in some Member States, the accused do not have access to proper advice therefore mutual recognition will raise concerns of fairness. This is an unacceptable state of affairs. It must be stopped.

The Union may also adopt, according to Article 69A (1) (b) “measures to prevent and settle conflicts of jurisdiction between Member States.” The present Article 31 (1) (d) provides already for action in preventing conflicts but not settling. This entails that there will be binding rules at the EU level which will require Member States to take steps to avoid or solve conflicts of jurisdiction. Member States have different criminal justice systems, and when the EU addresses the issue of 'conflicts of jurisdiction' in criminal proceedings, it is unclear of which Member State will be favoured. The EU cannot adopt legislation laying down jurisdiction rules given exclusive jurisdiction to a single Member State, for each type of case.

The Lisbon Treaty also provides for measures to “support the training of the judiciary and judicial staff”. The European Commission has already launched training programmes to law enforcement professionals. These programmes have been partly financed by different projects. There is also a European judicial training network aimed at improving mutual understanding of Member States legal systems among judges and prosecutors and develop the practical implementation of judicial cooperation within the European Union. The network is focused on criminal and civil matters. Therefore, there will be further programmes funded by the EU budget. Moreover, the new Article 69a (1) (d) provides for measures to “facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.” This provision is very similar to present Article 31 (1) (a) TEU. It will amount to massive costs for the UK – as does its own criminal justice system – and it is not in the British taxpayers’ or the national interest to commit itself to such costs.

Since the principle of mutual recognition will become a cornerstone of judicial cooperation in criminal matters, the UK will need to meet minimum standards in criminal proceedings within the EU. Under Article 69A(2), the Council acting by QMV together with the European Parliament through the ordinary legislative procedure (co-decision) allows the Union to establish minimum rules to adopt directives establishing minimum rules in order to “facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension.” Hence, this provision represents a new EU competence to adopt measures concerning criminal proceedings. Such minimum rules concern mutual admissibility of evidence between Member States which are related to different modes of trial in the Member States will be adopted by QMV. Therefore, the UK will not be able to block an EU standard on the admissibility of evidence. The Union may also adopt minimum rules concerning the rights of individuals in criminal procedures.

The European Commission already proposed, in 2004, a draft framework decision on certain procedural rights in criminal proceedings. The Commission’s draft proposal

contained the following rights: the right to legal assistance, the right to interpretation and translation, the right to have medical attention, the right to communicate with consular authorities. However, there are several concerns over the proposed legal base. The Commission's proposed legal base is Article 31(1)(c) TEU which states that "ensuring compatibility in rules applicable in the Member States as may be necessary to improve judicial co-operation in criminal matters". The Lisbon Treaty provides for a clear legal base for such measures. It also may adopt minimum rules concerning the rights of victims of crime. There is already a 2004 EU Council Directive on compensation for crime victims which requires Member States to have a national scheme in place that guarantees compensation to victims of crime. The compensation must be decided upon and paid by the Member State in which the crime occurred.

Moreover, this list of criteria for UK criminal proceedings may be endless since, according to this provision, the Council, acting unanimously after obtaining the consent of the European Parliament, may decide to extend the aspects of criminal proceedings. Hence, the European Parliament acquires powers of consent (assent procedure). Under the assent procedure which in the Lisbon Treaty is referred to as "consent", the European Parliament either accepts or rejects a proposal but it cannot amend it. This minimum rule applies to cases with cross border implications but they are likely to affect purely national cases. This provision stresses that the adoption of minimum rules "shall take into account the differences between the legal traditions and systems of the Member States" and "shall not prevent Member States from maintaining or introducing a higher level of protection for individuals." However, the experience tells us that the Commission has not been taken into account the special nature of UK common law. This provision raises major concerns over the limitation of the right to trial by jury and habeas corpus.

What about an emergency brake on such legislation? Article 69A(3) does provide for an emergency brake but only on draft directives establishing minimum rules criminal proceedings. Hence, if one Member State considers that a draft directive would affect fundamental aspects of its criminal justice system, it may request the draft to be referred to the European Council and the ordinary legislative procedure will be temporarily suspended. The European Council would decide by consensus. Moreover, the Lisbon Treaty provides for the possibility for at least nine Member States wishing to establish 'enhanced cooperation', on the basis of the draft directive in question, to move forward. If the European Council is unable to find an agreement within four months, a notification to the European Parliament, the Council and the European Commission will be enough to allow this group to establish enhanced cooperation. (The difficulty with such cooperation is that each Member State shall be compelled at some future point to subscribe to enhanced cooperation anyway, when it becomes Union law). According to this provision, the normally required authorisation is therefore "deemed to be granted." Therefore, there is no need to go through the procedure mentioned in Article 280 D TFEU, because in this way enhanced cooperation is speeded up. The non-participating States cannot prevent the others in going ahead with further integration.

It is said that our opt outs and opt ins on the above measures are a matter of free choice. But are they? If it is a free choice, the UK has the right to choose whether to take part in judicial and police cooperation in criminal matters. Nevertheless, once opting in, UK is subjected to the Commission enforcement powers and to the ECJ jurisdiction. Therefore, it can be taken before the ECJ for failure to implement correctly or in due time criminal law legislation. Once it has decided to opt-in there is no right to opt-out, even if

the outcome of the negotiations is not acceptable. It is only in some cases that the UK would be entitled to apply the 'emergency brake.'

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**FIGHTING CROSS-BORDER CRIME: UNION TO DEFINE CERTAIN CRIMINAL  
OFFENCES & MINIMUM RULES TO OVERRIDE UK CRIMINAL LAWS  
AND SENTENCING PROCEDURES  
[ARTICLE 69b]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 4 – Judicial cooperation in criminal matters, Article 69b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 67, inserted Chapter 4 and Articles 69A to 69E TEC (TFEU) relating to judicial cooperation in criminal matters; and

(ii)'.  
'

This new provision will allow the Union to define certain criminal offences and set minimum sentences for those found guilty of them, overriding UK criminal laws and sentencing policies. It would be a complete travesty for the UK Government to accept the content of this provision and it must be rejected.

Bill Cash MP said in the House of Commons on 29 January that "We all want co-operation to deal with international criminal gangs, but will they be operating just in the European Union? No. There are international criminal gangs that operate all over the world. It is precisely because what is wanted is a uniform legal system, at the expense of our common law system and our judicial processes, which are free from political interference, dual criminality and so on, along with a whole range of criteria, that we are insistent that there should not be the intention that lies behind the treaty. That is why we propose in my amendments to leave out the relevant words. That intention is to consolidate all the different legal systems and the legal criteria that are applicable to 27 member states, but the attempt will simply fail."

The present Article 29 TEU provides for "approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31 (e)" under which common action on judicial cooperation in criminal matters includes "progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking." Racism and xenophobia are not specified in Article 31 (1) (e) however the Framework Decision on Racism and Xenophobia was agreed by the Justice and Home Affairs Council during the German Presidency. It is aimed at approximating Member States' laws and regulations regarding racism and xenophobia ensuring that the same behaviour constitutes an offence in all Member States. Under this Framework Decision, all 27 EU Member States will have to ensure that the conducts defined in this framework decision "are punishable by criminal penalties of a maximum of at least

between 1 and 3 years of imprisonment.” As the existing Article 29 TEU sets out the development of common action among the Member States in the fields of police and judicial cooperation in criminal matters and the prevention and fight against racism and xenophobia, it was considered that this objective could be achieved through approximation of rules on criminal matters in the Member States.

The new Article 69 b (1) provides that the Union may define criminal offences and sanctions in areas “of particularly serious crime with cross border dimension”: terrorism, illicit drug trafficking, organised crime, trafficking in human beings and sexual exploitation of women and children, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment and computer crime. Hence, this provision expands the areas of crime currently provided for in Article 31 (1) (e) TEC. Some of these areas of crime are quite broad which might lead the EU to lead with offences without a cross border dimension. The European Parliament together with the Council, acting by QMV, through the ordinary legislative procedure, may adopt directives establishing minimum rules concerning the definition of “criminal offences and sanctions” in the abovementioned areas. There are major changes to the decision-making of legislation for the ‘approximation of criminal law’ because unanimity in the Council will be replaced by QMV and the consultation procedure will be replaced by a co-decision procedure, increasing the European Parliament’s influential role. The Member States will not be able to veto such sensitive proposals.

Furthermore, such an extensive listing of areas of crime under EU control will be endless as this provision provides that the Council, acting unanimously after obtaining the consent of the European Parliament “may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph.” Hence, the European Parliament acquires powers of consent (assent procedure). Under the assent procedure, which in the Lisbon Treaty is referred to as “consent”, the European Parliament either accepts or rejects a proposal but it cannot amend it.

It is still probable that the UK will not have an opt out from substantive criminal law measures since they will be adopted to ensure the implementation of another Union policy and the decision-making procedure is only to be found in the provisions of the policy in question. Therefore, it will fall outside of a considered Protocol on the area of freedom, security and justice.

The European Court of Justice has, up until now, been ruling that the Community has competence under the EC Treaty for adopted criminal law measures when they are necessary for the implementation of Community objectives. However, according to the Court “the determination of the type and level of the criminal penalties to be applied does not fall within the Community’s sphere of competence.” But it assures that criminal penalties must be “effective, proportionate and dissuasive.” The Lisbon Treaty confirms and expands the ECJ rulings. Under Article 69b (2) “if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned.” The procedure to adopt such directives will be the same as that followed to adopt the harmonisation measures in question. This means that in the majority of cases, the harmonisation of criminal law will be decided by QMV through the ordinary legislative procedure (co-decision procedure). The provision stresses “without prejudice to Article 61 I”, therefore, the right to initiate

legislation in a quarter of the Member States. According to Article 61 I, the Commission will share its right of initiative with a quarter of the member States in police and judicial cooperation in criminal matters.

The power to determine criminal liability and to impose criminal penalties is a sovereign power which should be retained by the UK. The Union should not be allowed to harmonise substantive criminal law and even if it were surrendered, such legislation should at least be decided by unanimity which is not the case.

What about the application for the use of the emergency brake? Article 69B(3) provides for an emergency brake on draft directives to “establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension” and draft directives establishing minimum rules with regard to the definition of criminal offences and sanctions to ensure the implementation of a Union policy. Hence, if one Member State considers that a draft directive would affect fundamental aspects of its criminal justice system, it may request the draft to be referred to the European Council and the ordinary legislative procedure will be temporarily suspended. The European Council would decide by consensus. Moreover, the Lisbon Treaty provides for the possibility for at least nine Member States wishing to establish ‘enhanced cooperation’, on the basis of the draft directive in question, to move forward. If the European Council is unable to find an agreement within four months, a notification to the European Parliament, the Council and the European Commission will be enough to allow this group to establish enhanced cooperation. (The difficulty with such cooperation is that each Member State shall be compelled at some future point to subscribe to enhanced cooperation anyway, when it becomes Union law). According to this provision, the normally required authorisation is therefore “deemed to be granted.” Therefore, there is no need to go through the procedure mentioned in Article 280 D TFEU, because in this way enhanced cooperation is speeded up. The non-participating Member States cannot prevent the others in going ahead with further integration. The UK must block this provision.

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**FIGHTING CROSS-BORDER CRIME: EU WILL BEGIN TO INTERFERE IN CRIME  
PREVENTION BEYOND EXISTING CROSS-BORDER MEASURES  
[ARTICLE 69C]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 4 – Judicial cooperation in criminal matters, Article 69C*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 67, inserted Chapter 4 and Articles 69A to 69E TEC (TFEU) relating to judicial cooperation in criminal matters; and

(ii)'.  
'

The existing Article 61 (e) TEC provides that "In order to establish progressively an area of freedom, security and justice, the Council shall adopt measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union." EU funding programmes have been dealt with as crime prevention issues. For example, the programme *Prevention of and Fight against Crime* provides financial support to activities on crime prevention and criminology.

The new Article 69C provides for a specific legal base for the adoption of EU crime prevention measures. This is completely unacceptable. The European Parliament and the Council through the ordinary legislative procedure (co-decision) may adopt measures "to promote and support the action of the Member States in the field of crime prevention." Such measures will be adopted at the Council by QMV. It seems that the Union is only allowed to "support" the Member States since the "harmonisation of the laws and regulations of the Member States" are excluded. However, despite the Treaty claims, such measures will interfere with the Member States crime prevention measures because this provision is not limited to crime with a cross-border dimension and therefore the Union will interfere with the Member States national programmes to prevent crime. The provisions of this Article must be opposed.

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**FIGHTING CROSS-BORDER CRIME: BRITISH JUDICIARY MUST SUBMIT TO  
EUROJUST INTERFERENCE, EU CRIMINAL INVESTIGATIONS  
& MASSIVE INTERVENTIONS IN PROSECUTING SERIOUS CRIME  
[ARTICLE 69D]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 4 – Judicial cooperation in criminal matters, Article 69D*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 67, inserted Chapter 4 and Articles 69A to 69E TEC (TFEU) relating to judicial cooperation in criminal matters; and

(ii)'.  
'

Eurojust is a European Union body established [in 2002 by a Council Decision of 28 February 2002] to facilitate cooperation and coordination between the Member States competent judicial authorities when investigating and prosecuting “serious cross border crime, particularly in the case of organized crime.” Its remit is presently ruled by Articles 29 TEU which provides for closer cooperation between Member States through Eurojust and 31(2) which provides that the Council shall enable “Eurojust to facilitate proper coordination between Member States' national prosecuting authorities” promote “support by Eurojust for criminal investigations in cases of serious cross border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol” and facilitate “close cooperation between Eurojust and the European Judicial Network, particularly .... Article 3 of the Council Decision setting up Eurojust provides for Eurojust's objectives, which are to “stimulate and improve the coordination, between the competent authorities of the Member States, of investigations and prosecutions in the Member States ..., to improve cooperation between the competent authorities of the Member States ..., to support otherwise the competent authorities of the Member States in order to render their investigations and prosecutions more effective.” Eurojust competences cover the serious forms of crime and the offences within the Europol remit [as established in Article 2 of the Europol Convention of 26 July 1995] such as terrorism, unlawful drug trafficking and other serious forms of international crime as well as other types of crime as mentioned in Article 4 of the Council Decision, such as computer crime, fraud and corruption and any criminal offence affecting the European Community's financial interests, the laundering of the proceeds of crime, environmental crime, participation in a criminal organisation.

Under the terms of Lisbon, Eurojust has now had its remits and powers hugely increased. The Lisbon Treaty introduces Article 69D which increases Eurojust's remit and powers when compared to the present Article 31(2) TEU. Article 69D defines the “mission” of Eurojust's which is to “support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.” Hence, it seems that the Eurojust's mandate is extended “as serious crime affecting two or more Member States or requiring a prosecution on

common bases” is broader than “cases of serious cross-border crime, particularly in the case of organised crime.”

This provision also provides that the European Parliament and the Council through the ordinary legislative procedure (co-decision) may adopt regulations, which are directly applicable in the Member States, determining “Eurojust’s structure, operation, field of action and tasks.” Such regulations will be adopted by QMV in the Council and shall also establish “arrangements for involving the European Parliament and National Parliaments in the evaluation of Eurojust’s activities.” The Lisbon Treaty provides what Eurojust’s tasks may include. This list of already extensive powers has increased massively. Neither can Member States veto proposals over: “the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union, the coordination of investigations and prosecutions, the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.” Presently, Eurojust acting as a College may ask the competent authorities of the Member States concerned to undertake an investigation or assert the prosecution of specific acts even if such a request is not binding and the Member State is not obliged to act.

The Lisbon Treaty expressly provides that Eurojust may have the power and the responsibility to initiate criminal investigations and also the power to propose the initiation of prosecutions even though the prosecution would be conducted by the national authorities and according to Article 69 D (2) “formal acts of judicial procedure shall be carried out by the competence national officials” without prejudice to the European Public Prosecutor.

This provision implies a major takeover of the responsibilities of national public prosecutors. In this way Eurojust tasks are to similar to the ones of the European Public Prosecutor. There is a Declaration on Article 69 D(1) which states “The Conference considers that the regulations referred to in the second subparagraph of Article 69 D(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” but it is not legally binding. Since this marks a takeover of major UK legal responsibilities, mostly notably through the empowerment of European judicial authorities in prosecuting serious crime above and beyond the powers of the British judiciary, this is an area of significant concern which must be rejected by the UK Government.

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**FIGHTING CROSS-BORDER CRIME: TREATY CREATES ROLE OF EUROPEAN  
PUBLIC PROSECUTOR TO COMBAT CRIMES AGAINST THE UNION  
[ARTICLE 69E]**

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***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 4 – Judicial cooperation in criminal matters, Article 69E*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 67, inserted Chapter 4 and Articles 69A to 69E TEC (TFEU) relating to judicial cooperation in criminal matters; and

(ii)'.  
'

The Lisbon Treaty provides for the creation of a European Public Prosecutor's Office (EPPO) from Eurojust, to combat crimes affecting the financial interests of the Union. It is not clear what they precisely mean "from Eurojust." The establishment of the European Public Prosecutor requires unanimity in the Council and consent of the European Parliament. However, the veto of one or more Member States will not be enough to stop the creation of the European Public Prosecutor. Hence, if the Council has not reached the required unanimity a group of at least nine Member States, it may request that the draft regulation establishing the European Public Prosecutor be referred to the European Council and the procedure will be temporarily suspended. The European Council would decide by consensus and in case of agreement the draft goes back to the Council for adoption. This provision introduces another "enhanced cooperation mechanism." If the European Council is unable to find an agreement within four months, and if at least nine Member States wish to establish 'enhanced cooperation', on the basis of the draft regulation in question, a notification to the European Parliament, the Council and the European Commission will be enough. According to this provision, the normally required authorisation is "deemed to be granted." Therefore, there is no need to go through the procedure mentioned in Article 280 D TFEU – in this way, the enhanced cooperation is already fast-forwarded. The non participating States cannot prevent the others from going ahead with further integration.

The EPPO will have extensive powers. The European Public Prosecutor's Office will be a judicial body in charge of investigating, with the power to order national police forces to initiate investigations. He will assemble all the evidence in favour or against the accused and will be responsible for conducting and coordinating prosecutions. His jurisdiction will prevail over the jurisdiction of the Member States enforcement authorities. Moreover, he will have the power to bring to judgment perpetrators, and accomplices, of offences against the Union's financial interests. Article 69E (2) expressly states "It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences." He will ultimately decide the country in which the trial will take place. Obviously, the Prosecutor will be a powerful actor in the Union area of judicial cooperation in criminal matters.

The EPPO will not be accountable to the UK Parliament and it is not completely clear how the EPPO will operate. According to Article 69E (3), the regulation establishing the

EPPO will set out “the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.” The EPPO activities will be subject to review by the European Court of Justice. However, it is not clear yet if his actions and which actions will be subject to review by a national judge. Nevertheless, the EPPO will not be accountable to the UK Parliament.

Moreover, the Lisbon Treaty provides for the extension of powers of the EPPO to include “serious crimes having a cross-border dimension.” Article 69E provides that “The European Council may, at the same time or subsequently, adopt a decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.” There is no real universally recognised need to create a European Public Prosecutor’s Office as Eurojust already contributes to the fight against fraud providing for closer cooperation with OLAF (European Antifraud Office) and national law enforcement agencies. But Eurojust is not an acceptable benchmark for UK authorities either. Furthermore, both are unnecessary – it must be left to voluntary cooperation between the Member States to decide on their own enhanced cooperative rules to decide on.

The creation of such a post has been made in complete disregard of the different legal systems within the EU, especially the common law system in the UK. It is likely to have a severe impact on Member States criminal justice systems.

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**JUSTICE: TREATY GIVES EUROPEAN COUNCIL POWER TO DEFINE  
OBJECTIVES FOR UK LEGISLATION ON FREEDOM, SECURITY AND JUSTICE  
[ARTICLE 61 A]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)’.

This is a new provision which formalises the far-reaching practices of the European Council – it is not in the interests of the UK to bind itself to such a legislative council which provides such fundamental objectives for the governance of 27 Member States.

On the creation of an area of freedom, security and justice, the 1999 Tampere European Council provided a programme setting out policy guidelines and objectives with a timetable for their achievement, which was adopted. Under the Lisbon Treaty, the European Council is obliged to define guidelines for legislative and operational action within this area.

The Lisbon Treaty recognises the European Council as an EU institution. If the European Council does not act in this area in accordance with Article 230 and 232, the ECJ will have jurisdiction to hear actions against the European Council for failure to act.

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**JUSTICE: NATIONAL PARLIAMENTS UNDER LEGAL OBLIGATION TO MAKE  
SURE EU POLICE COMPLY WITH NATIONAL AUTHORITY  
[ARTICLE 61B]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61B*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)'.  
'

This is a new provision. It stresses that National Parliaments will ensure that proposals and legislative initiatives in judicial cooperation in criminal matters and police cooperation comply with the principle of subsidiarity. It is important that national Parliaments are involved in these matters but it has been said that the Treaty places a legal obligation upon Member States to contribute.

It should not amount to a legal obligation on Parliament to do this. The European Scrutiny Committee is not convinced and concluded that "the text of the Reform Treaty has been amended so as to put beyond any doubt the principle that no obligation must be imposed on Parliament." The Committee had stated in its first report: "We wish to emphasise that the proposals in the Reform Treaty raise a serious difficulty of constitutional order in as much as they appear to impose, whether by accident or design, a legal duty on national parliaments "to contribute actively to the good functioning of the Union" by taking part in various described activities. National parliaments, unlike the European Parliament, are not creations of the Treaties and their rights are not dependent on them. In our view, the imposition of such a legal duty on the Parliament of this country is objectionable as a matter of principle and must be resisted."

The Protocols on the position of National Parliaments and on the application of the principles of subsidiarity and proportionality will be discussed further.

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**JUSTICE: COUNCIL WILL ADOPT NEW MEASURES TO EVALUATE  
THE IMPLEMENTATION OF POLICY IN AREA  
OF FREEDOM, SECURITY AND JUSTICE  
[ARTICLE 61C]**

**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61C*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)'.

Under this new Article, the Council acting by QMV may adopt measures for evaluating the implementation of the area of freedom, security and justice after simply informing the European Parliament and national Parliaments.

Member States will be required to “in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies” in the area of freedom, security and justice, “by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition.” It is not clear the meaning of “Member States' authorities” but it seems to cover the impact that this will have on UK judicial authorities and police and customs authorities.

The organisation and impact of such evaluation is not yet clear, nor is it transparent as to how it will be conducted, how standards will be established or a decision reached. Obviously, if a Member State does not meet the necessary standards, it will be subject to sanctions. It is stated that this Article is without prejudice to Articles on infringement procedures before the ECJ so the ECJ has jurisdiction over the implementation of these policies. It remains to be seen if the ECJ intervention will only take place after such evaluation or if the processes could run at same time.

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**JUSTICE: PROTOCOL ISSUES PRESSURE FOR THE UK  
TO OPT IN OR FACE FINANCIAL PENALTY  
[Protocol on Transitional Provisions]**

**Policy Area:** *Protocol on Transitional Provisions*

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These provisions concern the Court's jurisdiction and Commission competence over third pillar matters before the Lisbon Treaty enters into force, such as, for example, the notorious Framework Decision on the European arrest warrant.

According to Article 10 of this Protocol, the Court's limited jurisdiction over police and judicial cooperation in criminal matters is retained for existing measures for five years

after the Lisbon Treaty enters into force. Under present Article 35 TEU, the ECJ has jurisdiction to give preliminary rulings on interpretation and validity of framework decisions, decisions and conventions adopted under Title VI (police and judicial cooperation in criminal matters). However, this applies only to the Courts of a Member State which have expressly accepted such jurisdiction. The UK has not submitted a declaration under Article 35 TEU and therefore it does not accept the jurisdiction of the Court to give preliminary rulings on such matters. Moreover, the Commission will not have the powers to initiate infringement procedures against Member States concerning the implementation of these matters in their national law for a five year period.

However, during the five year period, the European Court of Justice will have full jurisdiction, interpretation of measures over an existing act which is amended. Presently, unanimity in the Council is required to amend such acts but under the Lisbon Treaty, the amendment of such acts can be achieved through QMV in the Council and then subject to co-decision procedure. In this way, the UK is excluded from the process of amending existing acts. It is of only marginal relief that the UK has an opt-out on amended acts. It would be more suitable for the UK to have a real input into the process. The terms of our input are completely unacceptable.

The UK will also encounter difficulties in that it will have no power of initiative over amending the third pillar measures and it will be for the European Commission to decide the transposition process. There is a Declaration on Article 10 of the Protocol on transitional provisions which states that "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." However, given that not all the third pillar measures will be amended, replaced or repealed by the end of the transitional period, the UK will have no power of initiative and it will be for the European Commission to decide the transposition process.

At the end of the transitional period, any third pillar measures which have not been transposed will be subject to ECJ jurisdiction. The UK, it is said, will notify the Council (at the latest 6 months before the expiring of the transitional period) that it does not accept the Commission and ECJ's powers over existing EU measures which have not been amended under the Lisbon Treaty. However, in this case, all third pillar legislation which has not been amended will cease to apply to the UK as from the date of expiry of the transitional period. The UK must, at the end of the transitional period either confirm the Commission and ECJ's powers over un-amended EU measures or it must face the consequences. The consequences are not described in the Lisbon Treaty.

The status quo will not be maintained if the UK decides not to participate in an amended measure. Moreover, the UK will not be entitled to continue its current EU agreements.

The Council, acting by QMV, on a proposal from the Commission, may determine "the necessary consequential and transitional arrangements" but the UK will be excluded from the adoption of such decision. Moreover, the Council acting by QMV "may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts."

The UK cannot win in this unscrupulous process. The UK may, at any time, notify the Council of its wish to participate in acts from which it was previously excluded. However, in that case, it will have to accept the Court's full jurisdiction and the Commission enforcement powers. The Provisions of the Schengen Protocol or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice shall apply which, in fact, provide tougher conditions for the UK to meet. The re-participation of the UK in those matters is subject to the approval of the Council but it should be mentioned that according to Article 10 (5) "the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence."

The UK has a flawed 'right to choose' – as the European Scrutiny Committee has said, "the risk of losing the benefit of an existing measure, because of a choice not to participate in its amendment, by virtue of a decision in which the UK cannot take part, must put at least some pressure on the UK to opt in." Moreover, the possibility of the Council deciding by QMV that the UK should bear the direct financial consequences necessarily and unavoidably incurred if it ceases to participate in a measure. It is as the ESC argued, that "this must import some measure of financial risk, not present before, into a decision not to opt in." Therefore, it is not in "the UK's interests to be exposed to such risk."

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**JUSTICE: PROTOCOL SEVERS THE UK RIGHT TO OPT OUT  
THROUGH THREAT OF POLITICAL COMPULSION  
OR FACE SIGNIFICANT FINANCIAL PENALTY  
[Protocol on the Position of the United Kingdom and Ireland  
in respect of the Area of Freedom, Security and Justice]**

***Policy Area:** Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Annexed Protocol No 1 Amending the Protocols Annexed to the Treaty on European Union, to the Treaty Establishing the European Community and/or to the Treaty Establishing the European Atomic Energy Community, Article 1(20) relating to the Protocol on the Position of the United Kingdom and Ireland in Respect of the Area of Freedom, Security and Justice; and

(ii)'.  
'

The Lisbon Treaty amends the Protocol on the Position of the United Kingdom and Ireland. It adds to the Title the words "in respect of the area of freedom, security and justice." Under the present Protocol, the UK has an opt out Title IV of the TEC (visas, asylum, immigration, judicial cooperation in civil matters). The Protocol is amended in order to include all matters of the new Title IV Area of Freedom, security and Justice of

the TFEU. The Lisbon Treaty will extend EU powers over those areas. Hence, the Protocol will cover police and judicial cooperation in criminal matters.

The Lisbon Treaty introduced a significant new provision. The new Article 4a of the Protocol provides that this Protocol also applies to measures under Title IV of the TFEU which gives the right for the Union to amend an existing measure by which the UK is bound (amendments of measures which presently bind the UK and also amendment to measures that the UK might be bound). The UK can opt out of amendments to legislation from which it has already opted in. However, if the Council, acting on a proposal from the Commission, determines that the non participation of the UK in the amending version of an existing measure makes the application of that measure inoperable for other Member States or the Union, it may urge the UK to take part in the adoption and application of the proposal. This provision of the Protocol will cause significant problems for the UK and it must be rejected.

Of further concern is that after this process (two months subsequent to the Council determination), if the UK, has decided not to make such a notification, and has decided not to participate in the amendment, the existing measure will not be binding or applicable to it. The Council will make such determination acting by QMV without UK participation. The UK will not participate in the final conclusion over whether it will not partake in a measure.

Whereas under existing Article 5, "A Member State which is not bound by a measure adopted pursuant to Title IV of the Treaty establishing the European Community shall bear no financial consequences of that measure other than administrative costs entailed for the institutions", according to the Lisbon Treaty, amendments the Council acting by QMV may determine that the UK shall bear the direct financial consequences incurred as a result of the cessation of its participation in the existing measure. The British taxpaying electorate will ultimately pay the cost of signing the UK up to this Protocol and it is unacceptable that such a move would be conceivable. The UK Government must reject the content of this Protocol.

As James Clappison MP said in the House of Commons on 29 January 2008: "Perhaps the Home Secretary can tell us what description she would choose to apply to an article that states 'the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.' That is compensation, is it not?" The UK shall bear the direct financial consequences.

It is clear that the UK is not free to opt out from a measure, as it will be under pressure to participate. As the European Scrutiny Committee have concluded on this Protocol, "the UK retains the final right to choose, but it seems to us that the risk of losing the benefit of an existing measure, because of a choice not to participate in its amendment, by virtue of a decision in which the UK cannot take part, must put at least some pressure on the UK to opt in." It has put an obligation onto the UK to not withdraw or amend an existing measure – if the UK does accept this Protocol, the consequences will be that the country will be politically compelled to adopt it against its wishes or a significant financial penalty.

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**POLICING: UNION POLICING MEASURES WILL EVENTUALLY BE REACHED  
THROUGH ENHANCED COOPERATION AND CRIMINAL DATA  
WILL NOT HAVE PROTECTION  
[ARTICLE 69F]**

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***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 5 – Police cooperation, Article 69F*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 68, inserted Chapter 5 and Articles 69F to 69H TEC (TFEU) relating to police cooperation; and

(ii)'.  
'

This new Article proves that whilst the European Union is willing to freely pass on the personal crime-related data of UK citizens around the 27 Member States, it will not allow for any data protection safeguards. The new Article 69f provides for the Union to “establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.” This provision is based on present Article 30 (1) TEU. There is no significant change in the Union powers in this area as the scope of cooperation between the competent authorities is the same. However, whereas Article 30 (1) (b) created a provision for “the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data”, the new Article has not provided for any guaranteed data protection safeguards.

Second, if Member States do not attain Council unanimity in legislating for a new measure, then the provision will still go ahead through enhanced cooperation. According to Article 69F, if the Council has not reached the required unanimity, a group of at least nine Member States may request that the draft measures to be referred to the European Council and the procedure will be temporarily suspended. The European Council would decide by consensus and in case of agreement the draft goes back to the Council for adoption.

