Chapter 4: Objectives of the Treaty in the Preamble and Common Provisions

The Preamble and Common Provisions

4-1 To understand the objectives of the Treaty, reference must be made to each of the Recitals, as well as to those Common Provisions which are directly or indirectly expressed as objectives. Recitals forming a Preamble to a Treaty, or to secondary legislation under a Treaty, are a normal method of explaining the objectives of the instrument in question; the same is true of some Member States' domestic legislation. As for the Common Provisions, these, as already mentioned, are largely political in character; and some of the Common Provisions are therefore closer to a statement of objectives than to a strictly legal text; many of them repeat, prune or amplify objectives already set out in the Recitals. The objectives may be expressed as follows:
(in the Recitals, and partly in the Common Provisions)

- closer integration in Europe,
- creation of firm bases for the construction of Europe,
- liberty, democracy, human rights and the rule of law,
- fundamental social rights,
- solidarity and individuality of the peoples of Europe,
- democratic and efficient functioning of the Institutions,
- economic and monetary union and a single currency,
- economic and social progress, including
    - sustainable development,
    - accomplishment of the internal market,
    - reinforced cohesion,
    - reinforced environmental protection,
    - policies for parallel progress,
- citizenship of the European Union,
- common foreign and security policy,
- area of freedom, security and justice,
- closer union based on the principle of subsidiarity,

(additionally, in the Common Provisions)

- establishment of a European Union,
- foundations of the European Union,
- organisation of relations between the Member States and
- maintenance of the *"acquis communautaire"*.

First Objective: Closer Integration

4-2 In the first Recital to the Treaty, the signatories express their resolve "to mark a new stage in the process of European integration undertaken[1] with the establishment of the European Communities". This objective is reflected in, for example, the extension of the political scope of the European Community, beyond the economic and social objectives which originally characterised it[2]; the introduction of citizenship of the European Union[3]; the establishment of economic and monetary union[4]; and the institutional changes, affecting in particular the Parliament and the Committee

structure.[5] The first Recital is echoed in the wording of both the Twelfth Recital and corresponding passage in the Common Provisions.[6] (This passage originally referred to a "federal" union; but the word was deleted before the Treaty was signed. How far the process is nevertheless directed in practice towards a federal objective is discussed in a later chapter.[7])

Second Objective: Creation of Firm Bases for the Construction of Europe

4-3 In the second Recital to the Treaty, the signatories recall "the historic importance of the ending of the division of the European continent and the need to create firm bases for the construction of the future Europe". The first half of this objective is somewhat vague.[8] As to the second half of the objective, it may be supposed that the establishment of a single European Union[9], "founded on the European Communities"[10] and "served by a single institutional framework"[11], are among the main contributions to the creation of these firm bases.

Third Objective: Liberty, Democracy and Human Rights

4-4 While the European Community had always been committed to "preserve and strengthen liberty"[12], it was not until 1987 that the Community was committed to "promote democracy" and to recognise the European Convention on Human Rights and Fundamental Freedoms.[13] Now, in the third Recital to the Treaty on European Union, the signatories have confirmed "their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law". This Recital is matched almost exactly by the corresponding provision in the text of the Treaty, but with the addition of the words, "principles which are common to the Member States".[14] As to the European Convention, the text of the Treaty imposes a more precise requirement on the European Union in providing that "the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law".[15]

4-5 A consequence of the European Union's commitment to democracy is that the admission of an undemocratic state as a Member State would not merely be impolitic but also be unlawful. In fact, only those European States which respect the principles noted in the foregoing paragraph are eligible to apply to become a Member State.[16] If an existing Member State were to exhibit or adopt undemocratic characteristics, or otherwise infringe the principles in question, there is a procedure under which certain sanctions may be imposed.[17]

Fourth Objective: Fundamental Social Rights

4-6 In a new fourth Recital[18], the signatories confirm "their attachment to fundamental social rights as defined in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers". This marks a change from the position resulting from the Treaty before amendment, in which a Protocol, now repealed[19], allowed the United Kingdom to "opt out" of the social provisions adopted by the other Member States. A peculiarity of the way in which social provisions are slotted into the respective Treaties is

illustrated by the fact that, although social policy is dealt with in the Treaty establishing the European Community, the change is reflected in a Recital to the Treaty on European Union; and by the fact that, while the Protocol on Social Policy mentioned above was introduced in the original version of the Treaty on European Union, it was "annexed to the Treaty establishing the European Community".[20]