If the European Council is unable to find an agreement within four months, and if at least nine Member States wish to establish 'enhanced cooperation', on the basis of the draft measures in question, a notification to the European Parliament, the Council and the European Commission will be enough. According to this provision, the required authorisation is usually “deemed to be granted.” The non-participating States cannot prevent the others from going ahead with further integration. The controls over UK policing and law enforcement agencies will be jeopardised since there appears to be no provision for the protection of criminal data in this Article and in any case, when enhanced cooperation (based on super-Union cooperation) develops, then it is only a matter of time before it becomes EU law and the UK is then forced to submit to the obligatory methods of unified police cooperation.

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**POLICING: TREATY CREATES NEW POWERS FOR EUROPEAN POLICE FORCE  
TO COORDINATE, ORGANISE AND UNDERTAKE INVESTIGATIONS  
BEYOND CROSS-BORDER CRIMES  
[ARTICLE 69G]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 5 – Police cooperation, Article 69G*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 68, inserted Chapter 5 and Articles 69F to 69H TEC (TFEU) relating to police cooperation; and

(ii)'.  
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The Council and Parliament are waiting for the Lisbon Treaty to be enacted so that the European Police Office's (Europol) powers can be greatly enhanced beyond cross-border crime – this inevitably has implied that the Lisbon Treaty will ensure new crime measures above and beyond national laws. According to Article 2 (1) of the Europol Convention the objective of Europol, the European Law Enforcement Organisation, is to improve "effectiveness and cooperation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime where there are factual indications that an organized criminal structure is involved and two or more Member States are affected by the forms of crime in question in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned." The future of Europol has been recently debated at the EU institutional level. The European Commission has put forward proposal for a Council Decision to replace the previous Europol Convention with all the amendments already incorporated in the three Protocols, as well as some new provisions. The Commission has also proposed that Europol's competence should not be limited to cross-border organised crime and that it should extend Europol's mandate to any serious cross border crime. The Justice and Home Affairs Council have been discussing this proposal and have already reach agreement for different Chapters of the Convention. The Council Decision is expected to be finalised by the summer of 2008. The Europol will be a Union agency funded by the EU budget. The European Parliament is already calling for the Council Decision to be revised within a period of six months following the Lisbon Treaty's entry into force, as it will have a greater say on decision-making (co-decision powers), on which it has always be in favour for the sake of increasing Europol powers. These encroaching powers will not work in the UK's favour.

Equally concerning is that Europol's mandate will no longer be limited to organised crime. The new Article 69G extends and enhances the role and the powers of Europol to "serious crime affecting two or more Member States." Article 2 of the Europol Convention provides for the Council, acting unanimously, to "decide to instruct Europol to deal with other forms of international crime listed in the Annex to this Convention. The Annex contains a long list of crimes concerning crimes against life, limb or personal

freedom, against property or public goods including fraud illegal trading and harm to the environment. The competence of Europol will be significantly increased as its mandate will no longer be limited to organized crime. "Serious crime" is a very broad term, subject to different interpretations which will bring harm to legal certainty.

Under the terms of Lisbon, Europol will vastly extend its own powers and Member States will no longer be able to block any further extension of powers. Presently, the Europol Convention amendments are decided by the Council acting unanimously after consulting the European Parliament. It is amended through protocols which are then ratified by national Parliaments. Hence, national parliaments can influence the content of a Protocol and block its ratification. When the Europol Convention is replaced by a Council decision, rules governing Europol will be amended by Council decisions unanimously adopted but national ratification is not required. With the Lisbon Treaty and the collapse of the pillars, legislation concerning Europol is subject to the Community method. According to Article 69G (2) the European Parliament and the Council, acting by QMV, through the ordinary legislative procedure (codecision), shall adopt regulations (directly applicable in all Member States) concerning Europol's structure, operation, field of action and tasks. Therefore, such aspects will be defined by secondary legislation rather than by Protocols amending the Convention. The Lisbon Treaty puts forward some tasks that Europol will have in the future – it is clear that the list is not exhaustive and also that Member States will no longer be able to block further extension of Europol powers.

Europol has set our objectives to develop into a European police force which will be able to co-ordinate, organise and even undertake investigations and operations together with national police forces. According to Article 69 G (2) (b) Europol's tasks with regard to "serious crime affecting two or more Member States" may include "the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust." These tasks are already foreseen in the Draft Council Decision establishing the Europol although this Draft Decision adds "where appropriate in liaison with European or third countries bodies." Hence, the coordinating role of Europol will be extended. The Europol is intentionally and with clear objectives developing into a European police force as it will be able to co-ordinate, organise and even undertake investigations and operations together with the national police forces. The Europol will have not only investigative but operational powers which should be kept to the national police forces. Article 69 G provides the single restriction to the Europol action stating that "Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities." However, "coercive measures" have always been subject to different interpretations.

Presently, there are some 'loose' safeguards: the ECJ, according to Article 35 (7) has jurisdiction to rule on disputes between Member States regarding the interpretation or application of the Europol Convention. Moreover, the ECJ has jurisdiction to receive a preliminary reference but only from the courts of a Member State which has expressly accepted such jurisdiction. The UK has not submitted a declaration under Article 35 EU – thus it does not yet accept the jurisdiction of the Court to give preliminary rulings on third pillar matters. Under the Lisbon Treaty, national courts against whose decisions there is no judicial remedy under national law may refer a question to the ECJ concerning interpretation of the Europol legislation.

The Treaty does offer some attempts at scrutiny of Europol which, however, come no way near to the amount and quality of scrutiny needed for it to be a an actual European police force as demanded in the Treaty provisions. Article 69 G (2) provides that regulations concerning Europol structure, operation, field of action and tasks “shall also lay down the procedures for scrutiny of Europol’s activities by the European Parliament, together with national Parliaments.” This new legal base is likely to enhance Europol accountability although it remains to be seen how national Parliaments will be involved. Nevertheless, Europol will never be accountable as a national police force. The Europol’s activities will be also subject to judicial review by the European Court of Justice. According to new Article 230 the Court of Justice “shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.” However, while The Treaty does offer some attempt to provide scrutiny of Europol it falls drastically short of the kind of scrutiny needed for it to be a an actual European police force as demanded in the Treaty provisions. This provision must be completely rejected.

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**HUMAN TRAFFICKING: EU EXTENDS FURTHER CONTROL OVER COMMON  
IMMIGRATION POLICY TO WHICH THE UK WILL BECOME SUBJECT  
[ARTICLE 63a]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 2 – Policies on border checks, asylum and immigration, Article 63a*

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The different EU leaders set out the basis for a common EU immigration policy at the 1999 Tampere European Council, aiming to better manage migration flows by developing a common European immigration system. At Tampere, three elements required for an EU immigration policy were agreed: a comprehensive approach to the management of migratory flows, it would include fair treatment for third-country nationals and development of partnerships with the countries of origin.

The Thessaloniki European Council July 2003 stressed even further “the need to explore legal means for third country nationals to migrate to the Union, taking into account the reception capacities of the Member States.” This was confirmed by the Hague programme which establishes the EU objectives for strengthening freedom, security and justice for the period 2005-2010. The European Commission is confident in ensuring the development of this policy by making several proposals, some of which has already become EU legislation. Lisbon must be stopped before the very freedom, security and justice of the UK citizens falls under the governance of a European Union with its destructive immigration policies.

The Lisbon Treaty provides a definite legal basis for the development of a comprehensive common immigration policy. The Lisbon Treaty confirms the EU commitment to the development of a common immigration policy. The new Article 63a is based on the existing Article 63 (3) (a) (b) (4) which expands it only in so far as it provides for single measures on immigration policy. Under the new Article 63A “The Union shall develop a common immigration policy aimed at ensuring, at all stages, the

efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.”

This provision introduces the term “efficient management of migration flows” which has now been used in Commission’s communications and European Council conclusions. Whereas there are Commission communications, Council conclusions and action plans on the EU fight against illegal immigration and trafficking in human beings, there is also a Council Framework Decision on combating trafficking in human beings which, the Lisbon Treaty provides a clear legal base for these measures. It refers “enhanced measures to combat, illegal immigration and trafficking in human beings.” Although it is not clear what is meant by “enhanced measures”, the underlying federalist ambitions will mean that it will lead to stricter control measures than the current Article 63 (3) (b) on the repatriation of illegal residents.

Presently, measures concerning illegal immigration are decided by QMV at the Council and through the co-decision procedure. However legal migration has been governed by unanimity in the Council through the consultation procedure so the European Parliament has a limited role in concerns over legal migration. Under the Lisbon Treaty, however, all common policy immigration measures will be decided together by the European Parliament and the Council through the ordinary legislative procedure (co-decision procedure) and by QMV in the Council. The Lisbon Treaty abolishes the veto over legal migration so the UK will have to accept a reduced influence in the adoption of measures concerning legal migration and it will not be able to sufficiently block legislation.

The UK has an opt out from the area of freedom, security and justice and it can decide to opt in to measures on illegal immigration or on legal immigration. According to a new Article 4a inserted in the Protocol on the position of the United Kingdom and Ireland, the UK is not bound by measures amending existing measures (on which it is already bound) but if the Council determines that the non-participation of the United Kingdom in the amended version of that existing measure makes the application of that measure inoperable for other Member States. it may urge the UK to participate. If the UK decides not to participate the existing measure is no longer binding upon it and it will bear the direct financial consequences. Therefore, the UK will be forced to participate.

The UK will be subject to enhanced EU controls over illegal immigration. The UK has opted into measures on illegal immigration such as the Council Directive defining the facilitation of unauthorised entry, transit and residence. The Lisbon Treaty enhances and expands EU action in this field.

Peter Bone MP said in the House of Commons on 29 January “that the Council of Europe and its 47 members govern the policy on human trafficking...I have just come from an all-party group meeting at which the chief executive of the immigration service said that he saw no advantage in the Lisbon treaty in respect of improving the human trafficking situation.” Given that there is no advantage offered by the Lisbon Treaty in dealing with the proper issue of human trafficking, it is cynical for the Government or anyone else to pretend there is.

The new Article 63 (2) (a) is the same as Article 63 (a) TEC, in that it allows the Union to adopt measures concerning the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for

the purpose of family reunification. It should be noted that the European Commission has recently proposed a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. The Draft Directive aims to grant socio-economic rights to third country-workers on equal terms with the Member States own nationals. The proposal's main objective is to ensure equal treatment to third country workers who reside legally in a Member State. It is currently being discussed. Whereas, under existing conditions, such measures are adopted by unanimity in the Council and through the consultation procedure under the Lisbon Treaty, they will be adopted by QMV in the Council and through the ordinary legislative procedure enhancing the influential role of the European Parliament. The new Article 63 (2) (b) provides for measures defining "the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States" which is similar to Article 63 (4) TEC. However, the EU competences are broader.

The new Article's guarantee of rights is not limited to the definition of the right of residence of legally resident third country nationals. The UK will now have to take into account that the Union common immigration policy aims to ensure "fair treatment of third-country nationals residing legally in Member States." Moreover, the new clause provides for the adoption of EU legislation defining the rights of legally resident third country nationals comprising (but not limited to) "the conditions governing freedom of movement and of residence in other Member States." The European Commission has also recently proposed a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment. The Draft Directive aims to harmonise the admission conditions of entry and residence of this category of workers. It also lays down the conditions under which a third-country national may reside in a second Member State. Such proposals are subject to unanimity in the Council. This is currently being discussed.

The Lisbon Treaty will also allow for decisions – concerning the rights of third country nationals, including the right to social security, residing legally in a Member State who then travel to another Member State – to be adopted by QMV through the co-decision procedure. Therefore, the UK will not be able to veto such proposals and it will have a limited influence in the adoption of such important measures.

The new Article 63a(2)(c) concerns illegal immigration and unauthorised residence, measures "including removal and repatriation of persons residing without authorization." It is of no coincidence then that a Proposal for a Directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals is currently being discussed. Moreover, the fight against illegal immigration implies the possibility of criminal sanctions. The European Commission has also recently presented a proposal for a Directive, providing for common sanctions and measures against employers of third country nationals who are illegally staying on the territory of the Member States based on existing Article 63 (3) (b). The Lisbon Treaty also introduces a new legal base, Article 63a (2) (d), for measures "combating trafficking in persons, in particular women and children."

The Lisbon Treaty provides for a new legal basis [Article 63a(3)] for the Union to conclude readmission agreements with third countries. This new clause provides that "The Union may conclude agreements with third countries for the readmission to their

countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.” The Council has already been authorising the Commission to negotiate readmission agreements with several third countries under the existing Article 63 (3) (b), concerning measures on illegal immigration and repatriation of illegal residents. Some of these agreements have already entered into force. They lay down the obligation to readmit nationals of the country with which the EU have signed the agreement. The Lisbon Treaty will enhance the Union’s competence to negotiate such agreements on behalf of the Member States.

The UK Government must realise that Lisbon pushes forward the boundaries in providing incentives and support for the action of Member States with the aim to promoting the integration of third-country nationals within their boundaries. The Commission has been adopting Communications on integration of third country nationals, such as, for example in September 2005, the Commission adopted the Communication, *A Common Agenda for Integration, Framework for the integration of third country nationals in the European Union*. The Justice and Home Affairs Council in June 2007 adopted conclusions on the strengthening of integration policies in the EU. They represented a new step in steering the EU integration agenda assessing the need for further action. The Lisbon Treaty introduces a new EU competence in Article 63(a)(4) to “provide incentives and support for the action of Member States” with the aim to “promote the integration of third-country nationals residing legally in their territories.” Such incentive and supporting measures for the integration of third country nationals will be established by the Council acting by QMV together with the European Parliament through the ordinary legislative procedure (co-decision procedure). The provision states that “any harmonization of the laws and regulations of the Member States” is excluded. Nevertheless, it will represent a significant interference with Member State’s integration policies. Moreover, it is probable that “incentives and support action” will be considered as an open door to harmonisation.

There is no clause for this Article as the existing Article 63 (4) already confirms that “Measures adopted by the Council pursuant to points 3 and 4 (measures on legal and illegal immigration) shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.” The Lisbon Treaty, Article 63a (5), solely refers to the right of the Member States to “determine the volumes of admission of third country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.” Nevertheless, there is already an access to the labour market by third-country nationals residing in a Member State and such movement will not be prevented. Therefore, one may conclude that Member States are not entitled to introduce national measures and false assurances in this Treaty that national provisions in immigration will take primacy over EU law are not workable. Even if the right over immigration is retained, it will be reduced extensively. The national laws of the respective Member States will be further harmonised into a binding common immigration policy, which is not in Britain’s interest.

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**ASYLUM AND MIGRATION POLICY: MEMBER STATES WILL SURRENDER  
LEGISLATIVE INITIATIVE ON BORDER CHECKS, ASYLUM AND IMMIGRATION  
MEASURES AND JUDICIAL COOPERATION IN CIVIL MATTERS  
[ARTICLE 61 I]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 1 General Provisions, Article 61I*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 64, replacement Chapter 1 and Articles 61 to 61I TEC (TFEU) general provisions relating to an area of freedom, security and justice; and

(ii)'

The Commission will share its right of initiative with a quarter of the Member States in police and judicial cooperation in criminal matters [Article 61I]. This will reduce the number of Member State initiatives. Presently, under the Third Pillar, the right of initiative belongs to any Member State, or to the Commission but under Lisbon that will change.

In concerns over policies on border checks, asylum and immigration and judicial cooperation in civil matters (community pillar matters), the Commission shared its right of legislative initiative with the Member States during the transitional period of five years following the entry into force of the Treaty of Amsterdam. Presently, the Commission has the sole right of legislative initiative even though Article 67 TEC obliges the Commission to examine requests made by Member States to submit a proposal to the Council. The Lisbon Treaty removes this requirement. Hence, the Commission will have the monopoly over legislative initiative and the Member States appear to have completely surrendered such right of initiative.

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**ASYLUM AND MIGRATION POLICY: UK SURRENDERS INCREMENTAL POWERS  
ON BORDER CHECKS, ASYLUM AND IMMIGRATION  
[ARTICLE 62]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 2 – Policies on border checks, asylum and immigration, Article 62*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 65, replacement Chapter 2 and Articles 62 to 63b TEC (TFEU) relating to policies on border checks, asylum and immigration; and

(ii)'.

This Chapter concerns border checks, asylum and immigration policies. This new Article 62 (1) relates to the abolition of checks on persons at the Union internal borders and "checks on persons and efficient monitoring of the crossing of external borders", it is similar to the present Article 62 (1) (2) TEC. The UK can choose to opt into measures under this Article. The Schengen Protocol, the Protocol on the Position of the UK in respect of the Area of Freedom, Security and Justice are amended by the Lisbon Treaty. There is a Protocol on Transitional Provisions with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the Treaty of Lisbon entered into force, with special provisions for the UK. Although it is arguable if it is a free choice, the UK has the right to choose whether to take part in JHA legislation. Nevertheless, once opting in, the UK is subject to Commission powers of enforcement and jurisdiction by the ECJ.

Under the Protocols annexed to the Amsterdam Treaty, the UK is entitled to exercise frontier controls. The UK has not given up its right to exercise controls on persons seeking to enter the United Kingdom. Neither is the UK bound by the Schengen acquis but is allowed to opt in to some of it. According to the Protocol on the position of the United Kingdom and Ireland in relation to the Treaty of Amsterdam, the UK does not take part in the adoption of measures under Title IV (visas, asylum, immigration) – nor are they bound in any way by them. However, the UK may notify the Council of its wish to take part in the adoption and application of a measure and it is also allowed to opt-in to a measure after it has been adopted. Nevertheless, the UK Government has opted into several immigration and asylum measures rather than staying out of them. Therefore, although the UK has prevented the enactment of various pieces of asylum and immigration control, the UK has begun to lose its sovereign power to the EU over control of its own borders.

The Article also makes tough moves towards an integrated EU management system for external borders. The new Article 62 (1) (C) will also provide for a specific legal base for "the gradual introduction of an integrated management system for external borders." The EU has been undertaking activities in this field such as the Commission communication, *Towards integrated management of the external borders of the Member States of the European Union, Management plan for the external borders of the Member States of the European Union*. This was adopted by the JHA Council on 13 June 2002, the June 2002

Seville European Council which called on the Commission and the Member States to implement several steps before June 2003. The establishment of FRONTEX, the External Borders Agency, was a major step in EU developments through an integrated EU border management system.

The European Agency for the Management of Operational Cooperation at the External Borders, known as FRONTEX, was established on 1 May 2005 by order of Council Regulation (EC) No 2007/2004 of 26 October 2004. Among FRONTEX's tasks are: coordinating operational cooperation between Member States in managing the external borders, assisting Member States in training national border guards, including the establishment of common training standards, conducting risk analyses, provides Member States with the necessary support for organizing joint return operations, and assistance to Member States in circumstances requiring increased technical and operational assistance at external borders. Regulation on setting up rapid border intervention teams was adopted in 2007 which expands the FRONTEX action. The Rapid Border Intervention Teams (RABITs) consists in the creation of a pool of experts from the Member States, trained by FRONTEX that can be deployed for a limited period of time in exceptional and urgent situations. Under the principle of "mandatory solidarity", Member States will have to contribute deploying trained border guards at the request of the agency for external borders, FRONTEX. The UK is not a member of FRONTEX, and the UK application to participate was refused by the Council. Therefore, the UK has not taken part in the adoption of the regulation on setting up rapid border intervention teams, and therefore, is not bound by it. However, the government wants to opt into the RABITs. FRONTEX does not constitute a 'European Border Guard' but it does create a coordinating command structure, and it can issue instructions to national border guard forces. The EU External Border Agency represents a major step towards the development of a super-integrated EU network structure of border guard forces. The inclusion of the concept of an "integrated system of external border management" in the Lisbon Treaty represents another step towards the creation of a 'European Border Guard' with massive consequences for national sovereignty. The creation of a European Border Guard entails external border control standards which would have to be implemented by national forces in charge of border controls, all with different powers, priorities and cultures. Moreover, the European Border Guard will have coercive powers. It would require significant changes to Member States' national services on border controls. It remains to be seen what this Lisbon Treaty provision in reality entails in practice but it would mean further integration and interference in the field of border controls.

Of great concern is that the Council acting through special legislative procedure may adopt measures concerning passports, identity cards and residence permits. According to the existing Article 18(3), the Council cannot adopt measures on passports, identity cards, residence permits, social security or social protection to ensure freedom of movement if such measures are not expressly provided for in the Treaty. There is no provision on the EC Treaty conferring express powers for the Community to adopt measures concerning measures on passports and identity cards. However, this had not prevented the Council from adopting a Regulation on standards for security features and biometrics in passports and travel documents issued by Member States using as legal base Article 62(2)(a) TEC, the Community border control powers. The Lisbon Treaty introduces a new legal base, Article 62(3) which provides that if the Treaties have not provided the necessary powers, the Council acting unanimously and after consulting the European Parliament (special legislative procedure) may adopt measures concerning

passports, identity cards, residence permits or any other such document in order to supposedly support the exercise of the right to move and reside freely within the territory of the Member States.

The Lisbon Treaty adds a new paragraph stating that “This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.” In fact, apart from this disclaimer there are not many powers left for the Member States to assert authority on border controls.

Finally, it is catastrophic that the Lisbon Treaty repeals Article 68 TEC involving the limits of ECJ power. According to Article 68 (2), the ECJ shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62 (1), measures with a view to ensuring the absence of any controls on persons when crossing internal borders, relating to the maintenance of law and order and the safeguarding of internal security. However, Article 240b of the Lisbon Treaty expressly excluded ECJ jurisdiction “to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security” but within the provisions of Chapters 4 and 5 of Title IV, judicial cooperation in criminal matters and police cooperation, the ECJ will have jurisdiction.

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**ASYLUM AND MIGRATION POLICY: UK SURRENDERS MASSIVE CONTROLS  
OVER COMMON ASYLUM SYSTEM, LOSES VETO  
AND FINANCIAL PENALTIES ARE IMPOSED  
[ARTICLE 63]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 2 – Policies on border checks, asylum and immigration, Article 63*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 65, replacement Chapter 2 and Articles 62 to 63b TEC (TFEU) relating to policies on border checks, asylum and immigration; and

(ii)’.

The conditions of asylum demanded by the existing Article 63 TEC have now been met. Under existing Article 63 TEC, the Council was already required to adopt within a period of five years after the Amsterdam Treaty entered into force (by 2004), measures on asylum, in accordance with the Geneva Convention of 1951 and the Protocol of 1967 relating to the status of refugees and other Treaties concerning the criteria and mechanisms for determining Member State responsibility when considering an application for asylum, minimum standards on the reception of asylum seekers, minimum standards on qualification of national of third countries as refugees, minimum standards on procedures for granting or withdrawing refugee status as well as measures

concerning to minimum standards for temporary protection of displaced persons and promoting balance of effort between Member States receiving refugees and displaced persons. The 1999 Tampere European Council decided that a common asylum policy should be implemented and a common European asylum system to be set up in two phases. A first set of minimum standards and measures had to be adopted by 2004 according to Article 63 TEC. The elements of the first phase are already in place.

The Lisbon Treaty underpins the fact that the crucial objective of the Common European Asylum System will be the establishment of a common asylum procedure. There are four main legal instruments on asylum: the Reception Conditions Directive (minimum standards for the reception of asylum seekers), a Directive on minimum standards in asylum procedures for granting and withdrawing refugee status, a Directive on qualification and content of refugee status and on subsidiary forms of protection and Regulation on criteria and mechanisms for determining the State responsible for examining asylum requests (the Dublin Regulation, replacing the Dublin Convention). It has also created the European Refugee Fund aiming at enhancing solidarity between Member States. Its aim is to support Member State's efforts in granting reception conditions as well as actions concerning integration and repatriation of refugees, displaced persons and beneficiaries of subsidiary protection. The crucial objective of the Common European Asylum System is the establishment of a common asylum procedure and a uniform status for persons in need of international protection valid throughout the EU. According to the Hague Programme which was adopted in 2004 this second phase should be adopted by the end of 2010. It should be recalled that the UK is finalising the implementation of the first phase of the CEAS on setting minimum standards. The Commission is planning to present further proposals to establish a common asylum procedure during 2008. The UK has opted in to all the Regulations and Directives mentioned above and under Lisbon will further bind itself into a fully-integrated common asylum policy, the conditions of which will be legislated for in Brussels and not Westminster.

The Lisbon Treaty is a clear reflection of political decisions already confirmed at the Tampere European Council. Hence, the Lisbon Treaty confirms the EU commitment to the development of common asylum policy expressly stating on Article 63 (1) that "The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement." The present Article 63 (1), establishes measures on minimum standards for refugees and asylum seekers Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties. The new Article 63 (1) also states that the common policy on asylum must be in accordance with the Geneva Convention and the Protocol of 31 January 1967 and other relevant treaties. It expressly states that the common policy on asylum, subsidiary protection and temporary protection has to comply with the principle of non-refoulement. According to MigrationWatch, "this framework of legislation ... has proved thoroughly unsatisfactory as a framework for tackling the modern phenomenon of very large scale economic migration often disguised as asylum seeking. It results in an extremely lengthy and expensive process for deciding asylum claims and, by restricting the use of detention, it renders removal very difficult." The UK is giving away control of such a crucial policy area that the UK Government must oppose it. The common asylum policy goes beyond the Geneva Convention and due to accompanying EU social welfarist legislation, this will

lead to a huge increase in asylum applications. The evidence shows that the UK is the destination of choice.

It is unsurprising to discover that the grounds for Treaty changes towards a common asylum procedure are well under way. According to the present Article 67(5) TEC the Council may, acting by qualified majority voting through the co-decision procedure, adopt the asylum-related measures and measures on refugees and displaced persons provided for in Article 63(1) and (2)(a) provided that the Council has, unanimously and after consultation of the European Parliament, adopted Community legislation defining the common rules and basic principles governing those issues. The decision-making has changed from unanimity voting to QMV and from the consultation procedure to the co-decision – legislation setting out common rules and basic principles on all these asylum issues have already been adopted. Moreover, according to the Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, from January 2005 measures on refugees and displaced persons concerning promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons are adopted through the co-decision procedure and by QMV.

This provision of Lisbon provides a new legal basis for the common European asylum system. According to the new Article 63 (2), measures for common European asylum system will be adopted by the Council, acting by QMV, and the European Parliament through the ordinary legislative procedure as at present. However, the competence of the Union will be enhanced. The Lisbon Treaty provides a new legal basis and incorporates the concept of a "common European asylum system." The Lisbon Treaty confers upon the Union further powers to harmonise the Member States asylum systems as it sets a new list of Union competences.

The measures for a common European asylum system comprise "a uniform status of asylum for nationals of third countries, valid throughout the Union," "a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection", "a common system of temporary protection for displaced persons in the event of a massive inflow" and "criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection." The Lisbon Treaty removes the reference to minimum standards so there will common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status and standards concerning the conditions for the reception of applicants for asylum or subsidiary protection rather than minimum standards. Hence, the minimum standards will be amended into common measures.

The Treaty provisions block the UK from acting directly with third countries in managing asylum. The Lisbon Treaty introduces a new clause concerning the external dimension of asylum policy in Article 63 (2/G) which enables the adoption of measures relating to "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection." It should be noted that the European Parliament and the Council adopted in 2004 a Regulation establishing a programme for financial and technical assistance to third countries in the areas of migration and asylum (AENEAS) using Article 179 as a legal base on development cooperation. This programme is aiming to give financial and technical aid to third

countries in order to support their efforts in better managing migratory flows. Article 63 (3) replaces paragraph 2 of Article 64 TEC, stating that “In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.” The Lisbon Treaty introduces the obligation to consult the European Parliament even if its role is limited and the Treaty removes the requirement that such measures should not exceed six months.

As there is no veto power and the measures are adopted through the co-decision procedure, the UK suffers a reduced influence in not only having a say in the development of an EU common asylum policy, but in asserting its own independent asylum procedures. The UK may also incur financial penalties. The UK has an opt-out from the area of freedom, security and justice, but it is bound by the asylum Regulations and Directives on minimum standards which might be subjected to amendments. According to a new Article 4a inserted in the Protocol on the position of the United Kingdom and Ireland, the UK is not bound by measures amending existing measures yet there may be difficulties with this assertion. If the Council determines that the non-participation of the United Kingdom in the amended version of an existing measure makes the application of that measure inoperable for other Member States, the Council may urge the UK to participate. If the UK decides not to participate in the existing measure, it is no longer binding upon it and it will bear the direct financial consequences of opting out. Therefore, the UK might be clearly forced into participating in asylum legislation which runs counter to the national interest. The Lisbon Treaty will hamper the UK’s ability to make its own asylum policies and laws. It will lead to a further loss of the UK’s control over its asylum system.

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**ASYLUM AND MIGRATION POLICY:  
TREATY ENSURES SOLIDARITY PRINCIPLE WILL GOVERN OVER IMMIGRATION,  
ASYLUM AND BORDER CONTROL POLICY  
[ARTICLE 63b]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IV – Area of Freedom, security and Justice, Chapter 2 – Policies on border checks, asylum and immigration, Article 63b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 65, replacement Chapter 2 and Articles 62 to 63b TEC (TFEU) relating to policies on border checks, asylum and immigration; and

(ii)’.

The Lisbon Treaty introduces a new legal base, Article 63b providing for “The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to

this Chapter shall contain appropriate measures to give effect to this principle." The Lisbon Treaty makes the principle of solidarity an almost socialist-styled principle of the Union's asylum, immigration and border control policies. Article 63b also makes an explicit reference to "financial implications" – financial implications which will amount to vast amounts of the British taxpayers' money being spent on European funds. The Member States will have to share the costs of asylum, immigration and border control policies and although the UK has an opt out in this area, it is clear that the "financial implications" will be significant for the UK.

The idea of solidarity and burden-sharing between the Member States in the response to migration and asylum challenges, however, is not new. The European Parliament and the Commission have been calling for greater solidarity between Member States. The Hague Programme also stresses that the development of a common policy in the field of asylum, migration and borders "should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical co-operation between member states". The Commission adopted, in 2005, a framework programme on solidarity and management of migration flows for the period 2007. The Commission proposed financial solidarity mechanisms covering the areas of controls and surveillance of external borders, return of third-country nationals residing illegally in the EU, integration of legally resident third-country nationals and asylum.

The Council and the European Parliament have already adopted decisions establishing different funds, including the European Refugee Fund, the European Integration Fund and the European Return Fund. Nevertheless, there had been no Treaty provision requiring solidarity and burden-sharing between Member States in the implementation of asylum or immigration policies until the enforcement of the solidarity principle in this area.

## Part II – Opposition to the Treaty of Lisbon on: energy (as debated in the House of Commons on Wednesday 30 January 2008)

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### UK PARLIAMENT MUST LEGALLY SUBMIT TO UNION IF AND WHEN UNION ACTS FIRST ON ALL LEGISLATIVE MATTERS [ARTICLE 2C]

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Common Provisions, Title I Categories and areas of Union Competence, Article 2c*

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#### **William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 12, new Title and new Articles 2A to 2E TEC (TFEU) relating to categories and areas of European Union competence; and

(ii)'.  
'

The Lisbon Treaty has formalised the idea that Member States competences will be limited once the Union has acted. This Article concerns areas of shared competence between the Union and the Member States. The present areas of shared competence are not explicit in the current Treaties. Under Article 2C, the areas of shared competence will be the following: internal market, social policy, economic, social and territorial cohesion, agriculture and fisheries, environment, consumer protection, transport, trans-European networks, energy, area of freedom, security and justice, common safety concerns in public health matters, for the aspects defined the Treaty, research, technological development and space and development cooperation and humanitarian aid. Energy and space policies are new Union competences. A vast range of activity, which should be under the remit of the UK Government, will be handed over to EU control.

It is a substantial concern that the Member States will only be allowed to adopt legislation if the Union has not already exercised its competence. National governments would only be able to do what the EU has decided not to. It is not a "shared competence" with the Member States but an assertion of the primacy of Union activities over those of the Member States. In this sense, it is possible to argue that these policies are the Union's exclusive competences (and not shared competences). The Member States are not allowed to legislate in these areas if the Union decides to act. If there are severe doubts, the European Court of Justice will decide. Obviously, the ECJ will have a major role in the interpreting and deciding on the competence boundaries and it will do so in name of the uniform application and effectiveness of EU law.

It should be noted that Article 2C(2)(k) refers to "common safety concerns in public health matters" while Article 2E(a) refers to "protection and improvement of human health" as a supporting competence. The two were possibly confused. If the EU exercises competence in a shared area, the Member States will simply be left unable to act. The list of areas that fall under the "exclusive competence" and the supposed

“shared competence” include a substantial number of policies that will negatively affect the everyday lives of the citizens within nation-states. It is unacceptable that such a provision be imposed upon UK citizens since it surrenders their sovereign right to be governed by the UK Parliament on those matters.

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**ENERGY: WITH AMBIGUOUS “SPIRIT OF SOLIDARITY”,  
EU SEEKS NEW BASIS FOR COMMON ENERGY POLICY  
[ARTICLE 100]**

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*Policy Area: Treaty on the Functioning of the European Union, Article 100*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 87, amendment to Article 100 TEC (TFEU), relating to difficulties in the supply of certain products (energy); and

(ii)’.

This article, part of the section on economic policy, is given a new title, *Difficulties in the Supply of Certain Products (Energy)*. It provides an unacceptably vague new statement on energy. The first paragraph removes the reference to a vote by qualified majority and adds a reference to energy, as follows: “Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy”. The additional sentence adds “notably in the area of energy”.

Its demands are such that the basis for a common energy policy may now be decided on the spurious grounds of “a spirit of solidarity”. It is inconceivable that such abstractions will be used to define the basis for a common energy policy.

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**ENERGY: UK SURRENDERS DECISIONS OVER ITS GLOBAL ENERGY POLICY  
TO THE EU COMMON ENERGY POLICY BASED ON “SPIRIT OF SOLIDARITY”  
[ARTICLE 176A]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three, Policies and Internal Actions of the Union, Title XX, Energy, Article 176A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 147, new Title XX and new Article 176A TEC (TFEU), relating to energy; and

(ii)’.

The new Article 176A relates to the European Union’s massive push toward a harmonised common energy policy. Such a move is anti-competitive in the global marketplace of energy resources and does nothing to serve in the interests of further liberalization of the energy market. Some research has suggested that the energy measures within the Lisbon Treaty may cost UK taxpayers up to £6 billion. The UK needs a truly global energy policy, not one determined and sanctioned by the EU.

The EC treaty has not previously established an EU competency on energy. However, the EU has been shaping the energy sector through its competencies with regards to the internal market, competition policy and the environment. The Union has been using its powers in other areas as the internal market and the environment to regulate energy policy issues. The 2007 Spring European Council adopted the EU Energy Action Plan for the period 2007-2009 which comprehends several priority actions concerning energy efficiency, use of renewable energies, completion of the EU’s internal market for gas and electricity. The European Council has also stressed “the need to enhance security of supply for the EU as well as for each Member State.” It has called for the “development of a common approach to external energy policy.” All of this has rested upon the presumption that the Lisbon Treaty – or the provisions which should have come into force under the original EU Constitution – would enable Member States to enact those laws.

The Lisbon Treaty introduces a new legal basis, allowing the Union to establish measures relating to energy policy. The insertion in the Lisbon Treaty specifically on energy is a huge step forward towards the common energy policy. Energy is one of the Union’s supposed “shared competences” with the Member States. The Member States will only be allowed to adopt legislation if the Union has not exercised its competence already. In brief, national governments would only be able to legislate on policy areas on which the EU has decided not to.

Referring to Article 176A, Alan Duncan MP said in the House of Commons on 30 January: “Our Government has essentially written a blank cheque to Brussels, which could in certain circumstances oblige the United Kingdom, for example, to assist in the building of other member states’ energy infrastructure, or even to supply them with energy during times of emergency.”

The Union gains the competency to direct the objectives of energy policy. Article 176 A (1) expressly states that energy policy should be carried out on the spurious grounds of a “spirit of solidarity” between Member States. The Union policy on energy aims to “ensure the functioning of the energy market, ensure security of energy supply, promote energy efficiency and energy saving and the development of new and renewable forms of energy and to promote the interconnection of energy networks.” The Lisbon Treaty allows the Union to direct the objectives for energy policy.

It is clear that Lisbon will mean that the UK would be required to supply energy to (or share energy with) another Member State in the case of a crisis. Under Article 176A (2) measures on energy shall be adopted through the “ordinary legislative procedure” (co-decision) with the Council acting by a QMV, after consultation of the Economic and Social Committee and the Committee of the Regions. Energy is an issue of vital national interest and the UK will not be allowed to veto damaging EU laws in this area. The Union will harmonise the functioning of the energy market. The Energy policy also includes guaranteeing “security of energy supply.” The reference to solidarity is strengthened by an amendment to Article 100 stating that “... the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.” The Council will act by QMV. This was a concession to Poland which wanted guarantees that it would receive help from other Member States if their energy supplies were cut off. It is not clear what the spirit of solidarity will entail for the UK, but the UK would be required to supply energy to another Member State in the case of a crisis.

The situation does not logically make any sense. Peter Lilley MP said in the House of Commons on 30 January that “We in this country have the biggest reserve of oil and gas in Europe. We would therefore share something positive with countries that face risks but do not have the same resources to share with us in the event of our needing their help. We have also diversified slightly more than other countries, especially in opening up to achieve 20 per cent. of our gas supplies from Qatar. That will relieve at least some of our dependence on future gas supplies from Russia and central Asia. I do not therefore understand the logical case for us, in our specific circumstances of being the principal oil and gas producer, to share risks and supplies with other countries.”

Moreover, the EU will decide how energy is produced and will promote the interconnection of energy networks. Article 176 A (2) states that such measures “should not affect the right of a member state to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 175 (2) (c )”. This Article states that decisions “significantly affecting a member state’s choice between different energy sources and the general structure of its energy supply” are to be adopted by unanimity. This is unacceptable for the UK to accept these conditions – Parliament may be refused the right to act on any decision to implement either nuclear energy solutions and even worse, dispute the sovereignty of the UK’s vast coal reserves. Even if the UK were allowed to maintain its position (which would be against the terms of this provision), it will be heavily regulated by the European Union before it could ever go ahead. Such provisions in the Treaty must be blocked, as an energy policy must be properly legislated for at Westminster.

Under the terms of the Lisbon Treaty, the basic control of national energy policy is actively being transferred from Member States to the EU. The Lisbon Treaty will have a huge impact on the ability for Britain to determine its own competitive energy policy. This will prevent it of being able to guarantee flexibility to US contracts and interests in the UK, as it will for any other Member State. This will lead to huge instability in (rather than guaranteeing) the security of supply and also insecurities in the foreign policies of both the EU and the US in terms of their cooperation and agreements with oil-rich Middle Eastern countries.

In the interests of the United Kingdom, the Government must not accept those provisions on energy, their practical implications nor the right to legislate over those matters. The Government is already in urgent need – as one analyst of UK coal policy has said – of supporting privately owned industry whose retention is in the nation's security and economic interest, supporting the implementation of less draconian environmental planning rules for sites of any proposed new mines (deep or opencast), embracing the rhetoric and policy of clean coal technology, and supporting new clean coal stations. It also has intentions, as it has made clear, to develop a new basis for nuclear power stations. All of this, then, appears to be greatly jeopardised by the fact that the Government has signed the Lisbon Treaty – built on a completely flawed anti-market European energy model which will deliver nothing but unaffordable price hikes for the voters of this country. They will not be thankful, especially knowing that the Government had been warned of this disaster before signing the Treaty.

### **Part III – Opposition to the Treaty of Lisbon on: human rights (as debated in the House of Commons on Tuesday 5 February 2008)**

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#### **HUMAN RIGHTS: EU'S PRIORITY OF EUROPEAN HUMAN RIGHTS AGENDA NOT IN UK'S INTEREST OF FREEDOM AND DEMOCRACY [ARTICLE 1a]**

*Policy Area: Treaty on European Union, Title I, Common Provisions, Article 1a*

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The detailed entitlement of rights – embodied in the Articles of the Lisbon Treaty and the new Charter of Fundamental Rights – will represent a massive change in the way in which people are governed and who they are governed by. It is true that the Union values are already established and clarified in several of the Treaty Articles. The existing Article 6 of the TEU states that “The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States”, whilst the TEC’s Preamble refers to “peace and liberty”, and Article 2 TEC refers to “equality between men and women.” The present statement of “rights of persons belonging to minorities” is new to the Lisbon Treaty.

This latter change is intended to create new sets of social rights legislation which are to be accorded to different minorities. Although it implies positive changes, this has obvious negative consequences – the United Kingdom has already suffered under excessive and unreasoned human rights legislation, blossoming under the passing of the Human Rights Act in 1998, which implemented the European Convention of Human Rights. This was to the great detriment of the British people and will be further exacerbated as the British people are increasingly forced to live under a European ‘minority rights’ agenda, not only out of character with British political culture but running counter to the equal application of the rule of law.

This Article assembles those values which it deems to be the Union values. However, Member States assign different priorities to the different Union values and the precise ordering of values within a national culture informs the way in which they are to be governed. The British people do not want to be governed by a European government under an oppressive set of politically instructive doctrine of European rights. That is exactly what the Lisbon Treaty is demanding of them.

Furthermore, the Union – which claims to assert such a body of human rights – has not been founded on democracy, and to a large degree, it is recognised as undemocratic (most notably because the greater part of its law-making officials are unelected). There is no singular European *demos* which can provide the EU with a democratic basis. People do not identify and are not involved in the decisions made by the EU. They largely consider the EU a bureaucratic machine. The European Commission which has the immense power to propose legislation – and now proposes laws which make up over 60 per cent of Britain’s statute book – is not an elected body, and it is unaccountable. The Commissioner’s meetings, from which laws are derived, are held behind close doors. That does not do justice to the claim that the Union is founded on democracy,

freedom or the rule of law, all of which are compromised by the primary assertion of the human rights.

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**HUMAN RIGHTS: TREATY DEMANDS EXTENSIVE PROTECTION OF RIGHTS IN  
NON-EU STATES, BRITISH ‘EURO’, REPLACEMENT OF NATO FORCES  
WHILST REJECTING “FREE AND UNDISTORTED COMPETITION”  
[ARTICLE 2]**

*Policy Area: Treaty on European Union, Title I, Common Provisions, Article 2*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 4, inserted Article 2 TEU relating to the objectives of the European Union; and

(ii)’.

The new Article 2, Paragraph 5 focuses on the **protection of the EU human rights agenda** beyond the Union area. It claims that in its relations with the wider world, the Union shall uphold “the protection of human rights”, based upon its new provisions for human rights. Since that will include the Charter and the provisions of this Treaty, this must be stopped. Given that under the terms of Lisbon, the EU will begin to forcefully represent the UK’s interest beyond the European Union and into the wider world, its intention is to actively use the provisions of the Lisbon Treaty as external benchmarks for external action. Again, the UK Government will have surrendered its decision-making over the necessity for human rights benchmarks it should have set for future diplomacy, trade and cultural relations with non-EU countries. The UK is sacrificing such important diplomatic, economic, trade and cultural relations whilst it continues to respect the protection of an oppressive European rights doctrine.

- The Treaty makes claims to **promoting peace**. Article 2, in particular, establishes as a Union objective, the goal of peace. The aim of promoting peace across the globe (and not just in Europe) is something which has been set aside for the UN and NATO, in which Britain already plays a major role. What right does the EU have to assert this within an EU Treaty?
- The Treaty makes claims to **respecting the border controls** of nation-states. Contrary to the Article, the Union does not respect Member States’ borders control and is thus, moving forward towards a common asylum and immigration policy. With the 1998 Amsterdam Treaty, visas, asylum, immigration and other policies related to free movement of persons were transferred from the intergovernmental to the EC pillar becoming subjected to majority voting and the scrutiny of the European Court of Justice. Furthermore, under the Immigration Regulations 2006 which transposed the provisions of the Directive 2004/38/EC into UK domestic legislation, all citizens of the European Economic Area (EEA) acquired the right to come and live in the UK with their families. Member States should be able to keep their sovereign right to control their borders yet such right seems to be even more remote as we move toward a common migration and asylum policy within the Lisbon Treaty.

The Treaty **promotes the internal market** as a top priority. It commits itself to such provisions even in face of the picture that such market provisions do not work in the new globalised economy. Protectionism, which is an inherent principle of Europe's regional trading bloc, is still rife. A "social market economy" equals low growth and high unemployment. Europe is not even near to achieving full employment, and its objectives set as part of the Lisbon strategy for growth and job-creation have clearly failed.

- The Treaty attempts to lay down provisions for the **protection of the environment**. However, Europe's objective for the protection of the environment is simply not working, and there are many cases in which this has been established – for instance, the EU Emission Trading Schemes are not reducing but increasing CO2 emissions.

The Union must simply not take it upon itself to **combat social exclusion and promotion of social justice**, since this is a Member State responsibility. Not only does it differ between states as to what "social justice" is, but this assumes that ultimate control over justice and home affairs legislation is possible. Britain already has an organised programme for defining and managing social exclusion.

- The Union's promotion of "economic, social and territorial cohesion and solidarity among Member States" is an effective way of increasing Member State dependence on **massive structural funds**. It has committed itself to this principle when it is abundantly clear that a subsidised Europe is now a failed Europe.

Whilst, under current arrangements, it remains within the power of the UK to repeal or amend aspects of the *acquis*, it is unlikely that this power would survive the Reform Treaty's enhanced measure to "build on" the *acquis communautaire*. Of course, this will strangle the lifeline of British business and indeed European business – with EU regulations currently costing €600 billion per year according to one Industry Commissioner – if there is not a clause within the parliamentary Bill expressly reaffirming the sovereignty of Parliament.

- The Union has not respected each Member State's **cultural diversity** and any assertion in the Treaty must be taken as a token of excessive European cultural assimilation.

Paragraph 4 again **strengthens the euro** as the EU's currency. It implies that UK must adopt the euro at some point in the future.

- Paragraph 5 refers to the Union's relations with the "wider world." It has not yet realised that it is not the Union's job to **create and supervise peace and security** across the globe but NATO and the UN.

The Treaty will not enable the Union to contribute towards "**free and fair trade**." In fact, Doha is a good example of where EU protectionist trade is jeopardising both the developed global trading structure and the developing world.

- Many of the new objectives are already provided in Article 2 TEU, Article 2 and 3 TEC as well as in various Articles of the TEC but most astonishing of all is that there

is no mention as to whether the Union's objective is **free and undistorted competition**. Since it is such an essential feature of the Internal Market, it must be noted that the French President (Sarkozy) was able to negotiate the removal of free and undistorted competition from the Treaty, which represents a real threat to free competition. The reference to undistorted competition was moved to the Protocol on the Internal Market and Competition, annexed to the Treaties. This section of the Treaty makes no effective legally binding statement that would be able to defend the objective of free and undistorted competition.

- The provision states that “The Union shall pursue its objectives by appropriate means commensurate with the competences which are conferred upon it in the Treaties.” It is well known that in relation to shared competences, **the principle of subsidiarity** does not work. Moreover, if there is not a specific legal base for some of the Community's objectives, Article 308 of the EC Treaty states that: “If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate measures.” This Article will continue to be used and abused – under the Reform Treaty's enhanced measures for gaining shared competencies – by the Commission as the legal base for measures which have no connection with the operation of the common market. The Union has for far too long been extending its competences ignoring the Member States competences and interests.

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**HUMAN RIGHTS: UK SUBJECT TO NEW EU CHARTER OF  
FUNDAMENTAL RIGHTS  
[ARTICLE 6]**

*Policy Area: Treaty on European Union, Title I, Common Provisions, Article 6*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 1, paragraph 8, replacement Article 6 TEU relating to rights, freedoms and principles; and

(ii)'.

Although the Charter of Fundamental Rights – an alien European body of oppressive rights – was not incorporated into the Lisbon Treaty itself it will be a legally binding declaration. Member States are required to comply with the Charter when implementing Community law. Since the European Scrutiny Committee (ESC) has proved and concluded that there was an insufficient achievement of a 'red line' on the Charter, this Charter will have application with significant implications within the UK.

When the House of Commons debated human rights provisions of the Treaty of Lisbon on 5 February, Bill Cash MP stated “It is absolutely clear from the European Scrutiny

Committee report and from other eminent analyses ... that there is no doubt that the charter of fundamental rights will be made applicable in the UK sooner or later by the European Court of Justice. It will catch up with the Government, just as the working time directive caught up with us ...”

The Charter will be directly and legally binding for the European institutions, and Member States when implementing Union law. Obviously, Member States are obliged to ensure that in all areas of activity, to ensure that the “fundamental rights” are respected. The Member States will have an onus upon them to respect fundamental rights when legislating and implementing their respective national policies.

The European Court of Justice (ECJ) will have the jurisdiction to hear actions brought by the Commission against a Member State for infringing the Charter when implementing Community law. Through the preliminary reference procedures, issues such as the compatibility of a Member State action while implementing Community law with the Charter or compatibility of Community legislation with the Charter will be referred to the ECJ.

The UK has a Protocol on the Application of the Charter which the Minister of Europe as well as the Foreign Secretary has explained to European Scrutiny Committee is not an opt-out from the Charter but "it is a statement of how the Charter provisions will apply in the UK." Moreover, they say "the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law". However, the preamble to the Protocol stressed "... that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally." Hence, the Protocol will not prevent the Courts of England, Wales, Scotland and Northern Ireland from being bound by the ECJ interpretations of Union law measures based upon the Charter.

Under Article 3a of the Lisbon Treaty and to ensure the uniform application of the Union law in the respective Member States, the national courts are compelled to follow an ECJ ruling when interpreting a measure of Union law in a case arising in another Member State. According to the ESC, “the only way of ensuring that the Charter does not affect UK law in any way is to make clear, ... that the Protocol takes effect “notwithstanding the Treaties or Union Law in general.”

According to the Lisbon Treaty, “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms” while, presently, the TEU does not provide for accession. According to the ECJ opinion 2/94, the EU lacked competence to become party to the ECHR. Taking into account that the accession to the ECHR is restricted to the Council of Europe Member States’, this is another clear example of the Union trying to act with the political powers of a state. Obviously, this will entitle the Union to bring Member States before the European Court of Human Rights. There is simply no need for the Union to accede to the ECHR.

Moreover, this provision dangerously enhances the existing ECJ case law stating that “Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law.” The UK’s Protocol will not exclude the UK from the application of the EU’s

accession to the ECHR, or the general principles of EU law – and therefore, the provisions will deepen the detrimental impact the ECHR is having on the UK.

The assertions of the Charter will not respect British national traditions. David Lidington MP responded to the Government's case in the House of Commons on 5 February when he claimed that "The Government point to paragraph 4 of the charter's article 112. It requires that rights must be 'interpreted in harmony' with the 'constitutional traditions common to the Member States.' ... The problem, once again, is that the decision about whether a particular interpretation of rights is 'in harmony' with national traditions will be made not by national Governments or Parliaments but by the ECJ. The ECJ will not be under a duty to look separately at each country's national traditions. ... Where national traditions differ, ECJ judges will decide what balance they wish to strike. The President of the ECJ could not have made that clearer when he said that 'common constitutional traditions do not form a direct source of Community law and the Court of Justice is not bound by them'..."

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**HUMAN RIGHTS: TREATY TO ENFORCE AN OFFICIAL EU CITIZENSHIP –  
BRITISH CITIZENS TO BECOME EU CITIZENS  
[ARTICLE 8]**

*Policy Area: Treaty on European Union, Title II, Provisions on Democratic principles, Article 8*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 1, paragraph 12, replacement Title II and Article 8 TEU relating to provisions on democratic principles; and

(ii)'.

This provision on the principle of "democratic equality" is an attempt to bring the Union closer to its citizens. It is not in Britain's interest to further pursue a policy on European citizenship when this policy is creating well-documented damage to the British policy on citizenship, immigration and asylum, and more, importantly, marks an attack on Westminster parliamentary democracy.

The various peoples of Europe in general do not want to feel closer to the Union, and find the Union undemocratic and unaccountable. The last two sentences were added, clandestinely, in the October draft at the request of the European Parliament which was seeking to raise the profile of EU citizenship.

The concept of EU can already be found in Article 17 EC which states that:

"1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby."

With the Lisbon Treaty, the Union's citizenship is "additional to national citizenship." This provision creates dual citizenship for each individual. However, since there is not a European *demos*, the Union will never have the legitimacy, loyalty or respect from each Member State's citizens as they have towards their own state. The concept of EU citizenship is a widely criticised notion – states have citizens, and since no provision has been made to ensure that the European Union is recognised as a legal state within Europe, it cannot have citizens or citizenship. Even if an EU citizenship is enforced, the peoples of Britain should not be legally obliged to obey it.

Up until now, nobody could be a citizen of a European single state but under the Lisbon Treaty each citizen of each Member State will become a citizen of the Union. An EU citizenship implies certain Euro-centric rights and duties, yet each Member State citizen already has different national rights, obligations and duties to the state and between individuals. It is clear that the citizens of each Member State will have to respect the Union as a higher authority than their own states. Moreover, it seems, the legal rights and duties inherent to Union citizenship will be given primacy in cases of conflict with the ones of the national state since the Union law is superior.

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**HUMAN RIGHTS: EU INTERFERES WITH MOVEMENT OF UK PERSONAL DATA  
RELATING TO CRIME, JUSTICE AND TRAVEL  
[ARTICLE 16B]**

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Title II Provisions having general application, Article 16B*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 29, replacement Article 16B TEC (TFEU) relating to the protection of personal data; and

(ii)'.  
'

The Lisbon Treaty, under Article 16 B (1), recognizes the right of everyone to the protection of personal data. The new Article 16B (2) provides for the adoption of rules "relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies, and by the Member States when carrying out activities which fall within the scope of Union law, and the rules relating to the free movement of such data." Such rules will be decided by Qualified Majority Voting in the Council and the European Parliament acting under the Ordinary Legislative Procedure (co-decision procedure). It adds that "Compliance will be subject to the control of independent authorities." However, it has not recognised the European Data Protection Supervisor (EDPS) that on the basis of Article 286 (2) was established in 2004 to supervise the processing of personal data by Union institutions under EC law.

This is not unprecedented. Under the present Article 286 it is merely provided that "Community acts on the protection of individuals with regard to the processing of personal data and the free movement of such data shall apply to the institutions and bodies set up by, or on the basis of, this Treaty." Moreover, it calls for the Council to establish an "independent supervisory body responsible for monitoring the application of such Community acts to Community institutions and bodies and shall adopt any other relevant provisions as appropriate." This Article is substantially changed by the Lisbon Treaty and it was renumbered Article 16B.

Again, this is not unprecedented. There is already a directive harmonising national data protection law within the scope of the first pillar, Directive 95/46/EC of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data and there is a Commission's proposal for a Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters which is under discussion.

The protection and movement of court, police and judicial data in Britain will now be subject to EU interference. There is a Declaration on Article 16 B of the Treaty on the Functioning of the European Union and a Declaration on the protection of personal data in the fields of judicial cooperation in criminal matters and police cooperation which states "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 16 B of the Treaty on the Functioning of the European Union may prove necessary because of the specific nature of these fields." The Lisbon Treaty now incorporates police and judicial cooperation in criminal matters in the Treaty on the Functioning of the European Union (TFEU) so, the TFEU will cover data protection by the Member States within the scope of first and existing third pillar matters. Therefore, the rules of Directive 95/46/EC and Regulation Regulation (EC) N° 45/2001 on protection of individuals with regard to the processing of personal data by the Community institutions and on the free movement of such data will apply to the processing of personal data in the area of police and judicial cooperation in criminal matters. The Directive 95/46/EC states that these rules are not applicable to the processing of personal data in the course of an activity which falls outside the scope of Community law (such as those provided for by Titles V and VI of the Treaty on European Union), however Title V will no longer be an activity which falls outside the scope of Community law. The protection of personal data is a very sensitive area and it should be left to the responsibility of Member States. The European Parliament and the Council are free to adopt, on the proposal of the Commission, further legislation in this area.

The protection and movement of travel data will be subject to EU interference. The Commission also adopted a proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes which again raises concerns over privacy and data protection issues in the field of travel data.

Foreign policy data will be excluded from intervention. This Article states that "The rules adopted on the basis of this Article shall be without prejudice to the specific rules laid down in Article 25a of the Treaty on European Union." Therefore, data protection within the scope of the EU's foreign policy is excluded from the scope of this Article.

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**HUMAN RIGHTS: BRITISH CITIZENS WILL BECOME EU CITIZENS,  
SURRENDERING THEIR NATIONAL CITIZENSHIP FOR LOYALTY TO THE UNION  
[ARTICLE 17]**

*Policy Area: Treaty on the Functioning of the European Union, Part II, Non-Discrimination and Citizenship of the Union, Article 17*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 34(b) to (d), amendments to Article 17 TEC (TFEU) relating to the rights and duties of citizens of the European Union; and

(ii)'.

The Treaty falsely states that Union citizenship will occur but this will not take the place of national citizenship. The claim that Union citizenship will be merely supplementary is highly suspicious and must be voted against. Under the present Article 17 (1), it is confusingly stated that "...Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship." The Lisbon Treaty provides that "Citizenship of the Union shall be additional and not replace national citizenship," which was added at the request of the European Parliament. The Lisbon Treaty confirms the existing concept of the Union citizenship and massively develops it.

There is a new definition of European citizenship which will provide each citizen with a real dual citizenship: Union citizens and citizens of their national states. Each citizen can only be a citizen of its State. However, with the Lisbon Treaty every citizen is demanded to have the loyalty to the Union as to their own State. However, citizens do not trust the European institutions, nor want to have loyalty to it, and have no identification with the creation of a European demos. Although it is said EU citizenship will not replace national citizenship, what is meant by that abstraction? When EU citizenship is prioritised and enforced, will that then mean that British citizens can now have British passports, and claim British rights and claim to be judged by the British judiciary under British law. No it will not. The claim that Union citizenship is merely supplementary is a highly suspicious judgement and deserves nothing but complete refutation.

British citizenship will become an abstraction and will mean that the British people have mere entitlements towards an abstracted citizenship. The people's new EU citizenship – with its associated rights and obligations – will take its place. Under the amended Article 17 (2) "Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties" therefore the Lisbon Treaty replaces "this Treaty" by "in the Treaties." Moreover, the Lisbon Treaty adds to this Article a list of rights enjoyed by the Union citizens. It is clear that these rights are already provided for in the existing Treaties [TEC in Articles 18, 19, 20 and 21] which will be further discussed. Article 17 as amended also states that "These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder." This cannot be agreed to and it must be stopped.

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**HUMAN RIGHTS: IMPLEMENTATION OF BINDING CHARTER OF FUNDAMENTAL RIGHTS WILL RESULT IN UNHINDERED CONTROL OVER ENTIRE UK CRIMINAL JUSTICE SYSTEM**  
**[Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom]**

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) the Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom; and

(ii)'.

The EU Charter of Fundamental Rights is no longer a mere declaration. As David Heathcoat-Amory MP said in the House of Commons on 5 February: "The Charter will cease to be a declaration and will become a fully binding document and because it will be part of the treaty, in full, it will be superior to national law." The Charter was approved by the European Council at Nice in December 2000, but at that time, it was limited to a political declaration. This has not prevented the European Court of Justice from referring to rights recognised as "fundamental rights" under the Charter throughout its case law. Despite it having no legally binding character up to this point, it has already had a massive impact on EU law. As Bill Cash MP recently said – even if the Charter of Fundamental Rights is a declaration, "the European Court would still construe any such declaration as being matter for the European Court, taking precedence over those by national judges." Therefore, "putting the Charter in the Lisbon Treaty, in these matters, will hand the jurisdiction to the European Court with even more disastrous consequences than at present."

Although the Charter of Fundamental Rights was not incorporated into the Lisbon Treaty it will be an integral part of it, and it will now be legally binding. According to Article 6 of the Lisbon Treaty it "... shall have the same legal value as the Treaties." Member States are required to comply with the Charter when implementing Community law. Obviously, the ECJ will have jurisdiction to hear actions brought by the Commission against a Member State for infringing the Charter when implementing Community law. Moreover, by the preliminary reference procedures, any concerns such as the compatibility of a Member State act when implementing Community law with the Charter or compatibility of Community legislation with the Charter will be referred to the ECJ.

Mark Harper MP said in the House of Commons on 5 February that "Article 21 of the charter states that there should be no discrimination on the grounds of nationality. That is not limited to European states, as I read it; it means that there should be no discrimination on the grounds of nationality at all. That will have a huge impact on and wide-ranging consequences for our benefit system and our tax system. Again, it might transfer huge amounts of power from this House—people accountable to our electors—to judges."

Terrifyingly, individuals may in any court invoke the Charter of Fundamental Rights when the court matter has a connection to Union legislation. The Charter lays down rights, such as protection in the event of unjustified dismissal, right to limitation of maximum

working hours and the right of collective bargaining and action. These rights will be acted upon in the national courts. It will impose huge burdens on UK business.

The UK has a Protocol on the Application of the Charter which the Minister of Europe as well as the Foreign Secretary have even explained to the European Scrutiny Committee is not an opt out from the Charter but "it is a statement of how the Charter provisions will apply in the UK." Moreover, they say "the Charter provides no greater rights than are already provided for in UK law, and that nothing in the Charter extends the ability of any court to strike down UK law". This Protocol states that neither the UK courts nor the European Court of Justice may declare UK law incompatible with the Charter.

However, the preamble to the Protocol stressed "... that this Protocol is without prejudice to other obligations devolving upon Poland and the United Kingdom under the Treaty on European Union, the Treaty on the Functioning of the European Union, and Union law generally." Hence, the Protocol will not prevent the UK Courts from being bound by the ECJ interpretations of Union law measures based on the Charter.

The UK courts will be politically compelled to follow an ECJ ruling interpreting a measure of Union law. Considering that most UK laws now are merely transposed EU laws, the ECJ will begin to have complete jurisdiction over all areas of the UK. Under existing Article 10 TEC and new Article 3a (3) TEU in order to ensure the uniform application of the Union law in the Member States the UK courts are compelled to follow an ECJ ruling interpreting a measure of Union law in a case arising in another Member State. The UK will be bound by the Court of Justice rulings if it interprets Union law as implemented in other Member States in conditions where the same law is also implemented in the UK.

Bill Cash MP told the House of Commons on 5 February that the previous Government position on the Charter was not the same as the defensive position it holds now: "It is interesting to remember that the Government were opposed to the provisions in the charter of fundamental rights being applied through the treaty and the protocols, and it is equally true that they have tried to put up various roadblocks. I do not think that they have succeeded. Thanks to the European Scrutiny Committee, their cover has been blown."

For instance, the right to limitation of working hours might be used by the ECJ to undermine the UK's opt-out from the Working Time Directive. A Member State may make a reference to the ECJ concerning the interpretation of the working time directive. As the European Scrutiny Committee said, it is possible that the ECJ "having regard to the provision in the Charter that "every worker has the right to limitation of maximum working hours", might find that the derogation from the Directive allowing a waiver of the 48 hours limit on weekly working had to be interpreted more strictly than before." The UK courts would be bound by this ruling. The UK courts will not be able to ignore ECJ rulings when considering the interpretation and validity of UK law implementing Union law.