Fifth Objective: Solidarity and Individuality

4-7 A "desire to deepen the solidarity between their peoples while respecting their history, their culture and their traditions", expressed by the signatories in the Fifth Recital to the Treaty on European Union, is probably more important politically than constitutionally, since it is too vague to be construed in precise legal terms. It is possible to envisage a proposal for legislation at the European Union level being opposed politically by a Member State on the grounds that the proposal conflicted with that State's traditions or culture: it is harder to envisage legal proceedings in which the terms of the Recital are cited as a constitutional objection to the proposal. The text of the Treaty itself is more concise: it requires the European Union to "respect the national identities of its Member States".[21] A somewhat whimsical text of the Treaty establishing the European Community requires the Community to "contribute to the flowering of the culture of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".[22] Perhaps the Court of Justice, which has jurisdiction in this area, though not over the Common Provisions of the Treaty on European Union, may one day be called on to interpret this language.

Sixth Objective: Democratic and Efficient Functioning of the Institutions

4-8 In the Sixth Recital to the Treaty on European Union, the signatories express a desire "to enhance further the democratic and efficient functioning of the institutions, so as to enable them better to carry out, within a single institutional framework, the tasks entrusted to them". There is a gap between the objective expressed here and the terms of the Treaty: a constant lament in Brussels is the so-called "democratic deficit". The subject is discussed more fully in a later chapter.[23]

Seventh Objective: Economic and Monetary Union

4-9 By far the most ambitious and concrete objective of the Treaty on European Union is summed up in the Seventh Recital, in which the signatories express their resolve "to achieve the strengthening and convergence of their economies and to establish an economic and monetary union including, in accordance with the provisions of this Treaty, a single and stable currency". On the face of it, this is primarily an economic objective; and there can be little doubt that the economic consequences of implementing this objective will be far-reaching. But the constitutional importance of the objective, and of the provisions designed to implement it, cannot be too strongly emphasised, since the machinery for introducing and enforcing economic and monetary union involves a degree of constitutional integration greatly surpassing any forms of integration undertaken so far. The wording of the Seventh Recital is repeated or amplified, with or without amendment, in the Common Provisions of the Treaty[24], in the statement of the tasks of the European Community[25], in the

statement of the Community's activities[26] and in the provisions on economic and monetary union, whether general in the main text of the Treaty establishing the European Community[27] or of a detailed and procedural character in the relevant Protocols.[28] (These references reinforce the point made above about the slotting of policies into two different Treaties.)

Eighth Objective: Economic and Social Progress

4-10 According to the eighth Recital, the signatories to the Treaty on European Union are determined "to promote economic and social progress for their peoples, taking into account the principle of sustainable development and within the context of the accomplishment of the internal market and of reinforced cohesion and environmental protection, and to implement policies ensuring that advances in economic integration are accompanied by parallel progress in other fields". Economic and social progress is covered in most of the provisions referred to in the previous paragraph; social progress in particular is covered also in specific provisions[29] as well as in a Protocol.[30]

4-11 In the eighth Recital, quoted in full in the previous paragraph, there is a reference to the accomplishment of the internal market - or "the creation of an area without internal frontiers"[31], that is, "an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital".[32] Both directly and indirectly, the accomplishment of this objective has had important constitutional results. For example, the political need to accelerate the completion of the internal market led to the provisions of the Single European Act, extending the opportunities for legislating by means of qualified majority voting in the Council.[33]

4-12 What is referred to in the eighth Recital as "cohesion" is referred to in the Common Provisions[34] and elsewhere[35] as economic and social cohesion. Although it is not immediately obvious from the use of the word cohesion, the expression is generally taken to mean, or at least to include, the reduction of "disparities between the levels of development of the various regions [of the European Union] and the backwardness of the least favoured regions, including rural areas".[36] The concept of cohesion has constitutional implications, which are discussed in a later chapter.[37]

4-13 "Environmental protection" is largely self-explanatory; and, although it is not referred to in the Common Provisions, nor as one of the "tasks" of the European Community, a "policy in the sphere of the environment" is one of the "activities" of the European Community.[38] There are detailed provisions for the implementation of the policy.[39] The objective has some constitutional implications in relation to the provisions on the harmonisation of Member States' laws.[40]

4-14 "Parallel progress in other fields" is far from self-eplanatory. In fields other than economic integration, it may well refer to the series of new provisions on culture, public health and the like, introduced by the Treaty on European Union.[41] But this is not clear from the text. Nor does the objective in itself appear to have any special constitutional importance.