Past experience of UK-EU relations tells us that the ECJ will interpret measures of Union law such as directives according to the Charter. Hence, the outcome of such interpretation will bind UK courts through the UK obligations under the Treaties and "Union law generally." Hence, according to the ESC "the only way of ensuring that the Charter does not affect UK law in any way is to make clear ... that the Protocol takes effect "notwithstanding the Treaties or Union law generally." The conclusions of the ESC

have not been read or analysed and any intention to pass the Charter and this Protocol will result in massive long-lasting damage on all areas of future UK legislation.

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**HUMAN RIGHTS: EU WILL AGREE TO EUROPEAN CONVENTION ON HUMAN RIGHTS GIVING IT POWERS OF A STATE AND FURTHER DESTROYING BRITISH LIBERTY & SECURITY**  
**[Protocol 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]**

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) The Protocol 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; and

(ii)'

The Lisbon Treaty provides a legal base for the Union to accede to the European Convention on Human Rights (ECHR). In fact, it requires the Union to accede to the ECHR. The Convention is an international treaty which only Member States of the Council of Europe may sign. The EU accession to the ECHR is one more example of the EU merging its institutions into that of a state.

The truth is that the UK is already vastly submerged under the authority of the ECHR, after the introduction of the Human Rights Act in 1998. The Union accession will not add value to human rights protection as the ECHR is already the core of human rights protection in Europe. If anything, the EU accession will become an even more complex process. In the ECHR, there are procedural issues concerning the relationship between the EU and its Member States in proceedings before the European Court of Human Rights and institutional issues regarding the place of the EU in relation to the Court. The EU accession will enable individuals to bring complaints against the European Union institutions directly before the European Court of Human Rights. Moreover, the EU will now be able to bring Member States before the European Court of Human rights. This Protocol must be rejected and the UK must be clear of the consequences of the Union acceding to the ECHR.

The rise of international terrorism, mass movements of people and the increasing rate of technological advance have left the British nation more vulnerable than ever to unconventional and unexpected attack. It is the role of any government to protect its citizens' security and liberty – the fundamental challenge then is to strike a balance that succeeds in safeguarding both. To date, the Labour Government has got this balance severely wrong, by adopting the European Convention on Human Rights through the enactment of the Human Rights Act (1998). The EU accession to the ECHR is proof of the EU merging its institutions into that of a state bound by an oppressive human rights

code, and under which the UK legislature and judiciary are merely subsidiary concerns. This must be stopped.

The Human Rights Act – which was passed by the Labour Government in 1998 and which incorporated the European Convention on Human Rights (ECHR) into UK law – should be repealed and we should withdraw from the ECHR altogether. Until the passing of the European Communities Act in 1972, the proper protection of human rights was guaranteed by established English law: in legislation from Magna Carta to the Bill of Rights and in common law rules enshrining natural justice and denouncing slavery and oppression. Now the judiciary is bound by the HRA and increasingly uses Strasbourg jurisprudence as a precedent. This has led to a battle between our legislature and judiciary, as judges are not required to follow Strasbourg jurisprudence except in so far as it is coterminous with EU law. The accession of the EU to the ECHR will completely undermine the UK's balance between security and liberty.

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**HUMAN RIGHTS: PROTOCOL RECOGNISES APPLICATION OF CHARTER OF  
FUNDAMENTAL RIGHTS TO INTERFERE IN UK ASSESSMENT  
OF INTRA-EUROPEAN ASYLUM**  
**[The Protocol on asylum for nationals of Member States of the European Union]**

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Annexed Protocol No 1 Amending Protocols Annexed to the Treaty on European Union, to the Treaty Establishing the European Community and/or to the Treaty Establishing the European Atomic Energy Community, Article 1(22) relating to the Protocol on Asylum for National of the Union; and

(ii)'.  
'

This Article recognises the application of the Charter of Fundamental Rights. That is to say that the UK will be bound in its assessment of asylum for EU nationals by the Union's new framework in which this assessment must only be conceived in the understanding of the Charter of Fundamental Rights.

This protocol specifies the cases when an application for asylum made by a national of a Member State may be taken into consideration or declared admissible for processing by another Member State. The EU will continue to directly dictate the conditions under which the UK will process an asylum application made by a national of a Member State and declared admissible for processing by another Member State.

The Union continues to, in fact, control asylum applications outside the Courts within the UK. It does not merely undermine our Westminster Parliament – it further undermines the faith of the UK citizens in a manageable asylum system which continues to allow the Union to dictate and further relax the conditions of asylum, regardless of the impact this will have on individuals within the UK.

The Charter of Fundamental Rights would give the ECJ jurisdiction over our rights – taking that power away from our national institutions.

## **Part IV – Opposition to the Treaty of Lisbon on: single market (as debated in the House of Commons on Wednesday 6 February 2008)**

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### **SINGLE MARKET: COMMUNITY COMMON POLICIES WILL TAKE PRECEDENCE [ARTICLE 2B]**

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Common Provisions, Title I Categories and areas of Union Competence, Article 2B*

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#### **William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 12, new Title and new Articles 2A to 2E TEC (TFEU) relating to categories and areas of European Union competence; and

(ii)'.

This Article concerns the enhanced approach in which the Union will grab and maintain new areas of exclusive competence. In particular, it means that the Union will dictate competition rules, misleadingly justified under the functioning of the internal market, as an exclusive competence of the Union. The current Article 5 TEU stresses that "... In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community." However, it has not been determined in which areas the Community has exclusive competence and this has led to legal disputes. The ECJ has been recognizing the exclusive power of the Community within certain areas it has not had competencies in – now it has those competencies. This new Article is a reflection of ECJ practices and existing case law.

The European Community Common Policy approach will take greater precedence than British obligations to third countries and commonwealth countries to the extent that Britain will, in the words of the European Court of Justice, "no longer have the right" to maintain its existing relations. Control over the customs union, the establishing of the competition rules necessary for the functioning of the internal market, monetary policy, common commercial policy and the conservation of marine biological resources under the common fisheries policy are locked into the Union. The last one will allow the Union to further regulate catches or ban fishing in several areas. Hence, to conserve stocks fishing quotas will be further reduced. Moreover, the Lisbon Treaty introduces the Union exclusive competence for concluding an international agreement "when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope."

In fact, in the earlier European Court of Justice case [Case 22-70, Commission v Council] concerning a European Agreement on Road Transport (which is better known

as the ERTA case), the ECJ delineated the concept of exclusive competence. It has stressed that "... each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form they make, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules or alter their scope." This stated provision within the Treaty, the single legal personality and the Common Foreign and Security Policy provisions will remove from the Member States most of their current Treaty-making powers in those areas.

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**SINGLE MARKET: FAILED EU PROTECTIONIST INTERNAL MARKET SET TO CONTINUE WITHOUT ANY OF THE MUCH NEEDED RADICAL REFORM [ARTICLE 22a]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title I – The internal market, Article 22a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 40 to to 45 , inserted Title I and Articles 22a and 22b, renumbered Title Ia, amended Article 23(1), inserted Chapter Ia and Article 27a TEC (TFEU) relating to the internal market; and

(ii)'

The existing Article 14 created a common basis for the internal market. In the Lisbon Treaty, Article 14 merely becomes Article 22a, with the word Community being replaced with Union, the word Treaty being replaced with Treaties and obviously the reference to the expiry date of 31 December 1992 for completion of the internal market being deleted. The Union shall adopt measures not only aimed at establishing but also ensuring the functioning of the internal market.

On 6 February in the House of Commons, Mark Harper MP made clear the current failures of the internal market which the Lisbon Treaty will perpetuate: "The Government carried out their own study last year, and in January 2007 the Treasury and the then Department for Trade and Industry published a joint assessment of the single market. Among its findings were that 'the rate of progress—in terms of strengthening and deepening the Single Market—has slowed down.' The key points were that 'Europe still lags behind its main competitors, notably the US', that the 'long-standing challenge' that I have just outlined was a 'far-off aspiration', and that 'competition can be expected to become more intense, with the rapidly emerging industrialising economies of India and China catching up fast.'" So, it is not immediately obvious why the UK Government would vote for the underlying features of a single market that has clearly failed?

It should be noted that protectionism is still an inherent problem in the internal market – highlighted by Mark Harper MP in the Commons when he discussed features of European trade in textiles and shoes – and, as a regional protectionist trading bloc itself, the Union has proven not to be a workable model in the new globalised economy.

Internally, it has created an unworkable and overregulated economy. It needs an urgent and radical reform which has not been provided by within this provision or any of the other provisions in the Lisbon Treaty.

EU protectionism is part of a wider problem of the European landscape, namely the failure of the European economic project, which includes the Lisbon Agenda. Far from achieving its objectives, the Agenda is characterised by low wages, low growth and high unemployment in the eurozone – major issues that played a primary role in the rejection, by the various peoples of Europe, of the original European Constitutional Treaty. The fact is that the European economic policies do not work.

Under the Single European Act, European legislation would have become oppressive unless much more was done to counter it by way of ministerial involvement and extra information to Parliament from business. The oppression is becoming acute. The question now is why there is such a refusal to acknowledge its source. Perhaps it is the fear of accusations of *'europhobia'*, or a belief that the national interest is not worth rocking the boat for. Either way, the conspiracy of silence is itself a significant example of the effect Europe has on our daily lives.

Under Nice, the standard justification for the proposed massive extension of QMV at the Nice IGC is that the veto would "imperil the single market" in an enlarged EU. It seems in reality that the "single market" has come – quite conveniently, from Brussels' perspective – to be understood as including virtually every aspect of EU business. The removal of barriers to trade and obstacles to the free movement of people has become a convenient excuse to centralise more and more powers at EU level.

To top it all, the Lisbon Strategy, which was supposed to make the single market the most competitive knowledge-based economy in the world by 2010, has been a fiasco and a failure. Initiatives like the Lisbon Agenda are presented in the language of globalisation, but beneath the surface, they are based on the old, bloc-ist thinking. The hightax, high-regulation, market interventionist system of governance must be radically reformed if Europe is to flourish in the 21st Century. The Lisbon Treaty enshrines that failing economy, which carries with it disastrous consequences for Britain and Europe.

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**SINGLE MARKET: RULES OF ESTABLISHING THE INTERNAL MARKET  
REMAIN THE SAME – UNCOMPETITIVE EUROPE GOES ON  
[ARTICLE 22b]**

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*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title I – The internal market, Article 22b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 40 to 45, inserted Title I and Articles 22a and 22b, renumbered Title Ia, amended Article 23(1), inserted Chapter Ia and Article 27a TEC (TFEU) relating to the internal market; and

(ii)'

The Lisbon Treaty does not change the substance of this existing provision. The failed Europe, under the rules of the internal market, will persist – the low growth, high unemployment under the single European market has failed spectacularly.

The European single market has failed. The EU's Lisbon agenda – driven to making the EU a competitive economy for the 21<sup>st</sup> Century – has failed and the progress reported by the UK's key representatives was one of failure and delusion. UK rapporteur for an EU task force, Will Hutton, told our European Reform Forum at the time on why "progress has been so disappointing" for the Lisbon agenda. He agreed that the "EU is committed to four freedoms on the economic front: trade in goods; trade in services; the free movement of capital; and the free movement of labour. The presumption embedded in the heart of the European Treaties is that the purpose of the whole exercise is openness."

However, as a result of large scale failures in the economy of Europe, particularly "on business regulation" Hutton said, "we had reached a tipping point ... Business regulation in Europe has probably become counterproductive, and the presumption should be that regulation ought to be used as a last resort." On the workings of the single market, he argued that "there are many design faults in the way in which institutions and processes work – for example, the lack of symmetry in relation to the inflation target – which would need to change before I would think about Britain's membership of the single currency area." If British Eurosceptics and Europhiles in general have agreed that the single market in its current form does not work (or at the very least, needs radical reform), then why would the UK Government sign a Treaty and continue to support the Lisbon agenda which has been proven not to work and will trash the opportunities of UK citizens, businesses for decades to come. This is a farce and the provisions on the single market must not be accepted.

This contrasts with states who benefit from the EU's four freedoms (of goods, services, people and capital) but are not subject to its massive socialist programmes. For example, those states in the European Free Trade Area (EFTA) – as Dan Hannan MEP has made clear – benefit from the single market but control their own fish stocks and energy reserves, borders, labour, employment and human rights legislation and thus the

citizens of those countries remain the richest, with their independent sovereign democracies intact.

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**SINGLE MARKET: THE EU AS A CUSTOMS UNION WILL CONTINUE,  
PREVENTING AN INDEPENDENT TRADE POLICY  
[ARTICLE 23]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title Ia Free movement of goods, Article 23*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 40 to to 45 , inserted Title I and Articles 22a and 22b, renumbered Title Ia, amended Article 23(1), inserted Chapter Ia and Article 27a TEC (TFEU) relating to the internal market; and

(ii)'.  
'

There are no substantial amendments to this Article. The word "Community" will be replaced by "Union" and the words "shall be based upon" are replaced by "shall comprise".

The UK has not been in charge of its own trade policy for quite some time. Director of the Trade Policy Research Centre, Ronald Stewart-Brown, argues that "For Britain, in particular, the disadvantage of belonging to a dysfunctional customs union will be exacerbated by the astonishing bias the EU's regional trade agreement policy shows against our best interests", whilst outside the customs union, the UK could benefit greatly from negotiating its own bilateral free trade agreements, and as one example, we could also benefit from importing food on our own terms, saving the average family of four around £1500 a year.

As both the failure of the EU countries at the WTO's Doha round proved (externally) in addition to the EU's own failed Lisbon agenda demonstrated (internally), neither Britain nor Europe are gaining from the existing arrangements in the customs union. Britain needs to urgently renegotiate terms with Europe in order to develop itself as a free and enterprising nation within the global marketplace.

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**SINGLE MARKET: EU'S UNCONDITIONAL  
FREEDOM OF MOVEMENT OF WORKERS SECURED  
[ARTICLE 39]**

**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title III – Free movement of persons, services and capital, Chapter 1 – Workers, Article 39*

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There are no substantial amendments to this Article. However, it is obvious that the EU's unconditional Treaty obligation providing for the freedom of movement of workers overrides massively important national legislation and parliamentary decision-making.

In addition to the effects of limitless EU immigration in affecting public services, a recent illustration of its detrimental effects has been the restriction that it has placed on the UK's right to deport serious criminals to their respective home countries. It has become increasingly evident that the Labour Government's ongoing introduction of recent EU legislation into Britain is making it almost impossible for the UK Courts to properly pass judgement according to British law on the deportation of criminals from Britain to within the European Union. It has gone from bad to worse, as the British judiciary has attempted to assert the two conflicting bodies of law. The failed attempts by the British Government to deport foreign criminals after release from prison – noting the futile attempts of Home Secretaries Charles Clarke, John Reid, David Blunkett and Jacqui Smith – whilst simultaneously introducing EU legislation in through the back door to prevent such deportation has left the country open to a fragmented society, endangered by serious criminals on the streets and acts of public terror within the cities.

The Home Office has always been adamant that the strict EU laws on the freedom of movement of persons within Europe has not impinged upon the UK's right to deport serious criminals or terrorists to the EU Member States. They have been proven wrong. As a case in point, the Asylum Immigration Tribunal (AIT) in the UK refused to deport the killer of Philip Lawrence to his home country of Italy on the grounds of a Citizens Directive (2004/38/EC) issued in 2004.

In light of the Labour Government's position on serious criminals appealing against deportation on release from prison, it is clear that the UK Courts no longer have control on such deportations, rendering the criminal justice system and the faith that UK citizens have within that system increasingly unstable, since it fails to achieve the criminal justice system's overarching objective – the capacity for each and every British citizen to be protected in a fair and just society. That condition is allied to the introduction of recent European Directives, in particular the Citizens Directive, which asserts an unconstrained and almost unconditional free movement of persons within the European Union. The unconditional assertion of this freedom of movement puts the British people in the way of grave dangers. It must be stopped and it must be replaced with national legislation that allows for both free movement of workers with respect to a set of national labour market-based criteria for entry and for the UK Government to ultimately decide its own 'free movement of workers' policies in relation to national provisions for public services, housing and the economy.

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**SINGLE MARKET: TREATY GIVES AWAY POWERS MAKING IT EASIER FOR  
MIGRANT WORKERS TO “ACQUIRE AND RETAIN  
THE RIGHT TO BENEFIT” IN THE UK  
[ARTICLE 42]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title III – Free movement of persons, services and capital, Chapter 1 – Workers, Article 42*

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Article 42 details the extended EU rights of migrant workers´ to claim social security within the Member States. The Lisbon Treaty replaces the words "migrant workers and their dependants" with "employed and self-employed migrant workers and their dependants" providing a clear legal base on social security for measures related to “self-employed migrant workers.”

The Council will continue to legislate on these matters with the European Parliament. Presently, the Council is required to act unanimously throughout the co-decision procedure when adopting social security measures necessary to provide freedom of movement for workers and their dependants. The words "the Council [shall], acting in accordance with the procedure referred to in Article 251" will be replaced with "the European Parliament and the Council [shall], acting in accordance with the ordinary legislative procedure." The Council will continue to legislate on these matters with the European Parliament although the Lisbon Treaty has extended Qualified Majority Voting into this area.

The Council’s unanimity procedure is replaced with a complex procedure which allows any Member State to temporarily suspend a draft proposal for four months. Under this Article, as amended by the Lisbon Treaty, a Member State may declare “that a draft legislative act referred to in the first subparagraph would affect important aspects of its social security system, including its scope, cost or financial structure, or would affect the financial balance of that system” requesting the matter to be referred to the European Council. Then, the ordinary legislative procedure will be suspended for four months and the European Council either “refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure or take no action or request the Commission to submit a new proposal in that case, the act originally proposed shall be deemed not to have been adopted.” Under the Lisbon Treaty, essentially, it will be much easier for EU citizens in the UK to adopt measures concerning “aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account for employed and self employed migrant workers and their dependants” (Article 42 first subparagraph).

There is a Declaration on the second paragraph of Article 42 of the Treaty on the Functioning of the European Union which states that the European Council will act by consensus. The power of veto will be replaced by an ‘emergency brake’ mechanism and it is not clear if unanimity is still required for “the payment of benefits to persons resident in the Territories of Member States” (Article 42 second subparagraph). The Lisbon Treaty only refers to the emergency brake regarding “the first subparagraph.” So when the Treaty is enforced, with this anomaly, it will not allow the UK any control – even an emergency brake to be applied – on the payment of benefits to persons resident in the territories of Member States.

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**SINGLE MARKET: LISBON TREATY COULD REMOVE UK VOTE ON  
A CRUCIAL MATTER OF COMMON ECONOMIC POLICY  
[ARTICLE 99]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title III – Free movement of persons, services and capital, Chapter 4 – Capital and payments, Article 99*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 85, inserted Article 97b TEC (TFEU), relating to the single currency, and paragraph 86, amendments to Article 99 TEC (TFEU) relating to broad economic guidelines; and

(ii)'.  
'

Article 99 is amended by Lisbon, crucially removing the state's own vote on a matter of common economic policy. This Article deals with common economic policy and commits the Member States to "regard their economic policies as a matter of common concern". Guidelines are laid down by the Council for this and a system set up for reporting on adherence to them. In the earlier version, a state which is deemed not to be following these guidelines, or jeopardising the proper functioning of the Economic and Monetary Union was to receive "the necessary recommendations": Lisbon changes this and adds the possibility that "a warning" may be issued instead. Crucially, it also removes the state's own vote on the matter.

The troubling new version reads that where it is established that the economic policy of a Member State are not consistent with the broad guidelines or jeopardise the proper functioning of economic and monetary union, "the Commission may address a warning to the Member State concerned."

The Council may then address the necessary recommendations to the Member State concerned in which "the Council shall act without taking into account the vote of the member of the Council representing the Member State concerned." This clearly does not appear to be in Britain's national interest. In addition to these changes, the European Parliament is given power to change the rules for this multilateral surveillance procedure, which previously was held only by the Council.

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**SINGLE MARKET: SOCIAL SUMMIT SET UP TO ENSURE THE EFFECTIVE  
IMPLEMENTATION OF EU LABOUR AND SOCIAL LEGISLATION  
[ARTICLE 136a]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IX Social Policy, Article 136a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 114 to 122, inserted Article 136a TEC (TFEU) relating to social partners, and amendments to Articles 137 to 140, 143 and 148 TEC (TFEU) relating to social policy; and

(ii)'.  
'

This Article is an attempt to dictate a Union social policy which ensures the effective implementation of EU labour and social legislation. The Tripartite Social Summit for Growth and Employment was established by a Council Decision in 2003. It is composed of the Council Presidency and the two subsequent Presidencies, the Commission and all the social partners (employers and trade union organisations). The main aim is to ensure that social partners participate in implementing the EU's economic and social policies. It enables social partners to contribute to the Union social strategy and to the definition of European social standards. The European social dialogue is a component of the so called European social model.

The new Article 136a recognises the role of the social partners at the Union level and especially has attempted to acknowledge the Tripartite Social Summit for Growth and Employment importance to social dialogue. It is a clear project for forwarding EU socialist governance, focusing not on feedback from the Member States but on the effective top-down implementation of European social and labour legislation.

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**SINGLE MARKET: COMMISSION ATTEMPTS HARMONISATION OF  
EMPLOYMENT AND LABOUR LAWS THROUGH ESTABLISHMENT  
OF NEW GUIDELINES  
[ARTICLE 140]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title IX Social Policy, Article 140*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 114 to 122, inserted Article 136a TEC (TFEU) relating to social partners, and amendments to Articles 137 to 140, 143 and 148 TEC (TFEU) relating to social policy; and

(ii)'.  
'

Article 140 provides that the Commission "shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under this Chapter, particularly in matters relating to, employment, labour law and working conditions, basic and advanced vocational training, social security, prevention of occupational accidents and diseases, occupational hygiene, the right of association and collective bargaining between employers and workers." Article 137 clarifies the activities pursued by the Commission to ensure cooperation and coordination of the Member States action in social policy, such as studies, delivering opinions and arranging consultations.

The Lisbon Treaty adds to this list of "initiatives aiming at the establishment of guidelines and indicators, the organization of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation." This provision will increase the Commission's interference on Member States employment and social policies. Commission's action takes the form of initiatives particular to the open method of coordination (intergovernmental method in which the Member States are evaluated by one another as a means to help Member States develop their policies. It involves agreeing guidelines and timetables for short- medium- and long-term goals, establishing quantitative and qualitative performance indicators and benchmarks, translating the European guidelines into national and regional policies and monitoring and evaluating the results).

It should be noted that the majority of the above-mentioned areas are already fully governed by EU legislation. However, the Lisbon Treaty specifically provides of the requirement of the European Parliament to "be kept fully informed" of the Commission activities. Article 137 TEC also provides for the Commission consult the Economic and Social Committee before delivering the opinions provided for in this Article.

It is wrongly implied that the Commission will merely act within the best interests of the Member States, under the Lisbon Treaty, since in reality, the Commission will dictate the conditions of Member States harmonising on all areas of social policy (on employment, labour law, working conditions, social security, prevention of occupational accidents and diseases, occupational hygiene, the right of association and collective bargaining

between employers and workers), through the establishment of new guidelines, organising of exchange of best practice around a federalist Union model, and the watchful periodic monitoring and evaluation of Member State activities on all areas of social policy.

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**SINGLE MARKET: FREE AND UNDISTORTED COMPETITION BECOMES A MERE PROTOCOL FOLLOWING ITS REMOVAL FROM THE LISBON TREATY**  
**[Protocol on the internal market and competition]**

*Policy Area: Protocol on the internal market and competition*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) the Protocol on the Internal Market and Competition; and  
(ii)'.

Free and undistorted competition in the internal market is one of the EU's main aims – it is the entire reason why the British people, by referendum, opted to join a competitive common market in 1975. It is not in Britain's national interest to accept this protocol as a mere adjunctive measure in creating the Lisbon Treaty. Present Article 3 (1) (g) TEC states that "... the activities of the Community shall include, ...a system ensuring that competition in the internal market is not distorted." However, such an important objective has been limited to a Protocol and furthermore, it has been actively removed elsewhere in the Lisbon Treaty. It has been widely reported that the attempts to erase the references to competition were made by the French President and his delegation.

Moreover, there is no reference to "free and undistorted" competition – hence this provision represents a threat to free competition and will further enhance the Union's current protectionist policies. The very basis upon which the UK has sought to justify its place in the European Union has been jeopardised – free competition has simply been relegated as a key objective of the Union to the form of a mere Protocol.

Philip Hammond MP said in the House of Commons as he debated the provisions of this Treaty relating to the single market: "After 50 years with a clause enshrined at the front of the treaty relating to 'undistorted competition', we still do not have anything like it. What kind of signal is the Secretary of State sending by relegating that provision to a protocol?" There is no adequate defence for the Government's acceptance of this. Hammond discussed the three blows that had been struck to the heart of the cause of free and open markets and thus at the interests of the United Kingdom:

1. "The high-profile removal of the reference in the draft constitution to 'an internal market in which competition is free and undistorted' was the first blow."
2. "The replacement of the existing treaty wording, setting as an objective for the EU the promotion of 'a high degree of competitiveness' by the new objective stating that the EU shall work for 'a highly competitive social market economy,

- aiming at full employment and social progress', was a second, representing a significant dilution of the free market agenda.”
3. “The controversial concept of a ‘social market economy’ makes its way into an EU treaty for the first time. We are seeing the elimination of competition as an end in itself. The relegation of any reference to ‘a system ensuring that competition in the internal market is not distorted’, found in article 3 of the existing treaty, to a protocol is a third blow.

**Part V – Opposition to the Treaty of Lisbon on: common foreign security and defence (as debated in the House of Commons on Wednesday 20 February 2008) and international development (as debated in the House of Commons on Monday 25 February 2008)**

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**COMMON FOREIGN AND SECURITY POLICY: THE NEW EU FOREIGN MINISTER  
TO TAKE POWER OVER UK FOREIGN POLICY  
AND UK EXTERNAL REPRESENTATION  
[ARTICLE 9e]**

*Policy Area: Treaty on European Union, Title III, provisions on the Institutions, Article 9e*

**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 19, inserted Article 9E TEU relating to the High Representative of the Union for Foreign Affairs and Security Policy; and

(ii) any other'.

The High Representative of the Union for Foreign Affairs and Security Policy represents a severe danger to an independent British foreign policy. He or she will be appointed by the European Council, acting by a qualified majority vote and with the agreement of the President of the Commission. It is an immense threat to the independence of Britain in determining its own foreign policy, since this Treaty essentially creates a European Foreign Minister, claiming to work on Britain's behalf through the European Union.

They will have a right of initiative in foreign and security policy matters since they will share with each Member State the power to submit proposals regarding the common foreign and security policy (CFSP). He will chair the Foreign Affairs Council, submit the necessary proposals and receive executive mandates from the Council. He will represent the EU in matters relating to common foreign and security policy. He/she will express the Union position in international organizations. In addition, the Minister would be responsible for external representation of the Union for the purposes of the foreign and security policy. He/she can speak on behalf of the Union in the United Nations Security Council. This is entirely unacceptable.

The "foreign affairs minister" will be both the Council's representative for the common foreign and security policy and one of the Commission's vice-presidents. The Foreign Minister is a member of the College and one of its Vice-Presidents. In exercising his or her responsibilities within the Commission, they will be bound by Commission procedures. As a Vice-President of the Commission, he/she will be responsible within the Commission for responsibilities given to it in external relations and for coordinating other aspects of the Union's external actions. Since the CFSP is an intergovernmental matter, a Commission member will be greatly involved in the Council's work. There are no clear separation of powers within the European institutions under this provision. He/she will serve on both supranational and intergovernmental matters and this one individual will be the judge of the balance of competences between the supranational

body and intergovernmental matters. Therefore, this person will wield huge and fundamental powers who will prepare, decide on and execute matters related to foreign and security affairs relating to the UK, whilst acting as a Vice-President of the Commission.

Moreover, the High Representative of the Union for Foreign Affairs and Security Policy will be charged with the control of a European external action service with delegations in different countries, and will ensure that the Union has a stronger voice (than the respective Member States) on the international arena.

The new post changes the nature of the relationship between the Member States and the EU, even if European foreign policy will continue to be operating mainly by unanimity. The Union will be represented by the High Representative for matters relating to the common foreign and security policy, together with the President of the European Council, on issues other than CFSP, the external representation of the Union, which will be ensured by the Commission. The Lisbon Treaty transforms the Union into an international actor in its own right. The Heads of State and Government will cease to represent their country in an effective manner on the international stage since they will be represented by the Union.

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**COMMON FOREIGN AND SECURITY POLICY: EUROPEAN COUNCIL IS TO  
“IDENTIFY” BRITISH INTERESTS THROUGH EUROPE’S EXTERNAL OBJECTIVES  
[ARTICLE 10b]**

***Policy Area:** Treaty on European Union, Title V, "GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY". Chapter 1, GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION, Article 10b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out ‘any’ and insert—

‘(i) Article 1, paragraph 24, inserted Article 10B TEU on the strategic interests and objectives of the European Union; and

(ii) any other’.

It is obvious that if it is now up to the European Council to “identify the strategic interests and objectives of the Union” – as the Treaty states – then this puts the British national interest at risk if it disagrees with the Union. Paragraph 1 is essentially an enhanced measure based largely on the present Article 13(2) and (3) TEU on ‘common strategies’ decided by the European Council. Under the existing Article 13 (2), “common strategies shall set out their objectives, duration and the means to be available by the Union and the Member States.” Under previous Article 13 (3) TEU, “the Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.” The Lisbon Treaty re-introduces decision-making within the Council as the key ingredient for CFSP, with an emphasis on the binding nature of the decisions.

Under this new Article, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission acquired the right to “submit joint proposals to the Council.” It should be mentioned that under the present Article 22 (1) TEU the Commission “may submit proposals to the Council.”

This Article states that “The European Council shall act unanimously on a recommendation from the Council, adopted by the latter under the arrangements laid down for each area.” For CFSP, those arrangements are now set down in the new Article 15b (currently Article 23 TEU).

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**COMMON FOREIGN AND SECURITY POLICY: UNION WILL DO POLITICAL DEALS  
FOR BRITAIN OUTSIDE OF EUROPE, ASSERTING EU AGENDA  
IN ALL EXTERNAL ACTIONS  
[ARTICLE 10a]**

***Policy Area:** Treaty on European Union, Title V, "GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION AND SPECIFIC PROVISIONS ON THE COMMON FOREIGN AND SECURITY POLICY"., Chapter 1, GENERAL PROVISIONS ON THE UNION'S EXTERNAL ACTION", Article 10a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out ‘any’ and insert—

‘(i) Article 1, paragraph 24, inserted Chapter 1 and Article 10A TEU on the European Union’s external action; and

(ii) any other’.

This Article massively enhances the general guidelines and objectives for the Union’s external action. It lists the values and objectives of the Union yet it says nothing of how Member States have different values and objectives and assign different national priorities to those goals. In particular, it damningly asserts beyond the Union “the universality and indivisibility of human rights” as engineered under the provisions of the Lisbon Treaty. It is clear that the assertion of these values within the Treaty act as a specific reference for future accessions to the Union as well as any sanctions against a Member State that infringes those values. This Article provides for several Union objectives: “preserve peace, prevent conflicts and strengthen international security” which have been and will in the foreseeable future belong to NATO and the UN. The European Union, through this provision, will duplicate and weaken the role of the other organisations and will not be more effective. It is also for the UN to “assist populations, countries and regions confronting natural or man made disasters.” The objectives of the CFSP have been broadened extensively within the Lisbon Treaty, leading to a catastrophic surrender of national sovereignty and greatly reduce the capacity of the UK Government to assert an independent foreign policy.

The Title V of the TEU “Provisions on a common Foreign and Security Policy” will now be replaced with the “General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy.” Whilst this Article is new, it is based on several existing Treaty articles (see Article 11 TEU and Articles, 177, 174, 87 and 181a TEC), which set out CFSP objectives in certain areas. In particular, paragraph 3 (sub-para 1) is in part based on the current Article 178 TEC, which requires other EC measures to be consistent with development policy; and the consistency requirement (sub-para 2) is based on the current Article 3 TEU.

This Article states that the Union shall “encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade”. However, within the declared exclusive trade arrangements of the Union, international trade is met with European protectionism – lowering tariffs for those within the 27-bloc while maintaining tariffs for those outside – which will continue to be to the detriment of all developing countries across the globe. This is not a just or acceptable model, and British politicians and constituents from across the political divide have raised the campaigns on the damage this European framework has done to developing economies and the lives of people across the world. Since the Article itself is a false statement with no bearing on reality – which has been proven – there can be no support of it in any shape or form.

The role played by the Union in the international arena has now been increased with the Lisbon Treaty (in contrast to the Member States, whose power on foreign policy is now reduced to a secondary authority of a subsidiary council). The present foreign policy Articles of the TEU are widely amended by the Lisbon Treaty, mainly to provide for the role of the widely disputed High Representative of the Union for Foreign Affairs and Security Policy. The assertion of a European body of human rights will dangerously impact upon the UK when, in conflict, it also hopes to also assert the need for global enterprise, and business. How can governments negotiate with the European Union which demands enterprise in one voice and with another, often stronger voice, asks that its demands over human rights are also met (or face sanctions). Those are the kind of conditions that the UK should be dictating according to national priorities and national legislation with respect to a management of a particular external country as it develops. To insist on the EU’s protection of a body of rights upfront as a principled primary demand for all external political actors will jeopardise the UK’s future trade relations and any opportunity for an independent foreign policy.

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**COMMON FOREIGN AND SECURITY POLICY: EUROPEAN COUNCIL TO  
ULTIMATELY DECIDE ON THE FRAMING OF A COMMON DEFENCE PROGRAMME  
[ARTICLE 11]**

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*Policy Area: Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, Article 11*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 27, amendments to Article 11 TEU relating to the Common Foreign and Security Policy; and

(ii) any other'.

Article 11 has changed drastically. The CFSP objectives which are stated on the first paragraph of the present Article 11 TEU were moved to the new Article 10a TEU. At present, "The Union shall define and implement a common foreign and security policy covering all areas of foreign and security policy" under the Lisbon Treaty the Union has competence in "all areas of foreign policy and all questions relating to the Union's security ...". The CFSP is defined and implemented by the European Council and the Council, in general, acting unanimously.

This provision calls "for the progressive framing of a common defence policy which might lead to a common defence." This is based on the present Article 2 TEU which states that "... to assert its identity on the international scene, in particular through the implementation of a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence, in accordance with the provisions of Article 17." However, according to the new Article 28A "The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides." The European Council ultimately decides on the implementation of common defence.

The intergovernmental nature of the CFSP is, however, maintained since there are several cases where the new provision will be made for voting by QMV. The common foreign and security policy will be brought into effect not only by the Member States but also by the High Representative of the Union for Foreign Affairs and Security Policy. The ECJ will not have an exclusive competence over the CFSP except to monitor its compliance with Article 25b with reference to the exercise of Union competences and to rule on proceedings reviewing the legality of European decisions on restrictive measures against natural or legal persons adopted by the Council. Hence, the Court will have jurisdiction to review the legality of restrictive measures adopted by the Council against persons while it should not have jurisdiction at all over CFSP.

The duty of EU loyalty and mutual solidarity already exists under the existing Article 11(2) EU, but the Lisbon Treaty adds the new requirement that Member States "shall comply with the Union's action in this area". The present article 11 TEU previously required Member States to "support the Union's external action and security policy ..."

whilst the Lisbon Treaty requires Member States "... shall comply with the Union's action in this area." The terms have changed from voluntary support to compulsion. The duty of "loyalty" and "solidarity" with the Union's foreign policy jeopardises Member States independent foreign policy. The obligation towards absolute EU loyalty will subordinate the UK interests in matters of foreign policy and defence.

It should be noted that under the present Article 11, the Member States "... shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations" which implies that Member States will, at some point, be forced to work against their own national interests.

A major implication will be that UK relations with the rest of the world and NATO will be undermined, if not severed. The principles of NATO guarantee UK independence but the Lisbon Treaty will end it. It is clear that the UK's independent foreign and security policy is not preserved through this provision.

There is also a declaration concerning the common foreign and security policy which states that "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 United Nations. " It is clear that the Lisbon Treaty implies a completely integrated CFSP and a mere declaration will certainly not uphold the independence of the UK's foreign and security policy. More importantly, it is simply a declaration and is therefore not legally binding.

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**COMMON FOREIGN AND SECURITY POLICY: EUROPEAN COUNCIL WILL  
IDENTIFY, DECIDE AND ADOPT UNION'S FOREIGN POLICY  
AND DEFENCE INTERESTS  
[ARTICLE 13]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, Article 13*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 29, amendments to Article 13 TEU relating to the principles of and general guidelines for the Common Foreign and Security Policy; and

(ii) any other'.

It is clear that Paragraph 2 and the second sub-paragraph of paragraph 3 have been moved, with amendments, to the new Article 10b TEU. The European Council, under the

terms of the Lisbon Treaty, firstly, “shall identify the Union's strategic interests, determine the objectives of and define general guidelines for common foreign and security policy” and secondly, “define the principles of and general guidelines” as it is under the current Article 13 and thirdly, “It shall adopt the necessary decisions.” This gives the European Council extraordinary powers.

It was also amended in order to include a provision which allows the President of the European Council to convene an extraordinary meeting of the European Council if an international situation so requires, in order to define the Union’s policy on a particular issue.

The new paragraph 2 of the Treaty now changes the previous claim that “The Council shall frame the common foreign and security policy” to “The Council shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council.”

Under the Lisbon Treaty, not only the Council but also the High Representative of the Union for Foreign Affairs “shall ensure the unity, consistency and effectiveness of action by the Union.”

A completely new provision has been inserted, stating that “The common foreign and security policy shall be put into effect by the High Representative and by the Member States, using national and Union resources.” This Article is a further example of the further transfer of sovereign powers from Member States to the Union concerning CFSP.

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**COMMON FOREIGN AND SECURITY POLICY: NEW FOREIGN MINISTER MEANS  
EU DICTATORSHIP OVER ALL FOREIGN REPRESENTATION –  
EU LEGISLATIVE AND EXECUTIVE ARMS ARE HARMONISED,  
NEW EU DIPLOMATIC SERVICE IS CREATED  
[ARTICLE 13a]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out ‘any’ and insert—

‘(i) Article 1, paragraph 30, inserted Article 13a TEU relating to the role of the High Representative of the Union for Foreign Affairs and Security Policy; and

(ii) any other’.

The Lisbon Treaty establishes the post of High Representative of the Union for Foreign Affairs and Security Policy, which merges the positions of High Representative for the Common Foreign and Security Policy and the European Commissioner for External Relations. He/she will be both the Council’s representative for the common foreign and security policy and one of the Commission’s Vice Presidents. In exercising his/her

responsibilities within the Commission, they will be bound by Commission procedures. He will be responsible within the Commission for responsibilities given to it in external relations and for coordinating other aspects of the Union's external action, marking a clear neglect for the separation of powers. The CFSP is an intergovernmental matter in which a Commission member will now be completely involved in the Council's work.

Although the Lisbon Treaty has not completely eliminated the intergovernmental nature of the CFSP, it states clearly an intention to bring the CFSP closer to the supranational method – hence, the High Representative of the Union for Foreign Affairs and Security Policy has a “double hat.” Moreover, the Lisbon Treaty also creates a President of the European Council, who will also ensure the external representation of the Union – this of course creates a problem of the delineation of tasks for each representative. He/she will represent the Union for matters relating to the common foreign and security policy together with the President of the European Council.

The new High Representative is responsible for conducting the CFSP. He will chair the Foreign Affairs Council, submit the necessary proposals, and implement decisions adopted by the European Council and the Council. The rotating Presidency in external relations will end therefore the role of Head of State or Government and Foreign Minister of the country holding the Council Presidency will be significantly diminished. It remains to be seen how the agenda of the General Affairs and External relations Council, chaired by the High Representative for foreign policy will be coordinated with other council formations chaired by the ministers of the country which holds the six month Presidency. Moreover, it remains to be seen how the powers of the members of the future troika the commission president, the high representative for foreign policy and the European council president will be balanced. Therefore there are important issues of accountability at stake.

Obviously, the High Representative of the Union for Foreign Affairs and Security Policy will have too much power; he will prepare, decide on and execute matters related to foreign and security affairs. He/she will have the right of initiative in foreign and security policy matters as he will share with each Member State the power to submit proposals regarding the CFSP. He/she will represent the EU in matters relating to common foreign and security policy. He/she will express the “Union” position in international organizations and international conferences. In addition, he would be responsible for external representation of the Union for the purposes of the foreign and security policy. Presently, is the Presidency which represents the Union in matters regarding common foreign and security policy and who express the position of the Union in international organisations and international conferences. He/she can speak on behalf of the Union in the United Nations Security Council.

Moreover, the High Representative of the Union for Foreign Affairs and Security Policy will be in charge of the European external action service with delegations in different countries, and will ensure that the Union has a stronger voice on the international arena. Therefore the Union will not only have a “foreign affairs minister” but also a European external action service, meaning a diplomatic service with delegations in several countries.

The European external action service will be composed of a combination of national diplomatic services of the Member States and officials from the Council General Secretariat and of the Commission. The organisation and functioning of the Service will

be established by a Council decision on a proposal from the High Representative, after consulting the European Parliament and obtaining the consent of the Commission. Hence, it will be decided by Qualified Majority Voting. Obviously, the creation of the European external action service will be challenged, since there is no distinction between European and national foreign policy priorities and interests. According to the new Article 188q TFEU, the Union will transform the present Commission delegations into EU Delegations.

However, questions regarding institutional arrangements, competences (Commission/Council secretariat) and financing remain to be answer. The provision concerning the European external action service is extremely imprecise.

The Member States would no longer represent themselves. It will be the Union representing them on the international stage. What will happen the UK diplomatic representation? It is only possible to envisage an end to UK diplomatic representation. Who will defend the interests of the Commonwealth, if the powers of the Foreign Secretaries would be transfer to the High Representative of the Union for Foreign Affairs and Security Policy? It appears that the defence of British interests have been placed into the hands of those who will merely protect European interests. As such, the interests of British citizens will not be protected.

The new post changes the nature of the relationship between the Member States and the EU, even if European foreign policy will continue to be operating mainly through unanimity. Apparently, the Heads of State and Government will no longer represent their countries on the international stage. There is an immense and substantial transfer of more political power to EU level, through the new President of the European Council and the High Representative on Foreign and Security policy. All these changes would eliminate or diminish the ability of Member States to conduct their own independent foreign policy.

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**COMMON FOREIGN AND SECURITY POLICY: UK LEFT REDUNDANT IN  
BLOCKING COUNCIL DECISIONS AND EU FOREIGN MINISTER POWERS  
[ARTICLE 15b]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 1 Common provisions, Article 15b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 34, inserted Article 15b TEU relating to decisions within the Common Foreign and Security Policy; and

(ii) any other'

The new Article 15b (in place of current article 23 TEU) asserts that the European Council is not the only political actor to take decisions under this chapter. Decisions on CFSP matters will continue to be taken on the basis of unanimity. It stresses the

exclusion of “the adoption of legislative acts” and therefore, clarifies that the European Council does not have a role in adopting legislation.

It has become difficult for the Council not to adopt a decision, and Member States are left severely disabled in blocking a decision. The Treaty of Amsterdam introduced in the present Article 23 a possibility to facilitate decision making in areas where unanimity is required. Hence, a Member State may qualify its abstention from a vote by making a formal declaration – therefore the Member State in question shall not be obliged to apply the decision but must accept that the decision commits the Union. Furthermore, it must refrain from any action likely to conflict with the Union action. Under the present Article 23, “If the members of the Council qualifying their abstention in this way represent more than one third of the votes weighted in accordance with Article 205(2) (qualified majority voting) of the Treaty establishing the European Community, the decision shall not be adopted.” However, under the Lisbon Treaty “If the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted.” Therefore, it has become much more difficult for Council not to adopt a decision.

To make matters worse, under the Lisbon Treaty, Member States can oppose the adoption of a decision by QMV for reasons of “vital” instead of the present “important”, reasons of national policy which will make more difficult to oppose to the adoption of the decision.

The second paragraph also reconfirms the powers of the High Representative. This Article increases the areas in which Qualified Majority Voting (QMV) would be applied to CFSP matters from those established in Article 23(2) TEU – this includes decisions on proposals presented by the High Representative. This is entirely unacceptable. Moreover, the Lisbon Treaty introduces the possibility that the High Representative will be charged with the responsibility of searching for a solution.

Finally, Article 15b (3) is a *passerelle* clause which allows for the extension of QMV in CFSP matters further than those already mentioned above, following the unanimous agreement within the European Council. Although this provision on QMV as well as the *passerelle* clause will not be applicable to decisions “having military or defence implications”, it will have a massive impact on foreign and security policy. The UK will simply not be able to pursue an independent foreign and security policy, since the bulk of our legislation will have been decided in the Council and through the clandestine briefings of a faceless mystery of a High Representative.

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**COMMON FOREIGN AND SECURITY POLICY: NEW EU FOREIGN MINISTER GAINS  
NEW RIGHTS OF INITIATIVE AND RIGHT TO SELECT JUNIOR DEPUTIES  
[ARTICLE 18]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 1 Common provisions, Article 18*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 37, amendments to Article 18 TEU relating to the role of the Presidency in the Common Foreign and Security Policy; and

(ii) any other'.

The first four paragraphs were replaced by Article 13a, which has transferred the role of representing the EU to the High Representative. Therefore on all matters relating to CFSP, the role of the Presidency now falls to the High Representative. This Article, as amended within the Lisbon Treaty, strengthened the role of the High Representative in relation to special envoys – the High Representative has the right of initiative in proposing to the Council the appointment of a special representative, over whose work he would have general authority.

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**COMMON FOREIGN AND SECURITY POLICY: UK MUST SPEAK ON BEHALF OF  
THE EU FROM ITS SEAT AT THE UN SECURITY COUNCIL  
[ARTICLE 19]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 1 Common provisions, Article 19*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out 'any' and insert—

'(i) Article 1, paragraph 38, amendments to Article 19 TEU relating to Member States' coordination of action within the Common Foreign and Security Policy; and

(ii) any other'.

Under the present Article, "Member States shall coordinate their action in international organisations and at international conferences. Under the new provision, it confers on the High Representative the power to organise this coordination. Since the Lisbon Treaty replaces "common positions" of Member States with the "Union position", it places an obligation on Member States that they uphold the common positions in such forums.

Furthermore, under the Lisbon Treaty, “Member States represented in international organisations or international conferences where not all the Member States participate” have to keep not only the other Member States informed but also the High Representative “of any matter of common interest.”

Under the present Article “Member States which are also members of the United Nations Security Council will concert and keep the other Member States fully informed.” Moreover, “Member States which are permanent members of the Security Council will, in the execution of their functions, ensure the defence of the positions and the interests of the Union, without prejudice to their responsibilities under the provisions of the United Nations Charter.” However, the amendments to this Article requires Member States with a seat on the Security Council to request that he/she speak on the EU’s behalf, where the Union has defined a common policy.

It is written: “When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be asked to present the Union’s position.” The main objective of such provision is to provide a single voice for the Union in the United Nations. It is a matter for the UN Security Council and not for the Union that appears before it. Member States who are members of the Security Council are required to defend positions in the interests of the Union. The UK, under such an obligation, is not free to act independently within the Security Council. Member States will be obliged to present the common foreign policy position when they are members of the UN Security Council. Britain would be on the UN Security Council primarily to represent the EU’s position.

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**COMMON FOREIGN AND SECURITY POLICY: MEMBER STATES WILL BE BOUND  
AS SUBSIDIARY COUNCILS INTO A LEGALLY-DEFINED EU STATE  
WITH ITS OWN FOREIGN POLICY AGREEMENTS  
[ARTICLE 24]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 1 Common provisions, Article 24*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out ‘any’ and insert—

‘(i) Article 1, paragraph 25, headings relating to the Common Foreign and Security Policy; and

(ii) any other’.

The Union will acquire legal personality – therefore it can conclude agreements with one or more States or international organizations in areas of a Common Foreign and Security Policy. The previous procedure of the present Article 24 will be radically simplified.

The significance of the legal personality should not be understated. As Bill Cash MP said in the House of Commons on 29 January: “The new Union that is created by the merger that I described earlier will take over legal personality from the European Community, with very significant constitutional impact. This, therefore, is a fundamental change of the kind that fulfils the criteria for the Government to hold a referendum.”

This provision means that the Member States would act under the European Union as one legally-defined state, as components of a trans-national European Union. Moreover, the Union at this point has gained a new uniform legal personality, providing the new Union the right to conclude international agreements. Thus, the Union will be able to lead on all manner of international actions, such as concluding treaties, holding a right to submit claims or to act before an international court or judge, becoming a member of an international organisation or becoming party to international conventions and holding a right to enjoy immunities and also to bind the Union internationally. To accede to the European Convention on Human Rights and Fundamental Freedoms is to enable Member States to be brought before the European Court of Human Rights. There is more than a danger that this will, in practice, affect our seat at the United Nations Security Council. It is a major constitutional cornerstone for the functioning of the European Union as a single state and effectively reduces the authority of national parliaments to the position of intellectual coffee shops. That is a fundamental change.

Any Member States that do object will be forced to accept the agreement and be forced to ride roughshod over their constitutional arrangements.

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**COMMON FOREIGN AND SECURITY POLICY: AFTER THE COLLAPSE OF PILLAR  
STRUCTURE, EU PROVIDES PROVISION FOR NOT ASSERTING FOREIGN  
POLICIES IN OTHER AREAS OF ACTIVITY  
[ARTICLE 25b]**

*Policy Area: Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 1 Common provisions, Article 25b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, leave out ‘any’ and insert—

‘(i) Article 1, paragraph 45, inserted Articles 25a TEU relating to personal data and 25b TEU relating to a saving for the exercise of European Union competences; and

(ii) any other’.

This provision holds, with a considerable lack of honesty, that the implementation of the common foreign and security policy shall not affect the extent of the powers of the institutions laid down by the Treaties for the exercise of all the Union competences. Since the High Representative’s precise duties are not determined, capped or controlled by this Treaty, their affect on the massively increased powers of the European institutions remains unknown – but is likely to be substantial and will severely affect “the

powers of the institutions laid down by the Treaties for the exercise of the Union competences under this Chapter”.

This is a new Article which distinguishes between foreign policy measures on the one hand and other Union competences on the other. It is based on the current Article 47 TEU, which will be repealed, originally designed to protect EC law from encroachment by the other pillars. This new provision will supposedly protect both other EU policies from being infringed by the foreign policy rules and also the foreign policy rules from being infringed by other EU policies.

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**COMMON FOREIGN AND SECURITY POLICY: THE EU COMPELLED TO HAVE  
COMMON ARMY MANAGED BY COUNCIL, DRIVEN BY EU FOREIGN MINISTER  
[ARTICLE 28A]**

***Policy Area:** Treaty on European Union, Title V, provisions on Common Foreign and Security Policy, Chapter 2, Specific provisions on the common foreign and security policy, section 2, provisions on the Common security and defence policy, Article 28A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 1, paragraphs 48 to 53, inserted Section 2 and Articles 28A to 28E TEU relating to the Common Security and Defence Policy; and

(ii)’.

The Treaty of Lisbon, known to “most” as the revived EU Constitution, represented a fundamental threat to the livelihoods, businesses and government of the British people. It is by virtue of the impact the Lisbon Treaty and all existing Treaties will have on people’s lives that they ought to have had their say on a matter of such vital national interest. It will have reduced their sovereign Parliament to an intellectual chatting-shop and their elected Members of Parliament to lackeys of European laws legislated for in a committee somewhere in Brussels.

The clear subordination of the Westminster Parliament under the terms of the Lisbon Treaty have been unacceptable. It also asserts massive changes including: the right to strike under the related Charter of Fundamental Rights, European jurisdiction over crucial aspects of our criminal justice system and immigration, a greatly increased European control over energy policy, the introduction of an EU President to manage the political affairs of Europe’s nation states, and a Foreign Minister assuming control over British foreign policy. However, in all the clamouring over the impact of the Lisbon Treaty on solely domestic issues, it has been forgotten, perhaps most importantly, that there will be massive effects of the Lisbon Treaty on the independence of our British defence policy.

Under the terms of the Lisbon Treaty (Article 28A TEU to be precise), the European Council gains an enhanced foundation from which it can now launch an extensive common defence policy. This Article establishes fundamental principles for the

development of a Common Security and Defence Policy (CSDP), previously named the European Security and Defence Policy (ESDP). Under the previous Article 17 TEU, it is stated that “the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide” whereas under the Lisbon Treaty, the defence policy “will lead to a common defence, when the European Council, acting unanimously, so decides.” The transformation from “might” to “will” states by way of compulsion for the Union to develop a common defence policy, even if it is not in the interests of the Member States.

It is a massive concern, not least because Gordon Brown, David Miliband and Jim Murphy have all said that the UK is protected from such fundamental changes in British foreign policy under the terms of the Treaty.

Under Lisbon, the common defence policy becomes an essential part of the common foreign and security policy. The Lisbon Treaty provides that “the common security and defence policy shall be an integral part of the common foreign and security policy.” Therefore, the Lisbon Treaty recognises the CSDP, or defence policy, as an integral part of the Union’s CFSP agenda. The CSDP will “provide the Union with an operational capacity drawing on civilian and military assets” for use “on missions outside the Union for peace-keeping, conflict prevention and strengthening international security.” The necessary military and civilian capabilities for these tasks will be provided by the Member States, but the decisions on the implementation of the CSDP, such as the launch of operations, will be adopted by Europe through the Council. In essence, the resources will be supplied by the Member States, including Britain, but the decision-making on how to make best use of those resources will be made in Brussels.

The EU’s defence wing is taking on a life of its own under the terms of the Treaty. The Union’s Common Security and Defence Policy will use civil and military assets for foreign interventions “in accordance with the principles of the UN charter” – however it does not require such missions to have a UN mandate. It is clear that the tasks foreseen for these missions are wider than the current ‘Petersberg tasks’ and represent an open door for foreign intervention by EU forces. It certainly lays down the groundwork and tools for a common European army – putting two and two together makes me think that we are going to have one. The gradual creation of a European defence force will represent a catastrophic threat to democracy in Europe.

All Member States will now be committed at the Union level to the goal of a common defence force. This amounts a major transfer of power from the Member States to the Union; a matter on which the British electorate ought to have had their say. The provision which states that “The policy of the Union in accordance with this Article (‘in accordance with this Section’ Lisbon Treaty amendment) shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty and be compatible with the common security and defence policy established within that framework” was kept in the Lisbon Treaty. This is a deceitful proposal since it is obvious that if this Treaty goes through, the UK’s existing relationship with NATO will be jeopardised. How can the UK really commit its resources and troops to NATO and the EU?

This Treaty represents a significant move towards a common defence policy, away from the much needed intergovernmental attempts to create practical and cooperative action. The provision supporting intergovernmental defence action, which states that “The progressive framing of a common defence policy will be supported, as Member States consider appropriate, by cooperation between them in the field of armaments” will now be deleted. Instead, the Lisbon Treaty introduces a provision which requires Member States to provide civilian and military capabilities for the Union to implement the common security and defence policy and to contribute to the objectives defined by the Council. Moreover, “Member States shall undertake progressively to improve their military capabilities.” In order to improve the Union’s military capabilities it will be up to the European Defence Agency (EDA) who will “identify operational requirements, shall promote measures to satisfy those requirements, shall contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, shall participate in defining a European capabilities and armaments policy, and shall assist the Council in evaluating the improvement of military capabilities.” Needless to say, this is entirely unacceptable. A commitment of UK resources to such grand European defence plans is significant and Gordon Brown was wrong to have signed this Treaty.

Under the Lisbon Treaty, decisions relating to the common security and defence policy, including initiating a military mission will be adopted by the Council acting unanimously. However, the Member States will have to share their right of initiative with the new EU Foreign Minister (or what the EU likes to call ‘the High Representative of the Union for Foreign Affairs and Security Policy’). Since the EU Foreign Minister will also be a Vice-President of the Commission, this means that the Commission has the possibility of initiating military missions for the EU to carry out. It is an area that should have been left solely to the respective Member States.

The intention of the European Union to develop a common European army is obvious – and it will raise global questions with respect to the continued authority of NATO. A major European innovation in this area of defence, under the terms of the Lisbon Treaty, is the introduction of a mutual defence clause so that if one Member State is attacked, the others are obliged to provide it with help “aid and assistance by all the means in their power.” This may be problematic since it will duplicate the work of NATO. The Lisbon Treaty provides that “This shall not prejudice the specific character of the security and defence policy of certain Member States. Commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those States which are members of it, remains the foundation of their collective defence and the forum for its implementation.” NATO remains the key political actor which aims to achieve peace in the collective defence of its members; the EU is hell-bent on achieving a politically militaristic European supremacy.

Under the terms of structured cooperation, the Lisbon Treaty will further Union defence integration to a point at which each Member State is compelled to follow the specified orders, and where it refuses to act, it will be subordinated to the Council determining a defence policy for all the other states under structured cooperation. In time, the reluctant Member State (as Britain often is) will simply be compelled to act under the increasing authority of an EU Foreign Minister who will conduct the foreign policy on behalf of a European single state. The UK will have been quickly absorbed into such plans after committing itself to the terms of the Lisbon Treaty. More terrifying perhaps is that these fundamental changes in the relationship between Britain and Europe will have been

pursued without the say of the British electorate.

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**EXTERNAL ACTION: EU INTERFERES IN UK FOREIGN DIRECT INVESTMENT,  
TO BE ABSORBED BY EU COMMON COMMERCIAL POLICY  
[ARTICLE 188B]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Five, External Action by the Union, Title II Common commercial policy, Article 188B*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 154 to 168, new Part Five TEC (TFEU) relating to external action by the European Union; and

(ii)'.

Whereas the present Article 131 (1) mentions that Member States will establish a "customs union between themselves", Article 188B states that the Union has established a customs union (and not the Member States).

Also, the present Article 131 (1) TEC has been amended in order to include foreign direct investment, with Article 188B referring to the "progressive abolition of restrictions on foreign direct investment." Presently, foreign direct investment does not directly fall under the EU's Common Commercial Policy. Member States have competence over Foreign Direct Investment. The EU's competence over this matter has previously been very limited.

Investment agreements with third countries are presently the responsibility of Member States. There is a transfer of competences of foreign direct investment to the EU. The Lisbon Treaty brings foreign direct investment directly under the operation of the EU's Common Commercial Policy. Therefore, it will have serious implications on the investment policy instruments of Member States. The Lisbon Treaty strengthens the EU's ability to conclude international investment agreements.

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**EXTERNAL ACTION: TREATY PROVIDES POWERS FOR UNION TO NEGOTIATE  
AND MAINTAIN KEY TRADE AGREEMENTS ON WORLD STAGE  
[ARTICLE 188C]**

*Policy Area: Treaty on the Functioning of the European Union, Part Five, External Action by the Union, Title II Common commercial policy, Article 188C*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 154 to 168, new Part Five TEC (TFEU) relating to external action by the European Union; and

(ii)'.

The EU's Common commercial policy has been recognised by the European Court of Justice as one of the areas in which the Community's competence is exclusive. The Lisbon Treaty has codified the ECJ case law, according to Article 2 B (e) Common Commercial Policy, as belonging to one of the Union's exclusive competences. Therefore, Member States have no way in which to act on this matter.

The Common commercial policy involves a harmonised conduct of trade relations with third countries mainly through a common customs tariff and common import and export regimes. The Commission negotiates and concludes international agreements on behalf of the Community at the bilateral and multilateral levels. All trade negotiations with third countries are conducted by the Commission and such agreements are binding on all Member States.

Article 188C (1) reads as follows: "The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies." Article 188 C develops upon Article 133 TEC, specifying "the conclusion of trade agreements relating to trade in services, and the commercial aspects of intellectual property, foreign direct investment", making them subject to the Union's exclusive competence. Both the Amsterdam and Nice Treaties allowed the Council to extend the scope of the common commercial policy to cover international negotiations and agreements on services and commercial aspects of intellectual property rights.

Under the Lisbon Treaty, trade in services and commercial aspects of intellectual property have become a genuine part of the Union's exclusive competence. Moreover, Article 188 C (1) adds a new area to the scope of the common commercial policy: foreign direct investment. Hence, the Union will have authority to conclude international investment agreements. Having investment agreements under the scope of the common commercial policy means that the Union will have exclusive competence – therefore the Member States will lose their ability to negotiate and conclude such agreements.

The Lisbon Treaty has broadened the scope of the exclusive competence of the Union as it has enlarged the scope of the common commercial policy. Hence, all WTO matters will be within the scope of the common commercial policy. Moreover, it seems that Article 188C also expands the Union internal competence concerning trade in services, commercial aspects of intellectual property and foreign direct investment.

Article 188 C (1) also states that “The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.” Therefore, the common commercial policy will now have to include principles such as human rights, equality and solidarity.

The Lisbon Treaty changes the decision-making process for the adoption of internal legislation by increasing the powers of the European Parliament. According to Article 188 C (2) “The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.” Hence, the European Parliament has now acquired the power of co-decision.

The Commission maintains its capacity as the official institution which recommends the beginning of negotiations to the Council and conducting those negotiations “in consultation with a special committee appointed by the Council to assist the Commission in this task.” Such committee is known as “the Article 133 Committee.” This committee coordinates EU trade policy and it is composed of Member State representatives and the European Commission. This committee has already been widely criticised for its lack of accountability and transparency.

Under the present Article 133 (3) the Commission is only required to report on the progress of negotiations to the 133 Committee but the new provision requires the Commission to also report to the European Parliament. According to Article 188C (4) “In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.” Therefore, as presently, the Council, in exercising its powers in the common commercial policy, acts by QMV. Unanimity is still required where necessary for the adoption of internal rules. Article 188C (4) states “For the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, the Council shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.” This provision is similar to Article 133 (5) TEC, however the new provision does not require unanimity where the agreement “relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules” – therefore trade in services and commercial aspects of intellectual property are definitely part of the Union's exclusive competence whether it will decide to exercise its internal competences in respect of that area or not.