Ninth Objective: Citizenship of the European Union

4-15 From a constitutional point of view, the ninth Recital is important. In it, the signatories express their resolve "to establish a citizenship common to nationals of their countries". The full implications are discussed in a separate chapter.[42] The objective is expanded both in the Common Provisions[43] and in the Treaty establishing the European Community.[44]

Tenth Objective: Common Foreign and Security Policy

4-16 Although the tenth Recital is potentially important to the future development of the European Union's constitution, its form and content fall short of legal precision. In it, the signatories express their resolve "to implement a common foreign and security policy including the progressive framing of a common defence policy, which might lead to a common defence ...[45] thereby reinforcing the European identity and its independence in order to promote peace, security and progress in Europe and in the world". The sentiments expressed in the Recital are oddly reversed in the Common Provisions, giving - intentionally or otherwise - a different emphasis. There, the objective is for the European Union "to assert its identity on the international scene, in particular through the implementation of a a common foreign and security policy including the eventual framing of a common defence policy, which might in time lead to a common defence".[46]

Eleventh Objective: Freedom, Security and Justice

4-17 In the eleventh Recital, the signatories reaffirmed their objective "to facilitate the free movement of persons, while ensuring the safety and security of their peoples, by establishing an area of freedom, security and justice, in accordance with the provisions of this Treaty". The corresponding text in the Common Provisions is more precise: there, the objective is "to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime".[47] However, neither the Recital nor the passage in the Common Provisions describes accurately the scope of the more specific provisions contained in the Treaty. The main Title, to which the Recital is intended to refer covers "provisions on police and judical cooperation in criminal matters"[48]; and a subsidiary Title (not, apparently, restricted to police and judicial affairs) covers "provisions on closer cooperation".[49] In other words, the concept of "cooperation", omitted from the Recital and the Common Provisions, is referred to in almost every specific provision of the two Titles in question, with some variants, such as "coordination" and "collaboration".[50] It is therefore arguable that the provisions foreseen in the eleventh Recital do not establish a European legal order in the fields in question, but only a mechanism for ensuring cooperation between the Member States. In the long run, cooperation may become transposed into substantive European law; but for the time being the provisions fall short of any such development.[51]

Twelfth Objective: Subsidiarity

4-18 In the twelfth Recital, the signatories express their resolve "to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen, in accordance with the principle of subsidiarity". This objective is

repeated in the Common Provisions[52], but with the addition of the words "as openly as possible" (a basis for the principle of "transparency") and without a specific reference at that point to subsidiarity, which is left to a later passage and to the Treaty establishing the European Community.[53] The principle of subsidiarity requires the Community, in areas which do not fall within its exclusive competence, to take action "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". The manner in which the principle of subsidiarity is observed is fundamentally important to the constitutional development of the European Union.[54]

Thirteenth Objective: Establishment of a European Union

4-19 After the Recitals and a repetition of the reference to the advancement of European integration[55], and a formal statement of the signatories' decision to establish a European Union, the Common Provisions begin by stating that "by this Treaty, the High Contracting Parties establish among themselves a European Union, hereinafter called 'the Union'".[56] However, the Union is not a legal entity: there is no provision in the Treaty corresponding to the provision under which legal personality is enjoyed by the Economic Community.[57] This may be explained by the fact that it is in practice the European Community which carries out the tasks, ranging from the conduct of negotiations with non-member states to the employment of staff, on behalf of the Union.