This new provision implies that the agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services are no longer a shared competence of the Community and the Member States. According to present Article 133 (6), “An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation. In this regard ... agreements relating to trade in cultural and audiovisual services, educational services, and social and human

health services, shall fall within the shared competence of the Community and its Member States. ... the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.” The Article is presented as though under the new provision the agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services are no longer a shared competence of the Community and the Member States. Unanimity is still required but according to Article 188 C (4) “The Council shall also act unanimously for the negotiation and conclusion of agreements: in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity” and “in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.” However, a Member State will have to provide explanations on how the agreement in question would represent a risk to “the Union’s cultural and linguistic diversity” or a risk to of disturbing the national organisation of social, educational and health services. Therefore, if the other Member States do not agree, the Council will act by QMV and it will be the ECJ which might end up having the last say.

The Union will not have exclusive competence to negotiate or conclude an international agreement in areas which the Union has not had the power to legislate internally. According to present Article 133 (6), “An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.” The Lisbon Treaty pretends to limit the Union competences in external trade policy including Article 188C (6) which states that “The exercise of the competences conferred by this Article in the field of the common commercial policy shall not affect the delimitation of competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of the Member States insofar as the Treaties exclude such harmonisation.” Hence, the Union will not have the exclusive competence to negotiate or conclude an international agreement in areas which the Union has no power to legislate internally.

The Lisbon Treaty will enhance the Union position as the only actor to negotiate and conclude agreements. The scope of the common commercial policy was massively expanded and therefore it seems that the Union will be able to negotiate and conclude agreements in all aspects covered by the WTO.

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**EXTERNAL ACTION: UK WILL BE PREVENTED FROM ENTERING INTO  
EXTERNAL NEGOTIATIONS SINCE UNION HAS THE PRIMARY LEGAL BASIS  
TO CONCLUDE AGREEMENTS  
[ARTICLE 188L]**

*Policy Area: Treaty on the Functioning of the European Union, Part Five, External Action by the Union, Title V International Agreements, Article 188L*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 170 to 174, inserted Title V and Articles 188L to 188O TEC (TFEU) relating to international agreements; and

(ii)'.

Article 188 L is another new Article with a new title - "INTERNATIONAL AGREEMENTS" – which essentially boosts the EU's ability to sign international agreements on its own. This is a consequence of its new "legal personality" which it acquires under the terms of the Lisbon Treaty. Presently, only the European Community, and not the European Union, has legal personality.

Whilst this Article is new, presently, the provisions on the Community's relations with third countries and international organisations as well as the Community's powers to conclude agreements with third countries or international organizations are included in part six, General and Financial Provisions of the TEC. Also, the conclusion of international agreements is provided for in several articles such as Article 24 TEU on the CFSP and Article 34(d) TEU on police and judicial cooperation, Article 133 TEC on Common Commercial Policy, Article 300 and Article 310 TEC.

Article 188L provides the EU with massive powers to conclude international agreements not just "where the Treaties so provide" but also "where the conclusion of an agreement is necessary in order to achieve, within the framework of the Union's policies, one of the objectives referred to in the Treaties, or is provided for in a legally binding Union act or is likely to affect common rules or alter their scope." Furthermore, according to Article 2 B TFEU the Union has exclusive competence "for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope." The new Article 188 L (1) as well as Article 2 B (2) codifies the ECJ case law, in particular the ERTA judgement concerning the EC external competence. According to the ECJ and the principle of implicit powers, the EC competence in external matters derives from explicit internal competence. Hence, if the Treaties provide explicit powers to the Community in a certain area the Community has similar powers to conclude agreements with third countries in the same area. Such principles will also apply, under the Lisbon Treaty, to CFSP and Justice and Judicial Cooperation in Criminal Matters.

Bernard Jenkin MP has already said in the House of Commons on 29 January that "Decisions under article 188L are, of course, made by qualified majority voting. So, whereas the arrangement for extradition agreements in the EU is a unanimity provision

at the moment, we are effectively conceding to the EU qualified majority voting on extradition. That amounts to an extra concession of qualified majority voting. Moreover, I must point out that, whatever is agreed internationally by the EU by qualified majority voting automatically becomes an exclusive competence of the EU that is enforceable through the European Court of Justice and therefore binding directly on member states.”

There is a Declaration on Article 188 N of the TFEU related to the negotiation and conclusion of international agreements by Member States in the area of freedom, security and justice, stating that “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.” However, it is a declaration and it is not legally binding. It is clear that the Lisbon Treaty will have a detrimental impact on the UK’s ability to conclude agreements with third countries. The UK will be prevented from entering into agreements in areas covered by the Union.

Article 188 L (2) states that “Agreements concluded by the Union are binding upon the institutions of the Union and on its Member States.” This provision is based on present Article 300 (7) TEC. Nevertheless, the Lisbon Treaty expands the Union competence to conclude international agreements – therefore, we will see further external agreements binding on the Member States.

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**EXTERNAL ACTION: COMMISSION AND EU FOREIGN MINISTER TO INITIATE ALL EXTERNAL NEGOTIATIONS, SETTING MAJOR LIMITATIONS FOR UK [ARTICLE 188N]**

*Policy Area: Treaty on the Functioning of the European Union, Part Five, External Action by the Union, Title V International Agreements, Article 188N*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 2, paragraphs 170 to 174, inserted Title V and Articles 188L to 188O TEC (TFEU) relating to international agreements; and

(ii)’.

Article 188 N replaced the previous Article 300, which again focuses on agreements with third countries. The new Article enables the EU to conclude international agreements by majority vote and with the participation of the European Parliament and the Court of Justice.

This new provision establishes the procedures for the conclusion of international agreements included in several TEC provisions but also agreements concerning CFSP and police and judicial cooperation in criminal matters (formerly third pillar). Although there are some specific rules for agreements under the CFSP, obviously the rules on the negotiation and conclusion of agreements will be fully applied to Treaties on former third pillar matters.

The Council continues to “authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.” The Commission, presently under Article 300 TEC has the power to negotiate on behalf of the Community. The new provision establishes the competences of the Commission and High Representative of the Union for Foreign Affairs and Security Policy, stating that “The Commission, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.” The Lisbon Treaty leaves it up to the Council to nominate the negotiator according to the subject matter of the agreement envisaged.

The new provision specifies that the authorisation of the signing of the agreement as well as the conclusion will be adopted by the Council in the form of decisions, on a proposal by the negotiator.

According to the new provision “except where agreements relate exclusively to the common foreign and security policy” the Council must obtain the consent (assent procedure) of the European Parliament before adopting the decision concluding the agreement in several cases. The European Parliament may accept or reject the Council decision but cannot amend it. Presently, the European Parliament assent power is limited to association agreements, agreements establishing a specific institutional framework by organising cooperation procedures, agreements with significant budgetary implications and agreements involving amendment of an act adopted under the co-decision procedure. The European Parliament role is enhanced under the Lisbon Treaty as the European Parliament will have to give its consent to the abovementioned agreements and also agreement on Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms and to all agreements in the fields covered by the ordinary legislative procedure (co-decision) or “the special legislative procedure where consent by the European Parliament is required.”

In other cases, the European Parliament will have a consultative power. The Council will continue to act by QMV except, as presently, if an agreement covers a field for which unanimity is required for the adoption of a Union act, association agreements and agreements, under Article 188h, with states which are candidates for Union accession. Hence, the reference to unanimous voting for the agreements concluded with States which are candidates for accession to the Union in present Article 181A (2) has moved to this Article. Moreover, the new provision provides that “The Council shall also act unanimously for the agreement on accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms.”

Presently, under Article 300 (6) “The European Parliament, the Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty.” Obviously, the Lisbon Treaty replaces “this Treaty” with “the Treaties.” Moreover, whereas under the current Article 300 (6) “Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 48 of the Treaty on European Union.” The new provision provides “Where the opinion of the Court is

adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised."

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**EXTERNAL ACTION: EU FOREIGN MINISTER (AND COMMISSION) ARE TO  
CONCLUDE INTERNATIONAL AGREEMENTS ON BRITAIN'S BEHALF  
WITH UNITED NATIONS, COUNCIL OF EUROPE, OECD  
AND ALL INTERNATIONAL ORGANISATIONS  
[ARTICLE 188P]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Five, External Action by the Union, Title VI The Union's relations with international organisations and third countries and the Union delegations, Article 188P*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 175, inserted Title VI and Articles 188P and 188Q TEC (TFEU) relating to the European Union's relations with international organisations and third countries and European Union delegations; and

(ii)'

Article 188 P is a new Article which allows the EU to conclude international agreements with international agencies like the UN, the Council of Europe, OECD etc... The High Representative is placed in charge of such agreements.

This new Title on the Union's relations with international organizations, third countries and Union delegations also applies to the EU's CFSP.

This new provision mainly concerns the relationship between the Union and international organisations. Present Articles 302-304 TEC are replaced by Article 188P. This new provision provides for a role for the High Representative of the Union for Foreign Affairs and Security Policy. The Commission as well as the High Representative and the Commission are responsible for keeping the Union's relations with the United Nations, the Council of Europe, the Organisation for Security and Cooperation in Europe and the Organisation for Economic Cooperation and Development and other international organisations. This is completely unacceptable and the provisions of this Article must be rejected.

**Part VI: Opposition to the Treaty of Lisbon on: EU institutions and decision-making (as debated in the House of Commons on Tuesday 26 February 2008) and climate change (as debated in the House of Commons on Wednesday 27 February 2008)**

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**EFFECTIVENESS OF EU DECISION-MAKING: EU-UK “SINCERE COOPERATION” EXTENDS EU COMPETENCES  
[ARTICLE 3a]**

*Policy Area: Treaty on European Union, Title I, Common Provisions, Article 3a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 1, paragraph 5, inserted Article 3a TEU relating to relations between the Union and Member States; and

(ii)’.

This Article sets out the relations between the Union and the Member States. It is extremely misleading in that it says “... competences not conferred upon the Union in the Treaties remain with the Member States” since, after Lisbon, there is no considered area which has been left to the Member States governance. The areas of exclusive EU competence are extended in much the same way that the areas of shared competence will be. It is well know that is the Union which rules in the areas of shared competence and not the Member States.

Moreover, according to doctrine, if the EU has been granted competence in a particular area, a Member State could not legislate in its own Parliament. Once a competence is transferred to Brussels, it cannot be transferred back. The Union reserves its right to exercise its power in frustrating national governments capacity to legislate.

Article 6 TEU already mentioned that “The Union shall respect the national identities of its Member States.” The Lisbon Treaty also includes a respect for regional and local structures of self-government. This is misleading. The Union approach has been one-size fits all with total disregard for national identities. Moreover, it states that the Union “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.” This Article does not include important state functions such as to conduct a Foreign and Security Policy. The TEU, Articles 33 and 35, state that the provisions on police and judicial cooperation in criminal matters “shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security” and Article 35 TEU limits the ECJ jurisdiction in this area. Police and Judicial cooperation will cease to be intergovernmental and be placed under the community method. Therefore, it is very likely that the Union will put forward measures that might jeopardise Member States’ national security measures. An

important observation is the way in which the Prüm Treaty – relating to the collection of personal data – is being implemented into Union law.

The “principle of sincere cooperation” is not new. Article 11 (2) TEU states that “The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity.” Under Article 10 EC, “Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community’s tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.” Presently, Article 10 only applies to the “first pillar.” Although the principle of sincere cooperation according to the present Treaties only applies to the second and third pillar, the ECJ, in the Pupino Case during 2005 [Case C-105/03] ruled that the principle of sincere cooperation is also binding in third pillar measures. Therefore, this provision both reflects and enhances existing ECJ case law.

The Article entails the proposal that Member States must be obliged to be loyal to the Union. Member States are obliged to refrain from taking actions at national level that are contrary or are likely to prejudice the Union’s effectiveness. This is a clear assumption of the Union’s superiority over the Member States in this respect.

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**EFFECTIVENESS OF EU DECISION-MAKING: ‘SUBSIDIARITY’ PRINCIPLE MADE  
REDUNDANT BY EU LEGISLATIVE PRIMACY  
[ARTICLE 3b]**

*Policy Area: Treaty on European Union, Title I, Common Provisions, Article 3b*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 1, paragraph 6, inserted Article 3b TEU relating to the competences of the European Union; and

(ii)’.

The Lisbon Treaty adds the word “only” which does not make any real difference, at least on a mere analysis of the text.

On the other hand, Article 2a of the Treaty on the Functioning of the European Union states that “When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.”

Therefore, Member States are only permitted to take action if the Union has decided not to already. It is well known that the principle of subsidiarity – whilst a good concept in

theory – has never worked in favour of the Member States. The Union has the primacy to legislate even in the shared areas. Furthermore, it will be the ECJ which decides on the limits and competences boundaries between the Union and the Member States.

The Lisbon Treaty only asserts the role of national Parliaments by ensuring compliance with the principle of subsidiarity according to the procedure established in the Protocol on the application of the principles of subsidiarity and proportionality.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU WILL CREATE BANK AND  
COUNCIL AS TWO NEW EU INSTITUTIONS  
[ARTICLE 9]**

*Policy Area: Treaty on European Union, Title III, provisions on the Institutions, Article 9*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 1, paragraphs 13 and 14, replacement Title III and Article 9 TEU relating to provisions on the institutions; and

(ii)'.

The European Council and the European Central Bank will now be added to the list of European Institutions. The present Article 9 of Title III of the TEU sets out amendments to the European Coal and Steel Treaty, which are now repealed. The ECSC Treaty expired in 2002. Article 9 is based on Article 5 TEU and Article 7 TEC which will be repealed.

The Lisbon Treaty now recognises the European Council as an EU institution and in accordance with Article 230 and 232, the ECJ will acquire competence to review the legality of the European Council. Moreover, the ECJ will have jurisdiction to hear actions for failure to act against the European Council. Hence, according to Article 233 the European Council might be required "to take the necessary measures to comply with the judgment of the Court of Justice" with all the negative implications this provision is likely to have. In all cases, the ECJ will have the final say on the limits and restraints of powers used by the Union institutions.

The European Council has previously been outside the supranational pillar and will now be part of the intergovernmental one. It has not previously been subject to the control of the ECJ. It should be noted that many of the Presidency conclusions of the European Council have had major consequences for the future direction of the Union. The European institutions now have their own mobilising political force through which to construct European policy, against the wishes of the British people.

The ECB has also previously been independent of political influences. When it becomes an EU institution under this provision, it will undermine the bank's independence. Even its President, Jean-Claude Trichet, fears that EU leaders will put political pressure on the bank's decisions.

The Committee of the Regions will undermine local government actions in counties and towns and the Economic and Social Committee will undermine national trade unions.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU CREATES NEW AND MASSIVELY  
ENHANCED POWERS FOR COMMISSION, PARLIAMENT,  
PRESIDENT AND FOREIGN MINISTER  
[ARTICLE 9d]**

*Policy Area: Treaty on European Union, Title III, provisions on the Institutions, Article 9d*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 1, paragraph 18, inserted Article 9D TEU relating to the Commission; and  
(ii)'.

Paragraph 1 provides a basis for the Commission functions which are spread among the present treaties. Most notably, the provision holds steadfast to the principle of acting as an external political representative body whilst excluding the role of foreign policy – thus, it constructs an impossible objective that “With the exception of the common foreign and security policy, and other cases provided for in the Treaties, it shall ensure the Union's external representation.” It is clear that the external representation of the European Union's views, expressed as though they were the United Kingdom's, is not only a major difficulty but that this precedes any provisions provided for within British foreign policy. If arrangements are made through external representation, then conditions reflecting that representation, will conflict with a British-determined foreign policy, leaving the United Kingdom open to substantial threats to its own policy.

Paragraph 2 enhances the Commission's power to propose legislation. It clearly states that the Commission has the monopoly to propose Union laws and set the legislative agenda. Under the Lisbon Treaty, the Commission's power to initiate legislation will be severely extended.

A Protocol attached to the Nice Treaty in 2000 required that the biggest Member States (UK, France, Italy, Germany and Spain) lose one commissioner in January 2005. Therefore, presently, the Commission comprises one national from each Member State. However, the Nice Protocol also requires that when the Union is made of 27 Member States, the Commission will then have fewer commissioners than the number of Member States. Under the Lisbon Treaty, until 2014, the Commission will be composed of one commissioner per Member State. However, from 2014 onwards, it will be composed of the number of Members equivalent to two thirds of the Member States on the basis of a system of equal rotation. So, each Member State will have a member for two out of three terms of office. The European Council acting unanimously might amend the number of commissioners. The size of the Commission will be cut therefore each Member State will not have a commissioner for several years. The Commissioners are also supposed to be independent and to act in the Union's general interests but in practice this has never

been proven to work – hence, cutting down the Commission size means that the UK, when it does not have a commissioner in the near future, will not be able to influence legislation. The rules on rotation of the Commission are already included in Article 211 TFEU.

It is clear that the Commission has attained an independent governmental structure. The President of the Commission has seen its powers increased. The Lisbon Treaty states that the Commission President “shall lay down guidelines within which the Commission is to work.” Under Article 219 TEC “After obtaining the approval of the College, the President shall appoint Vice-Presidents from among its Members”, this provision is not amended by the TFEU yet on Article 9 D (6) (c ) it has omitted “after obtaining the approval of the College.”

More importantly, in what concerns resignation of the Commissioners, under Article 219 “A Member of the Commission shall resign if the President so requests, after obtaining the approval of the College” however the “approval of the College” has now been omitted from the text of Article 9 D (6). Moreover, it should be noted that since the Commission is able to fire a commissioner insofar as the other commissioners agree, this represents the end of collective Commission responsibility. It also marks the clear end of the separation of political powers in the European Union.

The President of the Commission will be elected by the European Parliament on the basis of a proposal from the European Council, which will take into account of the result of the elections at the European Parliament. Under Article 214 TEC, the European Council nomination of the Commission President requires the approval of the European Parliament. Under the Lisbon Treaty, the European Council, acting by qualified majority proposes to the European Parliament a candidate for President of the European Commission who “shall be elected by the European Parliament by a majority of its component members.” This represents more powers to the European Parliament at the expense of the Member State input.

The veto of the Member States over this matter was already taken at Nice but now it will be up to the European Parliament on whether to elect (or not) the candidate chosen by the European Council. Under Article 214 TEC (2), second paragraph – which will now be repealed under the Lisbon Treaty – “The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State.” Under the Lisbon Treaty “The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it purposes for appointment as members of the Commission” as in the current Treaties the list will be based on suggestions made via the Member States. Hence, our existing practice in which each Member State will suggest different candidates, and the Council and the President will choose from the different proposals, will be abandoned.

However, Member States still have to be subject to the “vote of consent” of the European Parliament which complicates things even further. The Lisbon Treaty introduces the requirement that the appointments of members of the Commission shall be selected “... in accordance with the criteria set out in paragraph 3, second subparagraph, and paragraph 5, second subparagraph.” This says that, “the members of the Commission shall neither seek nor take instructions from any government or other institution, body, office or entity” and furthermore they “shall be chosen from among the

national of the Member States on the basis of a system of strictly equal rotation between the Member States, reflecting the demographic and geographic range of all the Member States.” This provision will further limit the influence of the Member States.

Under the Lisbon Treaty, the High Representative of the Union for Foreign Affairs and Security Policy as well as the President and the other Members of the Commission “shall be subject as a body to a vote of consent by the European Parliament.” Under existing Article 214 TEC, it was just the President and Commission members that had been approved by the European Parliament: “The President and the other Members of the Commission thus nominated shall be subject as a body to a vote of approval by the European Parliament. After approval by the European Parliament, the President and the other Members of the Commission shall be appointed by the Council, acting by a qualified majority.”

Concerning the European Parliament motion of censure of the Commission, this Treaty provision is based on existing Article 201 TEC. The new Article 9 D and Article 201 was amended to take into account the High Representative of the Union for Foreign Affairs and Security Policy who if a motion is carried “shall resign from the duties that he carries out in the Commission.” It seems that in this case the High Representative will be allowed to continue his/her functions that he carries out in the Council, whilst only being resigned from the Commission. This is fraudulent and is entirely unacceptable.

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**EFFECTIVENESS OF EU DECISION-MAKING: EUROPEAN COURT OF JUSTICE  
WILL GAIN NEW POWERS OVER BRITISH STATE LIABILITY, NATIONAL COURTS  
AND BRITISH LABOUR LAWS  
[ARTICLE 9f]**

*Policy Area: Treaty on European Union, Title III, provisions on the Institutions, Article 9f*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 1, paragraph 20, inserted Article 9F TEU relating to the Court of Justice of the European Union; and

(ii)’.

This Treaty provision does incorporate aspects of previous Articles 220, 221, 222, 223 of the TEC. It is formulated under existing Article 220 TEC that “The Court of Justice and the Court of First Instance ... shall ensure that in the interpretation and application of this Treaty the law is observed.” Under the Lisbon Treaty, the Court of First instance was renamed General Court and the Judicial Panels specialised courts. The word “Treaty” was replaced with “Treaties” as the Court of Justice of the European Union will now have competence over police and judicial cooperation (formerly the third pillar provisions).

The Lisbon Treaty imposes the obligation on Member States to create solutions necessary to guarantee the right of effective legal protection. The Treaty states that “Member States shall provide remedies sufficient to ensure effective legal protection in

the fields covered by Union law.” Hence, the Member States have to establish provisions within their rules of procedure which provide effective remedy for potential violations of rights conferred by Union law. Originally, the procedures and remedies for breaches of Community law were a matter for Member States. While the ECJ has no jurisdiction to hear complaints by individuals whose rights were violated under EC law, it has developed a ‘remedies’ approach through the preliminary ruling procedures.

In order to ensure the judicial protection of EU rights, the ECJ has developed two principles, the principle of equivalence and the principle of effectiveness concerning the adequacy of national remedies. The ECJ has held through its case law that remedies provided by national courts for the enforcement of Community law “must not be less favourable than those applying to similar claims based on domestic law” (principle of equivalence) and the conditions “must not be such as in practice to make it impossible or excessively difficult to obtain” a remedy (principle of effectiveness). Whereas Member States were not required to create remedies which were not available under national law the court’s autonomy on EC law enforcement is subjected to these principles. However, in the infamous Factortame I case, the principle of effective judicial protection of Community law has prevailed over UK rules being the House of Lords required to create a new remedy. Again, in the Marshall case [Case C-271/91, M.H. Marshall v. Southampton and South West Hampshire Area Health Authority] the ECJ considered the UK legislation’s limits and amount of compensation to not be an adequate remedy. Moreover, the ECJ, in 1991, in the Francovich case [Joined cases C-6/90 and C-9/90, Andrea Francovich and Danila Bonifaci and others v Italian Republic] introduced the doctrine of state liability enabling individuals to obtain reparation when their rights are violated by a breach of Community law “for which a Member State can be held responsible.” According to the Court, the reparation by the Member State is essential when it has not implemented a Directive in due time and consequently the individuals are unable to enforce their rights granted by Community law before the national courts. The principle was further developed in subsequent cases. In Dillenkofer [Joined cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94, Erich Dillenkofer, Christian Erdmann, Hans-Jürgen Schulte, Anke Heuer, Werner, Ursula and Trosten Knor v Bundesrepublik Deutschland], the ECJ further developed the conditions for state liability, where it concluded that “Failure to take any measure to transpose a directive in order to achieve the result it prescribes within the period laid down for that purpose constitutes per se a serious breach of Community law and consequently gives rise to a right of reparation for individuals suffering injury if the result prescribed by the directive entails the grant to individuals of rights whose content is identifiable and a causal link exists between the breach of the State’s obligation and the loss and damage suffered.”

Obviously, this principle has substantial implications, in particular, for the enforcement of EU labour law, such as on directives on health and safety at work. Moreover, such a principle works against the interest of Member States because it has an impact on public funds. It encroaches upon national sovereignty since it represents another intrusion on the autonomy of national courts. Previously, at the 1991 IGC, the Member States decided not to include in the Treaty general rules on state liability. Nevertheless, the ECJ introduced the principle which represents a way to sanction Member States which have not complied with Community law. The Lisbon Treaty will greatly exacerbate the creeping powers gained by the ECJ in the field of ensuring compliance with state liability, labour law and healthy and safety regulations.

The Lisbon Treaty now codifies the ECJ's principles of effectiveness and equivalence. Obviously, this provision will have a major impact on Member States as the requirement to provide for sufficient remedies will be primary law. National courts will be required to provide remedies which are not available under national law (as the ECJ held in the Factortame I case). The ECJ will be able to refer not only to its previous case law but also to a new Treaty provision. The pressure on the Member States to improve remedies available before their national courts will increase. Moreover, Article 47 (1) of the Charter of Fundamental Rights – to which the UK will be bound – also provides that “Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.”

The ECJ hears challenges to Community acts brought by Community institutions, Member States and by natural or legal persons. However, under Article 230(4) TEC "Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former". The criteria of "individual concern" has been strictly interpreted by the ECJ. Individuals can challenge Community acts in national courts through preliminary rulings procedures but Article 230(4) represents an obstacle to the individual access to the Court of Justice. The Lisbon Treaty will liberalise their standing so that regulatory acts which are of direct concern to the individual and do not entail implementing measures, may be directly challenged before the Court of First Instance. The power of the ECJ to give preliminary rulings will be also expanded. The Lisbon Treaty, in sum, drastically extends the Court's rule on all matters in the Treaty, with very few exceptions.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU BECOMES A LEGAL  
EUROPEAN SUPERSTATE  
[ARTICLE 46a]**

*Policy Area: Treaty on European Union, Title VI, Final Provisions, Article 46a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

‘(i) Article 1, paragraph 55, new Article 46A TEU relating to the legal personality of the European Union; and

(ii)’.

This new Article turns the EU into an global political actor in its own right. It takes most of the Member States' powers to sign treaties with other states. It will allow the Union to increase the role it plays on the international stage and to promote its values and interests. Member States would act under the Union as one state. The Union acquires the right to conclude international agreements. The Union will conclude treaties, hold a right to submit claims or to act before an international court, become a member of an international organisation, and hold a right to enjoy certain immunities. The European

Community already signs up to international agreements but the power is now extended to the entire Union. The Union will negotiate and sign international agreements and conventions relating to criminal law, extradition, foreign and security policy and defence.

Devastatingly, the Union will operate as a Government in its own right, signing treaties and agreements on the international stage; it will have the High Representative who is essentially its own Foreign Minister. The Union will hence be able to speak and take action as a single entity.

The Lisbon Treaty contains a 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” but this is not, in itself, legally binding.

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**EFFECTIVENESS OF EU DECISION-MAKING: LISBON TREATY IS  
A SELF-AMENDING TEXT – A GATEWAY TO A LEGAL EU SUPERSTATE WITH  
INFINITE POTENTIAL COMPETENCIES  
[ARTICLE 48]**

*Policy Area: Treaty on European Union, Title VI, Final Provisions, Article 48*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 1, paragraphs 56, replacement Article 48 TEU relating to Treaty revision procedure, and 57, amendments to Article 49 TEU relating to admission of new Member States; and

(ii)’.

The Lisbon Treaty notably introduces “simplified revision procedures” which means that the Treaty is self-amending. Article 48 (6) has been called the “ratchet clause” and allows Treaty amendments to be made without the necessity of a new, amending treaty and ratification. It allows for the revisions of text, within Part III, “on internal policies and actions of the Union” without convening an IGC. It provides a ‘simplified’ way for amending the Treaty’s provisions in areas of Union policy established in the TFEU. Under Article 48 (6) “The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.” Then, after consulting with the European Parliament, the Commission or the European Central Bank, the European Council “may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union” acting by unanimity. It will then be necessary that this “... decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements” but this is not the same as Treaty ratification. Moreover, this provision states that “The decision referred to in the second subparagraph shall not increase the competences conferred on

the Union in the Treaties” which will require an IGC. But is very difficult to understand how Union competences would not be increased under such a provision.

This provision introduces different Treaty methods. The present Article 48 TEU on the amendment of the Treaties was substantially amended by the Lisbon Treaty. Article 48 amended by the Lisbon Treaty introduces different Treaty amendment methods, the ordinary revision procedure and the simplified revision procedure (mentioned above). The present Article 48 TEU provides solely for the convening of an IGC in order to amend the Treaties.

Under the ordinary revision procedure, proposals for amendment may be submitted by a Member State, the European Parliament or the Commission to the Council. Under the present Article 48 the Commission as well as the Member States may submit to the Council proposals for amending the Treaties. The innovation is that the European Parliament can now submit proposals for revising the Treaty. The Lisbon Treaty adds that “These proposals may, inter alia, serve either to increase or to reduce the competences conferred on the Union in the Treaties.” However, the competences of the Union are never reduced but always increased. The proposals for the amendment of the Treaties are submitted to the European Council by the Council. The Lisbon Treaty introduces the requirement to inform the national Parliaments of such proposals. Then, the European Council will have to decide, after consulting the European Parliament and the Commission, by a simple majority a decision in favour of examining the proposed amendments. In that case, the President of the European Council calls a Convention which includes representatives of the national Parliaments, of the Heads of State or Government of the Member States, of the European Parliament and of the Commission to examine the proposals for amendments and shall adopt by consensus a recommendation to a conference of representatives of the governments of the Member States. The present Article 48 does not make a reference to the Convention but it states “If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties.” However, it was not changed that “A conference of representatives of the governments of the Member States shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to the Treaties.”

The European Council has ultimate decision-making on convening a Convention if it so wishes. This clause introduces an alternative procedure in which the “European Council may decide by a simple majority, after obtaining the consent of the European Parliament, not to convene a Convention should this not be justified by the extent of the proposed amendments. In the latter case, the European Council shall define the terms of reference for a conference of representatives of the governments of the Member States.”

The European Council has the ultimate say on resolving any UK problems with ratification of the Treaty amendments. “The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.” The Lisbon Treaty introduces a new procedure in case of difficulty with the ratification “If, two years after the signature of a treaty amending the Treaties, four fifths of the Member States have ratified it and one or more Member States have

encountered difficulties in proceeding with ratification, the matter shall be referred to the European Council.”

Article 48 (7) is the so-called passerelle clause. Obviously, under such a provision, further national vetoes will be abolished. Under Article 48 (7) “Where the Treaty on the Functioning of the European 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.” The Council will be allowed to move from QMV in areas covered by unanimity including foreign policy (but excluding defence) and such moves would not need to be ratified by national parliaments. Moreover, it is stated that “Where the Treaty on the Functioning of the European 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”, the European Council will allow a shift from the consultation procedure or assent procedure (special legislative procedure) to co-decision procedure (ordinary legislative procedure) which implies further involvement of the European Parliament. The European Council shall act by unanimity, after obtaining the consent of the European parliament, in deciding to move areas from decision-making by unanimity to Qualified Majority Voting and from special legislative procedure to ordinary legislative procedure.

There is also a provision that states “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.” However, the Government must allow sufficient time to the Parliament to vote against such proposals otherwise it goes through automatically. Therefore, it might happen that amendments to the Treaties will become law without sufficient parliamentary scrutiny.

The present Treaties also contain passerelle clauses in Articles 42 TEU and 67 TEC, but the Lisbon Treaty significantly broadens the possibility of transferring unanimity to QMV. The supposed intention of this provision is to simplify the revision of the Treaties and to move away from the IGCs and the signatures and ratification of a new Treaty by all Member States. The simplified but wholly undemocratic revision procedures represent a significant increase in the power of the Union, at the expense of the Member States. The role of the European Parliament in controlling Treaty amendments will be completely undermined.

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**EFFECTIVENESS OF EU DECISION-MAKING: LIGHT AT END OF THE TUNNEL?  
A PROCEDURE FOR VOUNTARY WITHDRAWAL FROM THE EU  
[ARTICLE 49A]**

*Policy Area: Treaty on European Union, Title VI, Final Provisions, Article 49A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 1, paragraph 58, new Article 49A TEU relating to the withdrawal of a Member State from the European Union; and

(ii)'.

This is a new Article which establishes a procedure for a voluntary withdrawal from the Union. It is the first time that such a withdrawal clause from the European Union is included. A Member State that wishes to withdraw must notify the European Council, which will consider the matter and set out negotiating guidelines. The Union will conclude an agreement setting out the arrangements for withdrawal which will take into account "the framework for its future relationship with the Union." The Council, after obtaining the consent of the EP, will conclude the agreement, acting by QMV. However, the withdrawing Member State is not allowed to participate in discussions or decisions about it in the European Council or in the Council.

It is clear that the right of withdrawal already exists and it should not have been made dependent on a conclusion of a withdrawal agreement. In the UK, it is up to the Parliament to repeal the European Communities Act 1972. If a state wants to join the Union again, it has to make an entirely new membership request and satisfy accession requirements.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU BLURS BOUNDARIES AND  
DEFINITIONS OF SHARED AND EXCLUSIVE COMPETENCIES  
[ARTICLE 2A]**

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Common Provisions, Title I Categories and areas of Union Competence, Article 2A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 12, new Title and new Articles 2A to 2E TEC (TFEU) relating to categories and areas of European Union competence; and

(ii)'.

This is a new Article, relating to the Union's encroaching power-grab for new competences. The Lisbon Treaty also contains a Protocol on this Article (Protocol on the exercise of shared competence).

The present Treaties do not contain a list of areas of the Union exclusive or shared competence and do not have an exhaustive list of the Union or Member States competences over the different policies. The Community has explicit powers, implicit powers and under Article 308 TEC if the Community has no powers to attain a Treaty objective concerning the common market, the Council is allowed, acting unanimously, to take the measures it considers necessary. It is well known that this Article has been used concerning measures that have nothing to do with the common market. The Community has exclusive powers, shared powers and supporting powers or areas of supporting action.

The Lisbon Treaty attempts to enhance the powers of the Union, blurring the distinction between powers of the Member States and the Union yet no remaining powers have been left for the Member States. It strengthens the power of the Union. It identifies the areas in which the Member States have transferred their powers of action to the Union. Obviously, the Lisbon Treaty will not stop the drift of powers from the Member States to the EU, in fact, it will increase it. The Lisbon Treaty will introduce a list of areas which fall under each type of competence: exclusive competence, shared competence and competence to take supporting, coordinating or complementary action, all of which have become almost meaningless categories.

It is of concern that all the aspects of the Union activity are not covered in such lists and there is extensive scope for interpretation. Obviously, the European Court of Justice will have a major role in the interpreting and deciding on the competence boundaries and it will do so in name of the uniform application and effectiveness of EU law.

The Union will have primacy. The “Union exclusive competence” is defined in Article 2A. Through this, the Union will act alone and only the Union is allowed to legislate and adopt legally binding acts.

Shared competences are, in fact, not shared since the Union, if it has decided to act already, maintains exclusive competence. Article 2A (2) defines “shared competence”, “When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area.” However, it also states that “The Member States shall exercise their competence to the extent that the Union has not exercised its competence.” Member States will only be able to act if the Union decided not to. Therefore, Member States are not allowed to legislate in the areas of shared competence if the Union decides to act. It is hard to imagine that the Union will surrender competences – hence Member States would not be able to claim back competences.

The competences gained by the Union will undermine British economic and employment management. Under Article 2A (3), Member States must attempt to coordinate their economic and employment policies, which the Union shall have the ultimate competence to provide, leading to increased EU interference in UK employment policy.

The competences gained by the Union will undermine British foreign policy. Under Article 2A(4), the Union shall have extended competences to define and implement a common foreign and security policy, including a common defence policy.” We have commented on this when discussing the foreign policy provisions in the TEU, and the effects this will have on the UK’s independent foreign policy.

The competences gained by the Union will be unnecessary to the Member States and they will be legally binding. Under Article 2A (5), the Union will also have competence to carry out actions through coordinating the actions of the Member States, without superseding their interest or competence in these areas. It will give the Union an imprecise and extended competence in areas that should have always been left entirely to the Member States. The Union is supposed to act in order to coordinate or complement the action undertaken by the Member States. This provision further states that “Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States’ laws or regulations.” The reference to “legally binding acts” makes clear that the Union will not merely be providing guidelines for these areas of responsibility.

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**EFFECTIVENESS OF EU DECISION-MAKING: UK MUST CONDUCT ECONOMIC  
POLICY IN INTERESTS OF EUROPEAN UNION  
UNDER INSTRUCTION OF COUNCIL  
[ARTICLE 2D]**

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Common Provisions, Title I Categories and areas of Union Competence, Article 2D*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’ insert –

‘(i) Article 2, paragraph 12, new Title and new Articles 2A to 2E TEC (TFEU) relating to categories and areas of European Union competence; and

(ii)’.

The first part of the provision demands that Member States must conduct its economic policy in the interests of the Union, under the instructions of the Council. This Article concerns mainly the coordination of economic, employment and social policy. Article 2D (1) concern the coordination of Member States’ economic policy, it stresses that “The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies.”

The current Article 99 TEC has already stated that “Member States shall regard their economic policies as a matter of common concern and shall coordinate them within the Council”. This provision will further harm the economic interests of the UK and provides a damaging economic framework which is likely to compel Britain to adopt the ‘euro’ in the near to medium future.

The Union will exercise the power of initiative over all employment and social legislation. Article 2 D (2)/(3) provides that “The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies” and that “The Union may take initiatives to ensure coordination of Member States’ social policies.” It should not be for the Union to provide the supporting and coordinating action since this will only take place if the Member States request it – therefore the Union has assumed the power of initiative. This clause provides the Union

with a broad and imprecise competence. The Union will further interfere with Member State employment and social policies. It is then of no surprise that low (and stagnated) growth results from Europe's coordination of economic and employment policies. The agreement to this provision is to put the opportunities and jobs (now and in the long-term) of the British people at great risk.

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**EFFECTIVENESS OF EU DECISION-MAKING:  
EU SEEKS TO DIRECT POLICY FOR BRITISH INDUSTRY, HEALTH, EDUCATION,  
SPORT, CULTURE, CIVIL PROTECTION AND TOURISM  
[ARTICLE 2E]**

*Policy Area: Treaty on the Functioning of the European Union, Part I, Principles, Common Provisions, Title I Categories and areas of Union Competence, Article 2E*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding' insert –

'(i) Article 2, paragraph 12, new Title and new Articles 2A to 2E TEC (TFEU) relating to categories and areas of European Union competence; and

(ii)'.

The provision demands that the EU now gain competences and power over policy for British industry, health, education, sport, culture, civil protection and tourism. This is an intolerable state of affairs for the British people. This Article is supposed to concern the areas of supporting, coordinating and complementary action. The supporting, coordinating or complementary action areas are the following: protection and improvement of human health, industry, culture, tourism, education, youth, sport and vocational training, civil protection, administrative cooperation.

These are areas on which the Member States should have exclusive competence and the Union provides mere support or coordination, when the participating states so demand. However, the EU intends to interfere by directing policy over British industry, health, education, sport and culture, civil protection and tourism. The Lisbon Treaty, under this Article, picks up a number of new Union competences such as sport, tourism civil protection and administrative cooperation.

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**EFFECTIVENESS OF EU DECISION-MAKING: DISASTROUS COMMON  
AGRICULTURAL POLICY AND FAILED COMMON FISHERIES POLICY SET TO  
EXTEND CONTROLS & ASSERT POWERS OVER UK'S TERRITORIAL WATERS  
[ARTICLE 32]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title II Agriculture and fisheries, Article 32*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 46 to 49, amendments to Articles 32, 36 and 37 TEC (TFEU) relating to agriculture and fisheries; and

(ii)'.  
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The competence over common agricultural policy is supposedly shared between the European Union (EU) and the Member States. However, the EU has taken complete control of it with disastrous consequences over the past decades. Article 33 TEC which detailed the aims of CAP held objectives which have changed over the course of time. CAP was reformed in 1992 and 2003 yet little was done to reduce the costs of CAP. CAP expenditure has amounted to almost half the Community budget.

Under CAP, farmers are paid not to farm. Moreover, the subsidies mainly reach the larger farms. Furthermore, there are people receiving CAP subsidies who are not farmers. CAP's system of farm subsidies has come at the expense of farmers in the developing world who cannot compete with the maintenance of tariff barriers on their products.

The Fisheries policy originally formed part of the CAP but has gradually developed a separate identity. It became a full common policy in 1983. It has the same legal basis as CAP (Articles 32-38 of the EC Treaty). It is also a supposedly shared competence. Its reforms have added new aims to its original objectives, with the protection of fish stocks (which it has destroyed) and the marine environment becoming main issues.

There is no future for British fishing within the CFP. In fact, the British fishing industry is falling apart at the seams. The catch restrictions have led to millions of tons of dead fish being dumped back into the sea, simply because the catch exceeds the rigid EU quota. The measures for fishery resources management, and the total allowable catch (TAC) and quota system are not operating effectively. The CFP does not work.

Under the Lisbon Treaty, Title II on Agriculture was amended in order to also include fisheries. The sentence "The Union shall define and implement a common agriculture and fisheries policy" was added to Article 32 (1) which makes clear that the provisions of this Title also apply to the CFP. Moreover, the Lisbon Treaty adds that the internal market shall extend not only to agriculture and trade in agriculture products but also fisheries and it adds the following sentence to Article 32 (1) "References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as also referring to fisheries, having regard to the specific characteristics of

this sector." The existing TEC already provides implicitly for this. The CFP will now have a proper Treaty basis.

The European Commission is already planning to put in place an EU Maritime Policy, combining fisheries, environmental and marine industry policies which will have implications for Member State sovereignty over territorial waters. Agricultural and fisheries policies should be repatriated back to Westminster so a legitimate and long-term national plan can be established.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU BECOMES ULTIMATE  
AUTHORITY OVER FREE MOVEMENT OF EU CITIZENS, PASSPORTS, IDENTITY  
CARDS, RESIDENCE PERMITS AND ENTITLEMENT TO BENEFITS  
(SOCIAL SECURITY)  
[ARTICLE 18]**

*Policy Area: Treaty on the Functioning of the European Union, Part II, Non-Discrimination and Citizenship of the Union, Article 18*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 35(b), amendments to Article 18 TEC (TFEU) relating to the adoption of measures concerning social security or social protection; and

(ii)'.  
'

The revised Article 18 concerns the right to the freedom of movement of all citizens of the Union within the confines of the Union. The present Article 18 already allows the Council to adopt legislation in order to ensure freedom of movement, even where the Treaty does not provide for it. The Lisbon Treaty changes the words "the Council [shall], acting in accordance with the procedure referred to in article 251" with "the European Parliament and the Council [shall], acting in accordance with the ordinary legislative procedure." Hence, such measures will continue to be adopted by the Council acting by QMV and the European Parliament.

The Lisbon Treaty introduces a new legal base for measures concerning social security in relation to the free movement of citizens. The Council, acting by unanimity and after consulting the European Parliament, may adopt measures concerning social security or social protection even where the Treaty does not provide for it. The Lisbon Treaty creates a new paragraph, Article 18 (3) "For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament." This will allow the Union to further interfere with national social security systems. The Union will do whatever it wants to achieve its aims, with common action.

There is a similar provision in the existing Article 42 TEC which states that “The Council shall, acting in accordance with the procedure referred to in Article 251, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants: (a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries; (b) payment of benefits to persons resident in the territories of Member States. The Council shall act unanimously throughout the procedure referred to in Article 251.” However, Article 18 (3) TFEU provides a broader definition. [Article 42 will be discussed further].

Under the freedom of movement legislation enabled by Lisbon, the EU is given the right to adopt provisions concerning passports, identity cards, residence permits or any other such documents applying to the movement of EU citizens. The present Article 18 (3) which will be repealed states “Paragraph 2 shall not apply to provisions on passports, identity cards, residence permits or any other such document or to provisions on social security or social protection.” This means that, presently, the Council cannot adopt measures on passports, identity cards, residence permits, social security or social protection to ensure freedom of movement if such measures are not expressly provided for in the Treaty. However, the Lisbon introduces a new legal base, Article 62 (3) which states “If action by the Union should prove necessary to facilitate the exercise of the right referred to in Article 17(2)(a), and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt provisions concerning passports, identity cards, residence permits or any other such document. The Council shall act unanimously after consulting the European Parliament.” Again, this provision will be further discussed. If the EU can issue the documentation for the freedom of movement across the Union in such a way, the full surrender of British sovereignty will have been almost accomplished.

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**EFFECTIVENESS OF EU DECISION-MAKING: EUROPEAN PARLIAMENT GREATLY  
EMPOWERED RELATIVE TO WESTMINSTER & CO-DECISION PROCEDURE  
WILL ALWAYS FAVOUR EU INTEGRATION  
[ARTICLE 190]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 1 The European Parliament, Article 190*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 179(b), amendments to Article 190 TEC (TFEU) relating to elections to the European Parliament; and

(ii)'.

**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 179(c), amendment to Article 190 TEC (TFEU) relating to the duties of members of the European Parliament; and

(ii)'.

The Lisbon Treaty strengthens the European Parliament's legislative, budgetary and political powers.

Under the Lisbon Treaty, the co-decision procedure will become the ordinary legislative procedure. This procedure will always tend to favour European integration – decisions now being made not on what should be decided at the European level relative to the national level but on how the European institutions can deliver laws regardless of national Parliaments. The Lisbon Treaty increases substantially the policy areas subject to the co-decision procedure. Hence, The European Parliament becomes a co-legislator for the majority of the EU legislation; it has to approve EU legislation together with the Council. Hence, a legislative proposal from the Commission only becomes law if both the Parliament and Council approve it. It can accept, amend or reject the content of a legislative proposal. The European Parliament is the only EU institution directly elected therefore it has been common for federalists to argue that co-decision will actually enhance democracy in the EU. Nevertheless, the EP has a stronger negotiation position as it can use its right of rejection to negotiate compromises with the Council. The European Parliament can make changes to the Council's common position which makes a substantial difference to the content of the legislation.

The remaining areas will be decided through the "special legislative procedure." The Lisbon Treaty brings the consultation procedure and assent procedure under the heading of special legislative procedure. The European Parliament has the right of consent (assent procedure). The Parliament may accept or reject the proposal but cannot amend it. The Council cannot adopt the act without the European Parliament's consent. Under the consultation procedure, the European Parliament must be consulted

before the Council vote on the Commission proposal. The Council is not bound by the Parliament's opinion. Therefore, the European Parliament has a marginally more influential role. The Lisbon Treaty also increases the number of areas in which *consent* rather than *consultation* is required.

The European Parliament's procedures will have been greatly strengthened at the cost of removing key decision-making powers from Westminster. Article 189 is repealed but the matters covered by provision are now dealt in Article 9A TEU as amended by the Lisbon Treaty such as its powers and number of Members. Each Member State will be represented according to population size based on the principle of degressive proportionality. However, this principle was not fully respected by the IGC, which gave one more seat to Italy. Hence, the European Parliament composition will be modified. The European Parliament will have 750 members and a President from 2009. There is a minimum threshold of six Member States and a maximum of 96. The UK currently has 78 MEPs; under the Nice Treaty's distribution of seats for the period 2009-2014 it would have had 72; and under the Lisbon Treaty it will have 73. According to Article 9A, as amended by the Lisbon Treaty, the European Parliament composition will be decided by the European Council with the European Parliament consenting decisions and not through an Intergovernmental Conference.

There are no major substantive changes to the other parts of this Article. The Lisbon Treaty changed to wording of Article 190 (4) will read "the European Parliament shall draw up a proposal to lay down the provisions necessary for the election of its members by direct universal suffrage" rather than "The European Parliament shall draw up a proposal for elections by direct universal suffrage".

Also worth noting in this Article is that it was previously said that the Council "shall recommend to Member States" certain provisions, but under Lisbon, it is assumed that such provisions "shall enter into force", as if Member State constitutional requirements are secondary. The room for Member States debating the provisions according to their constitutional requirements is reduced – it shall merely enter into force. According to Article 190 (4), the Council acting unanimously and after obtaining the assent of the European Parliament (consent/special legislative procedure) "lay down the appropriate provisions, which it shall recommend to Member States for adoption in accordance with their respective constitutional requirements." The Lisbon Treaty removes the requirement "shall recommend to Member States for adoption." It states "These provisions shall enter into force following their approval by the Member States in accordance with their respective constitutional requirements." This may be a problem for Britain, having no constitution and therefore no constitutional requirements, which may have no legitimate way of defending itself against provisions with which it disagrees.

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**EFFECTIVENESS OF EU DECISION-MAKING: EUROPEAN PARLIAMENT WILL ACT  
ON A REDUCED MAJORITY IN PASSING EU LEGISLATION  
("ABSOLUTE MAJORITY" ABANDONED)  
[ARTICLE 198]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 1 The European Parliament, Article 198*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 186, amendment to Article 198 TEC (TFEU) deleting the requirement for an absolute majority in European Parliament proceedings; and

(ii)'.  
'

Under the present Article 198, the European Parliament "shall act by an absolute majority of the votes cast" except where the Treaty provides otherwise. The Lisbon Treaty provides that the European Parliament "shall act by a majority of the votes cast." The rule at the EP will be a simple "majority of the votes cast."

An "absolute majority", requiring half of all possible votes (including absentees and those present-but-not-voting) is often contrasted with a simple "majority" which only requires a majority of those actually voting in order to approve a proposal for it to be pushed through. This implies that the European Parliament will hardly be capable of registering dissent from voting. It also implies that the substantial support required for absolute majority voting will now be greatly reduced – all that is required is half of those who have bothered to turn up.

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**EFFECTIVENESS OF EU DECISION-MAKING: EUROPEAN PARLIAMENT IS ONLY  
BODY WHO CAN VOTE OVER CENSURE/DISMISSAL OF EU FOREIGN MINISTER  
AND COMMISSION OFFICIALS  
[ARTICLE 201]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 1 The European Parliament, Article 201*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 188, amendment to Article 201 TEC (TFEU) relating to motions of censure on the Commission; and

(ii)'.  
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The Lisbon Treaty amends this provision to take account of the new EU High Representative of the Union for Foreign Affairs and Security Policy who will act as both a vice President of the Commission and the Council's representative in governing the common foreign and security policy.

The new Article 9D TEU and Article 201 were amended to take into account the High Representative of the Union for Foreign Affairs and Security Policy who if a censure motion is carried "shall resign from the duties that he carries out in the Commission." If a set of Member States, or one Member State, encounters a major problem with the High Representative, nothing can be done, since the pro-integrationist European Parliament is the only body that can vote for a resignation of the person. The undemocratic procedures which have failed to elect and dismiss Commission officials are now true for the undemocratic candidacy of the EU Foreign Minister.

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**EFFECTIVENESS OF EU DECISION-MAKING: CHANGES TO VOTING WEIGHTS  
WILL GREATLY ENHANCE EUROPEAN COUNCIL'S ABILITY  
TO RAM UNION DECISIONS THROUGH  
[ARTICLE 205]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 2 The Council, Article 205*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 191, amendments to Article 205 TEC (TFEU) relating to the Council; and

(ii)'.

The voting rules at the Council will greatly enhance the Union's ability to force through decisions. Article 205 governs QMV in the Council and it was substantially changed by the Lisbon Treaty. The Lisbon Treaty changes the voting rules at the Council aimed at enhancing the Union's ability to take decisions. The Lisbon Treaty also extends the qualified majority vote to new areas which means that the UK will not be able to veto damaging EU proposals. Qualified majority voting becomes the general rule in the Council. The Council approves proposals put forward by the Commission in most of the cases according to "qualified majority."

Presently, and from 1 January 2007, the QM needed is 255 votes out of 345 (74% of the weighted votes available), representing a majority of the Member States when adopting a proposal from the Commission. In other cases, 255 votes are required in favour, cast by at least two-thirds of the Member States. Furthermore, a Member State may request verification that the QM represents at least 62% of the total population of the Union. If this condition is not met, the decision is not adopted. The Lisbon Treaty removes the difficult obstacle of the 74% weighted vote's criterion, making legislation a lot easier to pass through without any real opposition. The EU's largest Member States, especially Germany and France, will have more voting power.

According to Article 9C (4) TEU, it is stated that from 1 November 2014, QM will be calculated according to two criteria (double majority): 55% of EU Member States (15 Member States) making up 65% of the EU's population. A blocking minority has to be composed of at least 4 Member States. In order for a proposal to be adopted, it must therefore have support from 55% of the Member States, representing 65% of the EU's population. In order to prevent the most populated Member States blocking a decision from being adopted, a blocking minority must include at least four Member States. Otherwise, it would have been possible for just three of the four biggest Member States (Germany, France, UK and Italy) to form a blocking minority as their population represents more than 35% of the EU's population. Under the new system, it is said that decision-making at the EU will be facilitated since it will be easier to adopt legislation (as is often said of totalitarian governments). According to Article 205 (2), if the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the decision must be defined by at least 72% of

the members of the Council, representing Member States comprising at least 65 % of the population of the Union.

The rules will not enter into force until 2014. The Protocol on Transitional Provisions annexed to the Lisbon Treaty includes a Title on provisions concerning the qualified majority. According to this Protocol and Article 9 C (4) TEU, the new voting rules will enter into force on 1 November 2014. Therefore, until 31 October 2014, the present rules remain in force. Nevertheless, according to Article 3 (2) of the Protocol from 1 November 2014 until 31 March 2017, when an act is to be adopted by qualified majority, a member of the Council may request that the decision be adopted in accordance with the qualified majority as defined presently, under the Nice Treaty so that the current voting rules will apply.

Article 205 (3) puts forward the rules governing QM in cases where, under the Treaties, not all the Member States participate in voting. Hence, "A qualified majority shall be defined as at least 55 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States." Moreover, a "blocking minority must include at least the minimum number of Council members representing more than 35 % of the population of the participating Member States, plus one member, failing which the qualified majority shall be deemed attained." If the Council does not act on a Commission or the High Representative of the Union for Foreign Affairs and Security Policy proposals the QM must be defined "as at least 72 % of the members of the Council representing the participating Member States, comprising at least 65 % of the population of these States." According to Article 3 (4) of the Protocol until 31 October 2014, in those cases, the QM must be defined "as the same proportion of the weighted votes and the same proportion of the number of the Council members and, if appropriate, the same percentage of the population of the Member States concerned."

In noting changes under voting weights, it is worth recalling Poland's 'Ioannina compromise'. There is also a Declaration on Article 9C(4) TEU and Article 205(2) TFEU which provides the text of a draft Decision relating to the implementation of those Articles between 1 November 2014 and 31 March 2017 and from 1 April 2017. Such decisions will enter into force on the same day as the Treaty. According to Article 1 of the Draft Decision "From 1 November 2014 to 31 March 2017, if members of the Council, representing, at least three quarters of the population, or at least three quarters of the number of Member States necessary to constitute a blocking minority resulting from the application of Article 9 C(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." In this case, the Council shall seek "a satisfactory solution" to deal with those Member States' concerns. In the other hand, according to Article 4 "As from 1 April 2017, if members of the Council, representing at least 55% of the population, or at least 55% of the number of Member States necessary to constitute a blocking minority resulting from the application of Article 9 C(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." This is the 'Ioannina compromise' inserted at Poland's request. There is also a Protocol annexed to the Lisbon Treaty, Protocol on the Decision of the Council relating to the implementation of Article 9 C (4) of the TEU and Article 205 (2) of the TFEU between 1 November 2014 and 31 March 2017 on the one hand, and as

from 1 April 2017 on the other. According to this Protocol the Council can only repeal or amend such a decision after a preliminary deliberation in the European Council, acting by consensus.

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**EFFECTIVENESS OF EU DECISION-MAKING: THIS TREATY CREATES  
SPECIALIZED FIRST INSTANCE COURTS & CREATION OF COURTS MADE  
EASIER THROUGH NEW PROCEDURES  
[ARTICLE 225a]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 4 The Court of Justice of the European Union, Article 225a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 204 to 222, repeal of Article 220 TEC (TFEU), amendments to Articles 221, 223 to 225, 225a, 228, 229a, 230 to 237 TEC (TFEU), and inserted Articles 224a and 235a TEC (TFEU) relating to the Court of Justice; and

(ii)'.  
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The Lisbon Treaty changed the name of the “judicial panels” to “specialized courts” which have been created to “hear and determine at first instance certain classes of action or proceedings brought in specific areas.” Presently, the only “judicial panel” created is the Civil Service Tribunal. This implies that there is a definite expansion of the tribunals or judicial panels to courts hearing first instance cases.

Currently, such panels may be created by the Council “acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Court of Justice or at the request of the Court of Justice and after consulting the European Parliament and the Commission.” The Lisbon Treaty has changed the decision-making process. Under Lisbon, such “specialized courts” may be created through the ordinary legislative procedure (co-decision procedure) increasing, in this way, the power of the pro-integrationist European Parliament which presently just have a consultative role (consultation procedure) and by QMV in the Council.

Moreover, “the European Parliament and the Council shall act by means of regulations either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.” The Lisbon Treaty also changes the legal instrument necessary to establish a “specialized court”. It has been changed from a decision to a regulation. This change in decision-making powers will lead to an increase in the creation of such bodies.

The last paragraph of this Article states “Unless the decision establishing the judicial panel provides otherwise, the provisions of this Treaty relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the judicial

panels." The Lisbon Treaty replaces the "decision" with "regulation" and adds that "Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts." Title I of the Statute of the Court of Justice concerns judges and advocates-general duties and Article 64 rules governing language arrangements applicable at the Court of Justice and Court of First Instance (now the General Court). Moreover, it replaces the words "Court of Justice" with "Court of Justice of the European Union" and "Statute of the Court of Justice" with "Statute of the Court of Justice of the European Union." This change in institutional and decision-making powers must be considered unacceptable to the UK.

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**EFFECTIVENESS OF EU DECISION-MAKING: EUROPEAN COURT OF JUSTICE  
WILL BEGIN TO FAST TRACK NON-COMPLIANCE PROCEEDINGS  
AND THREATENS UK WITH IMMEDIATE FINANCIAL PENALTIES  
[ARTICLE 228]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 4 The Court of Justice of the European Union, Article 228*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 204 to 222, repeal of Article 220 TEC (TFEU), amendments to Articles 221, 223 to 225, 225a, 228, 229a, 230 to 237 TEC (TFEU), and inserted Articles 224a and 235a TEC (TFEU) relating to the Court of Justice; and

(ii)'.

The Lisbon Treaty introduces serious changes to the existing infringement procedures. Under the present Article 228, if the Commission considers that a Member State has not taken the necessary measures to comply with a previous judgment of the Court of Justice it opens an infringement procedure, it addresses a "Letter of Formal Notice" to the Member State concerned requesting it so submit its observations by a given date. Then, the Commission may decide to address a "Reasoned Opinion" (final written warning) to the Member State which it specifies the points on which the Member State concerned has not complied with a Court judgment. If the Member State fails to comply with the Reasoned Opinion, the Commission may decide to bring the case before the Court of Justice. The Commission is allowed to specify the amount of the lump sum or penalty payment to be paid by the Member State in question.

Now, under the Lisbon Treaty the Commission does not have to issue a "reasoned opinion", since it "may bring the case before the Court after giving that State the opportunity to submit its observations." If the Court considers that the Member State has not complied with its judgement it may impose a lump sum or penalty payment on the Member State. Hence, the procedures against a Member State which failed to comply with a previous judgment will be fast-tracked.

Moreover, the Lisbon Treaty introduces a new provision. According to Article 228 (3) "When the Commission brings a case before the Court pursuant to Article 226 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned". Therefore, if the ECJ "finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission" and that "the payment obligation shall take effect on the date set by the Court in its judgment." Consequently, a Member State which has not communicated to the Commission its measures to transpose a Directive will be subject to a lump sum or penalty payment.

The Commission will have the power of immediately seeking, in the case of failure of transposing directives, the imposition of penalty payments. Hence, the ECJ will have the power of imposing a lump sum or penalty payment on a Member State which has not implemented a directive without having a chance of complying with a previous declaratory judgment.

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**EFFECTIVENESS OF EU DECISION-MAKING: TREATY LAYS FRAMEWORK FOR  
THE FOUNDING OF A EUROPEAN PATENT COURT IN WHICH EUROPEAN COURT  
OF JUSTICE WOULD HAVE JURISDICTION OVER EUROPEAN PATENTS  
[ARTICLE 229a]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 4 The Court of Justice of the European Union, Article 229a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 204 to 222, repeal of Article 220 TEC (TFEU), amendments to Articles 221, 223 to 225, 225a, 228, 229a, 230 to 237 TEC (TFEU), and inserted Articles 224a and 235a TEC (TFEU) relating to the Court of Justice; and

(ii)'.  
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Presently, the Council acting unanimously, on a proposal from the Commission, and through the consultation procedure may adopt provisions to confer jurisdiction on the Court of Justice in disputes relating to the application of acts adopted on the basis of the Treaty which create Community industrial property rights. The Lisbon Treaty changes the words "Court of Justice" to the "Court of Justice of the European Union."

The Lisbon Treaty has not changed the decision-making given that such provisions continue to be adopted by unanimity in the Council through a special legislative procedure (consultation procedure). The European Parliament continues to have a marginal role. However, the Lisbon Treaty replaces "Community industrial property rights" with "European intellectual property rights". Moreover, whereas the present Article

229a provides that "The Council shall recommend those provisions to the Member States for adoption in accordance with their respective constitutional requirements" the Lisbon Treaty removes the recommendation requirement and stresses that "These provisions shall enter into force after their approval by the Member States in accordance with their respective constitutional requirements." It is certain that this provision would lead to the creation of a European patent court in which the ECJ would have jurisdiction over European and Community patents.

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**EFFECTIVENESS OF EU DECISION-MAKING: WHEN RULING OVER UK PERSONS BEING HELD IN CUSTODY, EUROPEAN COURT OF JUSTICE IS OBLIGED TO DEAL WITH IT URGENTLY, APPLYING CHARTER OF FUNDAMENTAL RIGHTS [ARTICLE 234]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter I the Institutions, Section 4 The Court of Justice of the European Union, Article 234*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 204 to 222, repeal of Article 220 TEC (TFEU), amendments to Articles 221, 223 to 225, 225a, 228, 229a, 230 to 237 TEC (TFEU), and inserted Articles 224a and 235a TEC (TFEU) relating to the Court of Justice; and

(ii)'.  
'

Article 234 concerns the jurisdiction of the Court of Justice to give preliminary rulings on the interpretation of the Treaties and the validity and interpretation of acts of the Union institutions. The Lisbon Treaty removed the reference to ECB because it is now considered an Institution of the Union.

Moreover, the Lisbon Treaty adds the following paragraph "If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay." This amendment was made to take into account the Court's extended jurisdiction over criminal matters. It also takes into account the application of fundamental rights from the ECHR and the Charter of Fundamental Rights.

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**EFFECTIVENESS OF EU DECISION-MAKING: PRO-INTEGRATIONIST EUROPEAN  
PARLIAMENT AND UNACCOUNTABLE COMMITTEES  
GIVEN EXTENSIVE POWERS  
[ARTICLE 249C]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter II Legal acts of the Union, adoption procedures and other provisions, Section 1 the legal acts of the Union, Article 249C*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 233 to 236, inserted Section 1, amendments to Article 249 and inserted Articles 249A to 249D TEC (TFEU) relating to legal acts of the Union; and

(ii)'.