Fourteenth Objective: Foundations of the European Union

4-20 An objective of the European Union, specified in the Common Provisions, is that the Union should be "founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty".[58] Thus the Union has five foundations (not, as sometimes said, "three pillars"[59]) as follows:

- the European Community,
- the European Coal and Steel Community,
- the European Atomic Energy Community,
- the Common Foreign and Security Policy and
- Cooperation
  - on Police and Judiciary in Criminal Matters and
  - among the Member States.

Fifteenth Objective: National Relations

4-21 According to the Common Provisions, the task of the European Union is "to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples".[60] This objective (or "task") is not entirely clear. It sounds slightly authoritarian, but may be intended to mean no more than this: that, in organising relations between the Member States and between their peoples, the Union should act consistently and should aim at solidarity. Constitutionally, there are still countless areas in which Member States organise for themselves their relations with other Member States.

Sixteenth Objective: Maintenance of the "Acquis Communautaire"

4-22 Among the Common Provisions, there are various texts, explicitly described as objectives and already noted in connection with the corresponding texts of the Recitals.[61] However, there is one additional objective which is neither referred to in the Recitals nor spelt out in the substantive (and justiciable) provisions of the Treaties. This is for the Union "to maintain in full the *acquis communautaire* and build on it with a view to considering, through the procedure [for amendment of the Treaty[62]], to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community".[63] The French phrase, *acquis communautaire*, besides being out of place in the English version of a Treaty, is notoriously imprecise; it would appear from the context here to be relatively narrow in scope.[64] According to a narrow definition - there is no formal definition in the Treaties - it may be taken to mean the sum of rules and policies already in place within the European Union. In this context, there are two objectives. The first is to maintain the letter and spirit of these rules and policies, particularly when new Member States are admitted to the European Union. The second is to proceed, under an amending Treaty or Treaties, with the transformation of the defence and security policy and the policy of cooperation in justice and home affairs into formal rules and statutory policies. Essentially, however, this objective is more in the nature of a political statement than of a genuine constitutional precept.

Means necessary to attain objectives

4-23 Towards the end of the Common Provisions, there is a last general objective, requiring the European Union to "provide itself with the means necessary to attain its objectives and carry through its policies".[65] These means may be assumed to include the following:

- financial means,
- institutional means,
- executive, legislative and judicial means,

all of which are discussed in later chapters.

Achievement of the Objectives

4-24 Under the Common Provisions[66], the objectives of the European Union are to be "achieved as provided in this Treaty and in accordance with the conditions and the time-table set out therein while respecting the principle of subsidiarity".[67] The most detailed conditions and the most rigorous time-table are those applicable to the creation of Economic and Monetary Union[68], which is the subject of the Seventh Objective described above.[69]

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1. Sc. "Begun".

2. See Articles 151 to 181 (formerly 128 to 130y), EC Treaty.

3. Article 2 (formerly B), third indent, EU Treaty; Article 17 (formerly 8), EC Treaty.

4. Article 2 (formerly B), first indent, EU Treaty; Articles 98 to 124 (formerly 102a to 109m), EC Treaty.

5. See Articles 192 to 201 (formerly 138b to 144), and 263 to 267 (formerly 198a to 198e), EC Treaty.

6. Article 1 (formerly A), second paragraph, EU Treaty. Compare this with the first Recital in the Preamble to the EC Treaty.

7. See Chapter 25.

8. See the corresponding Recital to the EC Treaty, in which the divisions are by inference mainly economic.

9. Article 1 (formerly A), first paragraph, EU Treaty.

10. Article 1 (formerly A), third paragraph, EU Treaty.

11. Article 3 (formerly C), first paragraph, EU Treaty.

12. Seventh Recital, Preamble to the EC Treaty.

13. Fourth Recital, Preamble to the Single European Act.

14. Article 6(1) (formerly F(1)), EU Treaty.

15. Article 6(2) (formerly F(2)), EU Treaty.

16. Article 49 (formerly O), EU Treaty.

17. Article 7 (formerly Article F.1), EU Treaty. The situation envisaged in this Article was almost realised in 1999, when one of the government parties in Austria was widely considered to have a fascist character.

18. Introduced under Article 1(1) of the Treaty amending the Treaty on European Union and coming into force on 1 May 1999.