This new Article introduced by the Lisbon Treaty confirms that "Member States shall adopt all measures of national law necessary to implement legally binding Union acts."

Under the present Article 211 TEC, the "Commission exercises the powers conferred on it by the Council for the implementation of the rules laid down by the latter." According to present Article 202 TEC the Council may confer on the Commission, in its acts, powers for the implementation of rules which it lays down. The legislative instrument spells out the scope of the implementing powers conferred on the Commission by the Council.

The rules governing the exercise of Commission powers are presently decided by the Council acting unanimously on a proposal from the Commission and after consulting the European Parliament. With the responsibility to execute legislation delegated to it by the Council, the Commission is assisted in its tasks by ad hoc committees composed of representatives from the Member States.

The system is known as comitology involving a series of complex procedures and using three types of committees to intervene: consultative, management and regulatory. They work according to different procedures and have different levels of legislative control over the Commission. The committees must give their opinion or approve the Commission's proposed measures. The European Parliament is not directly involved in the committees it is merely informed of their activities. The relations between the Commission and the committees are ruled by a Council Decision (Comitology Decision). The 2006 Council Decision introduced a new procedure for the exercising of implementing powers called the regulatory procedure with scrutiny. Hence, according to Article 5a of the Decision "...the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality." However, there must be due concern given to the adoption of measures of general scope designed to amend non-essential elements of a basic instrument

adopted by co-decision. The comitology process is not transparent and gives too much power to unaccountable committees composed of Commission officials and civil servants from the Member States.

The new provision, Article 249C, is based on the present rules on comitology. Article 249 C (1) provides “Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission or, in duly justified specific cases and in the cases provided for in Articles 11 and 13 of the Treaty on European Union, on the Council.” Therefore, the Council has implementing powers in concerns over Common Foreign and Security Policy. Presently, the rules governing the exercise of the Commission implementing powers are decided by the Council acting unanimously, through the consultation procedure. According to Article 249 C (3) “For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.” Therefore, under the Lisbon Treaty such rules will be adopted by QMV in the Council and through the ordinary legislative procedure (co-decision). Hence, the role of the European Parliament has increased and it has new powers equivalent to the Council in deciding how to control implementing acts.

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**EFFECTIVENESS OF EU DECISION-MAKING: UNION EMPOWERS PRO-  
INTEGRATIONIST EUROPEAN PARLIAMENT UNDER CO-DECISION  
PROCEDURES, WHICH FAST-TRACKS LEGISLATION THROUGH THE UNION  
[ARTICLE 251]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter II Legal acts of the Union, adoption procedures and other provisions, Section 2 Procedures for the adoption of acts and other provisions, Article 251*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 2, paragraphs 237 to 245, inserted Section 2, amendments to Articles 250, 251, 255 and 256, and replacement Articles 252a, 253, 254 and 254a TEC (TFEU) relating to procedures for the adoption of acts; and

(ii)’.

Article 251 describes the changes to the ordinary legislative procedure (co-decision procedure). The Lisbon Treaty increases substantially the policy areas subject to co-decision; a procedure which tends to favour continued European integration. The European Parliament becomes a co-legislator for the majority of the EU legislation. The role of the European Parliament as a Union legislator will be greatly strengthened.

Under the co-decision procedure, the European Parliament has to approve EU legislation together with the Council. Hence, a legislative proposal from the Commission

only becomes law if both of them approve it. The European Parliament can accept, amend or reject the content of a legislative proposal. The European Parliament is the only EU institution directly elected but it is wrongly stated by the pro-federalists that co-decision procedure will enhance democracy in the anti-democratic EU. Nevertheless, the EP has a stronger negotiation position as it can use its right of rejection to negotiate compromises with the Council. The European Parliament can make changes to the Council's common position which makes a substantial difference to the content of the legislation. Moreover, there are the informal trilogues aimed at reaching agreement before the Council adopts its common position or the European Parliament adopts its position, each in rigid pursuit of passing legislation before it can be properly debated and scrutinised. These trilogues are between members of the EP Committee responsible for the act in question, the rapporteur, the Council presidency and the Commission. However, they meet behind closed doors and there is no transparency.

Some changes have made it easier for legislation to be passed. The ordinary legislative procedure contains different stages: first reading, second reading, conciliation and third reading. Whereas under the present Article 251 (2) (b) (c), at second reading, "absolute majority" is required in the European Parliament component members to reject or to adopt amendments to the Council common position, under the Lisbon Treaty only a simple majority is required. As a result, it will be easier to pass legislation. Moreover, the Lisbon Treaty calls the Council "common position" by "Council's position at first reading." There is also a new paragraph which special provisions concerning legislative acts which were proposed by "a group of Member States, on a recommendation by the European Central Bank, or at the request of the Court of Justice." In these cases "the European Parliament and the Council shall communicate the proposed act to the Commission with their positions at first and second readings. The European Parliament or the Council may request the opinion of the Commission throughout the procedure, which the Commission may also deliver on its own initiative. It may also, if it deems necessary, take part in the Conciliation Committee in accordance with paragraph 11."

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**EFFECTIVENESS OF EU DECISION-MAKING:  
EUROPEAN INSTITUTIONS PROMISE TRANSPARENCY,  
DESPITE THIS TREATY BEING PURSUED THROUGH UTTER DECEPTION  
AND THE WIDESPREAD RECOGNITION OF THE EU AS ANTI-DEMOCRATIC  
[ARTICLE 254a]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title I – Institutional provisions, Chapter II Legal acts of the Union, adoption procedures and other provisions, Section 2 Procedures for the adoption of acts and other provisions, Article 254a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 237 to 245, inserted Section 2, amendments to Articles 250, 251, 255 and 256, and replacement Articles 252a, 253, 254 and 254a TEC (TFEU) relating to procedures for the adoption of acts; and

(ii)'.  
'

Another new element in Article 254a requires that the Union should have the support of an “open, efficient and independent European administration”. The need for more transparency in the workings of the EU's institutions was one of the elements mentioned in the Laeken Declaration and perceived to be one of the main reasons behind the growing public disenchantment with the EU. The Laeken Declaration failed miserably – after all, the Lisbon Treaty is itself a rehash of the EU Constitution which was earlier rejected by the French and Dutch peoples. The anti-democratic European institutions have declared that they have a respect for transparency in their work but this does not suddenly qualify as democratic.

The Union also falsely states in the Treaty that transparency is further emphasised in new Article 16A, which amends and replaces Article 255 TEC on the requirement for the institutions' Rules of Procedure to determine access to documents. It is said that the institutions must “ensure transparency in their work.” This is as poor a promise as that made by the Union when addressing the Laeken Declaration.

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**EFFECTIVENESS OF EU DECISION-MAKING: UNION STATES IT WILL NOT  
ALLOW FOR PROJECTS IT CANNOT BUDGET FOR DEPSITE MASSIVELY  
OVER-BUDGETED GALILEO PROJECT GOING THROUGH  
[ARTICLE 268]**

*Policy Area: Treaty on the Functioning of the European Union, Part Six – Institutional and Budgetary Provisions, Title II Financial Provisions, Article 268*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 257, amendments to Article 268 TEC (TFEU) relating to financial provisions; and

(ii)'.

As amended by the Lisbon Treaty, Article 268 provides “the expenditure shown in the budget shall be authorised for the annual budgetary period” in accordance with the Financial Regulations which determine the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts.

It is also provided in Lisbon that “the implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure in accordance with the regulation referred to in Article 279, except in cases for which that law provides.” Moreover, according to Article 268 (4) as amended by the Lisbon Treaty “the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework ....” Recent analyses suggest that the Galileo project was a perfect example of the budgetary discipline exerted by the Union – a complete failure.

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**EFFECTIVENESS OF EU DECISION-MAKING:  
UK WILL BE CONTINUE TO BE COMPELLED BY SUPER-UNION  
POLICIES DEVELOPED UNDER ENHANCED COOPERATION  
[ARTICLE 280A]**

*Policy Area: Treaty on the Functioning of the European Union, Article 280A*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

The objectives for a number of Member States to work ever-closer in “enhanced cooperation” on a particular policy [based largely on existing Article 10 TEU] will continue to greatly damage the capacity for each Member State not participating with the cooperation to escape or not participate in the super-Union enhanced policy after it has been developed by a select few states. Furthermore, those states not involved in enhanced cooperation, once they are compelled to adopt the measures as if they were classic Union measures, will have had no say in the binding nature or the content of the measure which they feel pushed into agreeing to. This is not in Britain’s national interest.

Article 280A even states that enhanced cooperation “should not constitute a barrier to or discrimination in trade between Member States, nor shall it distort competition between them.” This seems highly probable given that, for example, if France, Italy and Greece opted for enhanced cooperation on one or a number of policies in defence as well as cooperation on policies relating to CFSP, then Britain’s trade in defence technology would appear to be significantly jeopardised. The Union would support the measures on the basis that neither field of cooperation directly impinges upon trade. However, in order to remove the barrier and gain favour, it is likely that the UK would push for the enhanced cooperation measures by compulsion, in matters that were not only in its national interest but on measures over which it had no say.

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**EFFECTIVENESS OF EU DECISION-MAKING: NON-PARTICIPANTS OF ENHANCED  
COOPERATION WILL BE BROUGHT INTO LINE, THEIR NATIONAL LAWS  
CONSIDERED SECONDARY  
[ARTICLE 280B]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Article 280B*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

Article 280B demands that enhanced cooperation measures should not impose upon Member States not participating in the cooperative measure. However, as is clear under this Article and Article 280A, the push for a multi-speed Europe will obstruct the UK's (and many other Member States') national interest.

The states not participating in enhanced cooperation, once they are compelled by the political realities of Europe to adopt the enhanced measures, will have had no say in the binding nature or the content of the measure.

To remove the barriers resulting from non-cooperation measures, it would be probable that the UK would later adopt enhanced cooperation measures in concerns that were not only against its national interest but on measures over which it had no say in legislating or implementing.

The second major concern is that the Article asserts that non-participating Member States "shall not impede its implementation by the participating Member States" which suggests that if the programme of enhanced cooperation conflicted with the national legislation of a non-participating Member State, then it may result in the forced revoking/repealing of national legislation in the non-participating Member State, to be superseded by the field of enhanced cooperation, especially given the primacy assigned to EU law. This remains unclear and as such, it cannot be supported by the UK Government until it is properly addressed.

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**EFFECTIVENESS OF EU DECISION-MAKING: NON-PARTICIPANTS IN ENHANCED COOPERATION WILL BE HOUNDED BY COMMISSION, WHILE EU FOREIGN MINISTER CONTROLS RATE OF INTEGRATION ON COMMON FOREIGN POLICY [ARTICLE 280C]**

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*Policy Area: Treaty on the Functioning of the European Union, Article 280C*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

Article 280C attempts to keep programmes of enhanced cooperation as open to as many Member States as possible (as is the case already under Article 43b TEC), yet with the High Representative and Commission now keeping the European Parliament and the Council abreast of its new developments. In reality, the fact that enhanced cooperation "shall be open to all Member States" means that Member States will comply when necessary to the cooperative programmes.

In practice, this will amount to a powerful Commission and a handful of the Member States imposing a model of enhanced cooperation into the entirety of the Union's 27 Member States, far beyond their existing Treaty obligations. The participating Member States with the backing of the Commission will intensify the federalist objectives of harmonising all state policy around the centralised EU institutions; non-participating Member States will be wrongly compelled by the pressure of obligation in this Treaty Article, to simply accept that they must become participants.

It is also of considerable concern that it is not only the Commission that will be responsible for relaying to the European Parliament and Council on the successes/failures of the enhanced cooperation programmes since there will also be a High Representative. The High Representative who undergoes no process of democratic election will see through the future shape of a European enhanced foreign policy based on his/her own purported success of European integration under enhanced cooperation, as reported to the European Parliament and Council. There will be no scrutiny them the Commission since the appointed High Representative will in fact be the Vice President of the Commission.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU FOREIGN MINISTER DECIDING  
ON ELASTIC FOREIGN POLICY MEASURES WILL ASSERT ENHANCED  
COOPERATION MEASURES UPON THE UK  
[ARTICLE 280D]**

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*Policy Area: Treaty on the Functioning of the European Union, Article 280D*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

Ordinarily, Member States wishing to establish enhanced cooperation would put forward a proposal to the Commission who would then submit a proposal to the Council. Permission is then granted by the Council after gaining consent from the European Parliament. To this extent, there has been little change in the way of procedure for pursuing enhanced cooperation.

However, for Member States wishing to establish enhanced cooperation in the field of common foreign and security policy would put forward a proposal to the Council, who will then pass it on to the High Representative and the Commission, both of whom must give their opinion to the Council. The Council will then decide. Both the High Representative and the Commission must simply decide if it is "consistent" with Union CFSP yet under the terms of the Lisbon Treaty obligations, the field of CFSP is massively extended.

Therefore, for example, if the French plans for a single common European army (as enabled by this Treaty) were agreed upon by a number of the UK's neighbouring states, the UK would be 'fenced in' with agreeing states – and thereby compelled in the medium to long-term to adopt measures for a common European army. The Lisbon Treaty details the necessary demands to compel the UK to adopt such measures – this must be rejected by the UK Government.

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**EFFECTIVENESS OF EU DECISION-MAKING: EU DICTATORSHIP CONTINUES –  
ONLY AGREEABLE AND PARTICIPATING MEMBER STATES WILL VOTE IN THE  
COUNCIL ON ENHANCED COOPERATION  
[ARTICLE 280E]**

*Policy Area: Treaty on the Functioning of the European Union, Article 280E*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

Article 280E continues to confirm as in the existing Treaties (Article 44 TEC) that only the Member States in agreement with the federalist activities of enhanced cooperation can vote at the Council. Whilst non-participating Member States may deliberate, only participating members can vote – it is the equivalent of asking all agreeable parties in the Union to vote unanimously on their agreement. The corruption of voting on enhanced cooperation continues and the Lisbon Treaty will have offered nothing better to alter its path.

Asking agreeable parties who agree unanimously on the achievement of enhanced cooperation to reach a unanimous agreement in the Council is a farcical arrangement. It is a testimony of the undemocratic politics pervading many of the EU institutions. The non-participating Member States who will at some point be obliged to pursue the enhanced measures will have cast no vote in whether it should go ahead. The EU project will, then, go on regardless since a decision and the right to vote over the project is removed from those who wish to oppose it.

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**EFFECTIVENESS OF EU DECISION-MAKING: UK WELFARE – ALL MEMBER  
STATES WILL PAY FOR THE ADMINISTRATION OF ENHANCED COOPERATION  
BY THE FEW  
[ARTICLE 280G]**

*Policy Area: Treaty on the Functioning of the European Union, Article 280G*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

Although the essential features of expenditure on enhanced cooperation have not changed, the unified cost structure remains illegitimate. This is unacceptable. Even if participating Member States pay for the costs of implementation of enhanced

cooperation, all the attached administrative costs will be born by the EU institutions, to which all Member States must contribute.

So, in actual fact, the Lisbon Treaty specifies that whilst non-participation Member States cannot vote on measures relating to enhanced cooperation within the Council (Article 280E), their respective Member States must pay the administrative costs for a programme of enhanced cooperation that is completely against the wishes of their national Governments.

This jeopardises a substantial portion of the British taxpayers' money – they will, in fact, pay for administering initiatives in other Member States which bears no direct relation to their lives, country or individual interests. The UK Government must reject the provisions detailed within this Article.

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**EFFECTIVENESS OF EU DECISION-MAKING: ENHANCED COOPERATION COULD,  
IF IT IS DESIRED, BE SUBJECT TO QUALIFIED MAJORITY  
OR PARLIAMENT-COUNCIL CO-DECISION  
[ARTICLE 280H]**

*Policy Area: Treaty on the Functioning of the European Union, Article 280H*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.

The voting procedures detailed in Article 280E descend further into an anarchic process of pushing through unopposed programmes of enhanced cooperation. The Treaty already demands, under Article 280E, that only participating members can vote in the Council – it is the equivalent of asking agreeable parties who agree unanimously on the achievement of enhanced cooperation to reach unanimous agreement in the Council. It is a farce.

Yet Article 280H goes even further in that it holds that if participating Member States do not agree, the Council may “adopt a decision stipulating that it will act by qualified majority.” By transferring voting from unanimous agreement to the qualified majority, it allows the participating Member States to decide through the Council through the ‘easiest route’ of the legislative process in order to establish enhanced cooperation.

To further tip the balance, it is now possible that the Council act within the empowered European Parliament – using the ordinary legislative procedure – to adopt acts pertaining to cooperation. The legislative arrangements designed for processing demands for enhanced cooperation are entirely unsatisfactory and would lead to the adoption of decisions through the path of last resistance. This is entirely undemocratic,

creating several legislative loopholes through which a super-European integration process can unfold.

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**EFFECTIVENESS OF EU DECISION-MAKING: EMPOWERMENT OF PARLIAMENT  
AND EU FOREIGN MINISTER WILL MAKE THE UNION AND SUPER-UNION  
POLICIES UNDER ENHANCED COOPERATION ALMOST IDENTICAL  
[ARTICLE 280I]**

*Policy Area: Treaty on the Functioning of the European Union, Article 280I*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 277 and 278, inserted Title III and new Articles 280A to 280I TEC (TFEU) relating to enhanced cooperation; and

(ii)'.  
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Whilst Article 280I asserts that “the Council and the Commission shall ensure the consistency of activities undertaken in the context of enhanced cooperation”, Lisbon also empowered the European Parliament as a decision-making body in enhanced cooperation [under Article 280H] as well as given the High Representative prime place (vis-à-vis the Council) in answering Member State proposals in this field under Article 280 C and D. This makes it difficult to conclude that it is, in fact, possible for the collective Union institutions to differentiate between the established “policies for the Union” and the super-Union developing under programmes of enhanced cooperation.

The Lisbon empowerment of the European Parliament and the High Representative will strengthen the blurred distinction between policies of the Union and the compulsion towards the ever-expanding powers of the super-Union under enhanced cooperation. The UK Government must reject the attempts by the fundamental change in the balance of powers and how this then impinges upon the UK in determining its own national policy on matters covered by enhanced cooperation. To not do so is not merely to surrender to the vast extension of powers under Lisbon but to agree to submit to the super-Union countries, asserting federalist ambitions above and beyond the reasoned capacity of European nations to legislate for themselves.

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**EFFECTIVENESS OF EU DECISION-MAKING: UNION AIMS TO ENCOURAGE PARTICIPATION IN DEMOCRATIC LIFE IN EUROPE, DESPITE THE LACK OF DEMOCRACY PRACTISED BY THE UNION  
[ARTICLE 149]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title XI Education, vocational training, youth and sport, Article 149*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 123 to 125, amendments to Articles 149 and 150 TEC (TFEU) relating to education, vocational training, youth and sport; and

(ii)'.  
'

Education, vocational training and sporting issues are the exclusive competence of the Member States yet the Union has had the competence to undertake actions in order to support, coordinate or supplement the actions of the Member States. Article 149 (2) contains a list of aims of the Union action in this field. The Lisbon Treaty adds to this list "encouraging the participation of young people in democratic life in Europe." There are already Council resolutions setting common objectives to develop and improve young Europeans' participation in democratic life and their access to information. The Commission has been organising debates in order to promote youth interest in the EU but it amounts to nothing more than deceitful EU propaganda. There will be further projects aiming at promoting the participation of young people. The Union has been spending a considerable amount of taxpayers' money on educational and training programmes such as the Lifelong Learning Programme. However, the organisations entitled to receive such funds are the ones which favour the excesses of the European integration project.

This Article is amended by the Lisbon Treaty to include a new 'legal base' on sport. Sport is one of the so called areas where the Union shall have competence to "carry out actions to support, coordinate or supplement the actions of the member states". According to Article 149, as amended by the Lisbon Treaty, "The Union shall 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." Moreover, according to a new statement introduced to the Lisbon Treaty on Article 149 (2) the aim of Community action concerning sport is to "develop the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports, and by protecting the physical and moral integrity of sportsmen and sportswomen, especially the youngest sportsmen and sportswomen." This new legal basis will allow the Union to adopt allowing measures for developing the European dimension in sport. Furthermore, "the Community and the Member States shall foster cooperation with third countries and the competent international organizations" not only in the field of education but also sport.

The European Commission adopted on 11 July a White Paper on Sport which is its first comprehensive initiative on sport. The White Paper proposes concrete proposals for

further EU action within a detailed Action Plan. According to the Commission “most challenges can be addressed through self-regulation respectful of good governance principles” – however, it also says “provided that EU law is respected, and is ready to play a facilitating role or take action if necessary.”

This paper examines extremely controversial issues such as transfers of players and TV rights. The White Paper gives a clear idea what the EU will do regarding sporting affairs, with massively greater EU interference over these matters. The Commission at the time made it very clear that the mandate for the Intergovernmental Conference, foresees a Treaty provision on sport, therefore, the Commission “may return to this issue and indicate further steps in the context of a new Treaty provision.” Hence, as the Commission said “the White Paper will allow the Commission to prepare in a coherent manner for the possible future introduction of an EU competence for sport.” This new provision is likely to have a massively detrimental impact on sports organisations in the UK.

According to Article 149 (4) the Council, acting by QMV, and the European Parliament through the ordinary legislative procedure (co-decision) and after consulting the Economic and Social Committee and the Committee of the Regions, “shall adopt incentive measures” aimed at contributing to the achievement of the abovementioned objectives. the EU is set to further interfere on the Member States policies in the field of education, training, youth and sport. The Council, acting by QMV on a proposal from the Commission, will adopt recommendations.

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**EFFECTIVENESS OF EU DECISION-MAKING: UK WILL NOT BE ABLE TO  
LEGISLATE OR ACT OVER SERIOUS MATTERS OF PUBLIC HEALTH IF THE  
UNION HAS ACTED ALREADY  
[ARTICLE 152]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title XIII Public Health, Article 152*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 2, paragraph 127, amendments to Article 152 TEC (TFEU) relating to public health; and

(ii)’.

Article 152 establishes the objectives of EU health policy and its legal basis. Health is a national responsibility for the Member States but it is an area in which the EU has gained increasing powers. It is difficult to draft the boundaries on the EU’s powers over Public Health – but it is generally described as a supporting and coordinating competence and a shared competence. The Lisbon Treaty has substantially amended this Article to clarify the boundary between EU and Member States competences but providing further powers to the EU. It is important to remember that if the EU exercises competence in a “shared area” the Member States are obliged not to act.

This Article provides that “a high level of human health protection must be ensured in the definition and implementation of all Community policies and activities.” Moreover, “Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.” The Lisbon Treaty adds to the Union action “monitoring, early warning of and combating serious cross-border threats to health” and replaces the word “human health” with “physical and mental health” and the word “Community” with “Union”.

Under the existing Article 152 (1), the Community action is to complement national policies, particularly in order to prevent human illness and disease including tackling drug abuse. Under Article 152 (2) the “Community shall encourage cooperation in the areas referred to this Article (...).” However, the Lisbon Treaty provides that the Union “shall in particular encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas.” According to present Article 152 (2) Member States are required to coordinate their health policies in liaison with the Commission which may take an initiative to promote such coordination. The Lisbon Treaty adds to this paragraph “in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation.” The Commission action takes the form of initiatives particular to the open method of coordination (establishment of guidelines and indicators, organisation of exchange of best practice, periodic monitoring and evaluation). This provision will allow the Commission to further interfere on Member States’ health policies.

The Lisbon Treaty inserts the following subparagraph to Article 152 (4) “By way of derogation from Article 2 A(5) (Union competence to carry out actions to support, coordinate or supplement the actions of the Member States) and Article 2 E(a) ( Union competence to carry out actions to support, coordinate or supplement the actions of the Member States in the protection and improvement of human health) and in accordance with Article 2 C(2)(k).” Therefore the Lisbon Treaty clarifies that the Union has a shared competence with the Member States on common safety concerns in public health matters. Hence, the Member States will only be allowed to adopt legislation if the Union has not exercised its competences. National governments would only be able to do what the EU decided not to.

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**EFFECTIVENESS OF EU DECISION-MAKING: UK IS SUBJECT TO EU SPACE  
POLICY DESPITE MASSIVE DAMAGE TO UK SOVEREIGNTY  
AND SECURITY INTERESTS  
[ARTICLE 172a]**

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**Policy Area:** *Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title XVIII Research and technological development and space, Article 172a*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraph 142, inserted Article 172a TEC (TFEU) relating to space; and  
(ii)'.

Presently, Member States pursue their own national space policy. The European Space Policy coordinates the financial and intellectual resources of its members and it undertakes programmes and activities. Not all EU Member States are Members of the ESA. The European space activities are carried out within the Framework Agreement between the Community and the European Space Agency (ESA) which came into operation in May 2004. The preliminary elements of the space policy were set up in the Commission communication of May 2005. The Space Council in June 2005 has encouraged the Commission to complete its proposal for a European space policy and programme. Last April, the European Commission adopted a Communication on European Space Policy. The European Space Policy is a joint policy document from the European Commission and the Director-General of the European Space Agency (ESA).

The Lisbon Treaty introduces a new legal basis, allowing the adoption of measures for the establishment of a European space policy. According to new Article 172a, it is there "To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space."

Moreover, the European Parliament and the Council, through the ordinary legislative procedure (co-decision) "shall establish the necessary measures, which may take the form of a European space programme, excluding any harmonisation of the laws and regulations of the Member States." Such measures which may take a form of a European Space programme are to be adopted by QMV in the Council. Therefore Member States will not be able to veto them.

Member States will have to orient their national space programmes towards European aims and share and pool their space technology. This provision requires that "the Union shall establish any appropriate relations with the European Space Agency." In fact, the Union is duplicating the work of this Agency. The European Space Policy aims at increasing coordination between the EU, ESA and their Member States activities and programmes, and organise their roles concerning space, providing a more flexible framework to ease Community investment in space activities. Not only in civil but also in the areas of security and defence space programmes. In order to these aims to be

achieved the EU, ESA and their Member States will have to take steps in establishing a European Space Programme, increasing synergy cooperation between defence and civil space programmes and developing a common strategy in space in what concerns international relations. Member States will have to orient their national space programmes towards European aims and to share and pool their space technology. Security and defence interests are key to Member States sovereignty. The EU is interfering with the Member State security interests.

Moreover, it should be recalled that an agreement on Galileo was recently reached which is likely to have serious implications for the US-UK relationship.

According to Article 2 C (3) “In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs” moreover Article 172a excludes “any harmonisation of the laws and regulations of the Member States.” Nevertheless, space policy is another EU competence which will have a massively damaging impact on the space policies of Member States.

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**EFFECTIVENESS OF EU DECISION-MAKING: UK SIGNS BLANK CHEQUE FOR  
UNION ADOPTING MORE POWERS BEYOND THE PROVISIONS OF THE  
TREATIES  
[ARTICLE 308]**

**Policy Area:** *Treaty on the Functioning of the European Union, GENERAL AND FINAL PROVISIONS, Article 308*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 2, paragraph 289, replacement Article 308 TEC (TFEU) relating to action within the framework of policies defined in the Treaties where the Treaties have not provided the necessary powers; and

(ii)’.

The Lisbon Treaty really will be a blank cheque written by the UK and all Member States in order to allow the Union to create its own powers (beyond the Treaties) in order to pursue Union objectives, since this provision states that “If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.”

The provisions of Article 308 have often been used, even when the EC Treaty has not provided the necessary powers. However, this Article has been misused because on

several occasions it has been mentioned as the legal base for a proposal which has no connection with “the operation of the common market.”

The EU has been using this provision to extend its competences. It is the responsibility of the ECJ to decide on whether proposals relating to Article 308 can be used as a legal base, based on an evident connection with the operation of the common market. The ECJ will ultimately decide in favour of integrationist proposals.

Under the Lisbon Treaty, this provision will also apply to all third pillar matters on judicial and police cooperation. Therefore, the Lisbon Treaty confirms the existing ECJ case law encroaching into this area. It is worth pointing out that, according to Article 308 (4) this clause is not applicable to EU foreign policy.

The Lisbon Treaty keeps the unanimity requirement but the European Parliament is provided with the right of consent (assent procedure) whereas it presently has consultative power.

The Lisbon Treaty does make a marginal reference to the role of national Parliaments but the Commission only has “to draw national Parliaments' attention to proposals based on this Article”, rather than requiring any form of proper agreement or consent.

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**CLIMATE CHANGE: NEW PROVISIONS SET OUT FIGHT AGAINST CLIMATE CHANGE DESPITE FAILURE OF EU EMISSIONS TRADING SCHEME AND OTHER PROJECTS  
[ARTICLE 174]**

***Policy Area:** Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title XIX Environment, Article 174*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after ‘excluding’, insert—

‘(i) Article 2, paragraphs 143 and 144, amendments to Articles 174 and 175 TEC (TFEU) relating to environment (climate change); and

(ii)’.

Article 174 relates to the EU’s environmental policy. According to Article 174, one of the objectives of the Union is to promote “measures at international level to deal with regional or worldwide environmental problems.” The Lisbon Treaty adds to this paragraph an express reference: “...in particular combating climate change.” The Lisbon Treaty recognizes tackling climate change as a specific EU policy objective.

According to Article 174 (2) “Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.”

The current EU policy to fight climate change has had a massively detrimental impact on businesses. For instance, the EU Emissions Trading Scheme has been considered to be by a failure because it has not yet led to cuts in carbon emissions within the EU. The emissions have not been reduced and industry is incurring massively high costs. Also of importance is that the EU is imposing such costly measures that do not apply to the major EU competitors. It is likely that the inclusion of a reference to climate change will increase the scope for further measures to tackle the issue, regardless of the negative impact this is having on trade and business within Europe.

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**CLIMATE CHANGE: COUNCIL IS FREE TO EXTEND ORDINARY LEGISLATIVE  
PROCEDURE TO FAST TRACK PROPOSALS ON CLIMATE CHANGE  
[ARTICLE 175]**

*Policy Area: Treaty on the Functioning of the European Union, Part Three Policies and Internal Actions of the Union, Title XIX Environment, Article 175*

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**William Cash, MP, House of Commons Amendment:**

Clause 2, page 1, line 12, after 'excluding', insert—

'(i) Article 2, paragraphs 143 and 144, amendments to Articles 174 and 175 TEC (TFEU) relating to environment (climate change); and

(ii)'.  
'

The environment is a shared competence between the Union and the Member States which means that Member States will only be allowed to adopt legislation if the Union has not exercised its competence. According to Article 175 (1) "The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174." Hence, the Union must contribute to the following objectives: preserving, protecting and improving the quality of the environment; protecting human health; promoting prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems.

Decisions on environmental policy are taken by the Council acting by a qualified majority and by co-decision procedure with the European Parliament (ordinary legislative procedure). Presently, "provisions of a fiscal nature, measures affecting town and country planning, quantitative management of water resources or affecting the availability of those resources, land use, except waste management; and measures significantly affecting a Member State's choice of energy sources and the general structure of its energy supply" are adopted by the Council acting unanimously and after consulting the European Parliament, Economic and Social Committee and the Committee of the Regions. Therefore, they are adopted through the consultation procedure where the European Parliament takes a marginally influential role.

However, the Council acting unanimously through the consultation procedure is free to decide to apply QMV to those matters subject to unanimity. According to the Lisbon

Treaty amendment, "The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph." Therefore, it makes clear that the extension of QMV to areas ruled by unanimity also involves the extension of the ordinary legislative procedure (co-decision procedure).