19. Under Article 2(58) of the Treaty amending the Treaty on European Union.

20. Paragraph 3 of the Protocol on Social Policy (now repealed: see note 19), introduced by the original EU Treaty.

21. Article 6(3) (Formerly F(3)), EU Treaty.

22. Article 151(1) (formerly 128(1)), EC Treaty.

23. See Chapter 26.

24. Article 2 (formerly B), first indent, EU Treaty. The word "stable", in relation to the single currency, does not appear in this provision.

25. Article 2, EC Treaty.

26. Article 5 (formerly 3b), first paragraph, EC Treaty. But the creation of an economic and monetary union is not specifically referred to here.

27. See, in particular, Articles 98, 99 and 116 (formerly 102a, 103 and 109e), EC Treaty.

28. Protocols 19, 20, 21 and 24, EC Treaty.

29. Articles 136 to 145 (formerly 117 to 122), EC Treaty.

30. Protocol 28, EC Treaty.

31. Article 2 (formerly B), first indent, EU Treaty.

32. Article 3(1)(c), EC Treaty. Compare Article 14(2) (formerly 7a, second paragraph), EC Treaty.

33. The most important of these provisions was Article 18 of the Single European Act, which introduced what is now Article 95 (formerly 100a), EC Treaty.

34. Article 2 (formerly B), first indent, EU Treaty.

35. For example, Articles 2 and 3(1)(k), EC Treaty.

36. Article 158 (formerly 130a), second paragraph, EC Treaty.

37. See Chapter 24.

38. Article 3(l)(l), EC Treaty.

39. Articles 174 to 176 (formerly 130r to 130t), EC Treaty.

40. Article 95(3) (formerly 100a(3)), EC Treaty. See, generally, Chapter 24.

41. Articles 151 to 157 (formerly 128 to 130), EC Treaty.

42. See Chapter 14.

43. Article 2 (formerly B), third indent, EU Treaty.

44. Articles 17 to 22 (formerly 8 to 8e), EC Treaty.

45. The words omitted here are: “in accordance with the provisions of Article 17". It is unusual for a Recital to refer to an Article. For the terms of Article 17 (formerly J.7), EU Treaty, see Chapter 7.

46. Article 2 (formerly B), second indent, EU Treaty.

47. Article 2 (formerly B), fourth indent, EU Treaty.

48. Title VI, comprising Articles 29 to 42 (formerly K.1 to K.14), EU Treaty.

49. New Title VII, comprising Articles 43 to 45, EU Treaty.

50. See, for example, Article 34(1) (formerly K.6(1)), EU Treaty.

51. See further Chapter 8, which discusses in more detail the provisions in question.

52. Article 1 (formerly A), second paragraph, EU Treaty. Compare the first Recital of the Preamble to the EC Treaty, with its reference to “an ever closer union among the peoples of Europe".

53. Article 2 (formerly B), second paragraph, EU Treaty; Article 5 (formerly 3b), second paragraph, EC Treaty.

54. See further Chapters 12 and 25.

55. See the first Recital.

56. Article 1 (formerly A), first paragraph, EU Treaty.

57. Article 281 (formerly 210), EC Treaty.

58. Article 1 (formerly A), third paragraph, first sentence, EU Treaty.

59. References to “three pillars” are commonly found in the press, but not in the law. See Table I.

60. Article 1 (formerly A), third paragraph, second sentence, EU Treaty.

61. These are as follows: Article 2 (formerly B), first indent, EU Treaty (see the seventh Objective on Economic and Monetary Union); ibid, second indent, EU Treaty (see the tenth Objective (Common Foreign and Security Policy); ibid, third indent, EU Treaty (see the ninth Objective (Citizenship); and ibid, fourth indent, EU Treaty (see the twelfth Objective (Freedom, Security and Justice),

62. Referred to in Article 48(2) (formerly N(2)), EU Treaty.

63. Article 2 (formerly B), fifth indent, EU Treaty.

64. It may have a wider meaning in Article 3 (formerly C), first paragraph, EU Treaty.

65. Article 6(4) (formerly F(3)), EU Treaty.

66. Article 2 (formerly B), second paragraph, EU Treaty.

67. As defined in Article 5 (formerly 3b), second paragraph, EC Treaty.

68. Articles 98 to 124 (formerly 102a to 109m), EC Treaty.

69. See paragraph 4-9 above.