

# TREATY OF NICE

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ENTRY INTO FORCE ON  
1<sup>ST</sup> FEBRUARY 2003

*Consequences*



**[www.unice.org](http://www.unice.org)**

Rue Joseph II, 40/4 – B – 1000 Brussels  
Tel. : +32 2 237 65 11 – Fax : +32 2 231 14 45  
e-mail : [main@unice.be](mailto:main@unice.be)

On 11 December 2000, at the European Council held in Nice (France) under the French Presidency of the European Union (EU), Heads of State or Government agreed to modify the Treaties on which the European Union is based concluding the Intergovernmental Conference (IGC) which began on 14 February 2000. Shortly after the agreement, the Nice Treaty was formally signed on 26 February 2001.

It was decided that, further to the signing of the Nice Treaty, it would only enter into force on the first day of the second month after the lodging of the ratification instrument by the Member State which is the last to complete this formality: Ireland was the last Member State to lodge its ratification instrument on 18 December 2002. Therefore the [Nice Treaty](#)<sup>1</sup> enters into force on [1<sup>st</sup> February 2003](#)<sup>2</sup>.

### **Aim of the Nice Treaty?**

**The main aim of the Nice Treaty is to adapt the way in which the EU institutions operate in order to make it possible for the EU to take in new Member States.**

This enlargement of the European Union took its latest decisive step when Heads of State or Government agreed at the [European Council held in Copenhagen](#) on 12-13 December 2002 that ten new States would integrate the European Union (Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia) from 1 May 2004. In addition, the objective was set to welcome two more States (Bulgaria and Romania) in 2007. It was also decided to open accession negotiations with Turkey without delay if the European Council in December 2004, on the basis of a report and a recommendation from the Commission, decides that Turkey fulfils the Copenhagen political criteria (i.e. stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities)<sup>3</sup>.

The European Union will be composed of 25 Member States from May 2004 (potentially 27 in 2007) as opposed to 15 today. In that context, this document is a summary of the main changes made by the Treaty of Nice to the:

- (I) INSTITUTIONS OF THE EUROPEAN UNION,**
- (II) DECISION-MAKING PROCESS, AND**
- (III) OTHER CHANGES.**

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<sup>1</sup> OJEC C 80, 10.3.2001, pp. 1-87, "Treaty of Nice, amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts". Available at the following link:

[http://europa.eu.int/eur-lex/en/treaties/dat/nice\\_treaty\\_en.pdf](http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf)

<sup>2</sup> The latest ratification situation is available at the following link: [http://europa.eu.int/comm/nice\\_treaty/ratifiable\\_en.pdf](http://europa.eu.int/comm/nice_treaty/ratifiable_en.pdf)

<sup>3</sup> See Presidency Conclusions of the Copenhagen European Council, 12 and 13 December 2002 available at the following link: <http://ue.eu.int/newsroom/makeFrame.asp?MAX=&BID=76&DID=73774&LANG=1&File=/pressData/en/ec/73774.pdf&Picture=0>

## I. CHANGES TO THE EUROPEAN UNION INSTITUTIONS AND BODIES

### European Commission (Art. 211-219 TEC)

#### *Number of Commissioners*

Early on in the enlargement discussions it became clear that maintaining the current system according to which the Commission comprises two nationals of each of the larger Member States and one national of each of the smaller Member States, would be unmanageable in an enlarged EU: a EU with 27 Member States would mean that the college of Commissioners could comprise 36 Commissioners!

#### *Increased power for the Commission President*

##### **Treaty of Nice:**

- The President shall be appointed by the European Council acting by **qualified majority** as opposed to consensus;
- The President decides on how the Commission will be organised internally;
- The President distributes responsibilities between its members;
- The President, with approval of the full Commission can oblige a Commissioner to resign.

##### **Treaty of Nice:**

- From **2005** onwards the Commission will consist of **one Commissioner per Member State**<sup>4</sup>;
- As from the appointment of the first Commission when the Union **has 27 Member States**, the number of Commissioners will be **smaller than the number of Member States**. Members will be selected on the basis of a **rotation system based on the principle of equality**. The exact number of Commissioners and the rotation order will be determined by the Council acting unanimously after the 27th Member State signs the Accession Treaty.

### European Parliament (Art. 189-201 TEC)

If the current system for allocating seats to Member States was maintained<sup>5</sup>, that number would largely exceed the maximum fixed by the Amsterdam Treaty: 700 (currently there are 626 Members of the EP).

##### **Treaty of Nice:**

- The number of members may not exceed **732**;
- For the **2004 European elections** the number of members to be elected (in the current Member States and in the new Member States with which accession treaties will have been signed by 1 January 2004) will increase on a pro rata basis to reach the total of **732**<sup>6</sup>.

<sup>4</sup> According to paragraph 7 of the Presidency Conclusions of the Copenhagen European Council (see footnote n°3), **Commissioners from the new Member States will join the current Commission as from the day of accession on 1 May 2004**. After the nomination of a new President of the Commission by the European Council, the newly elected European Parliament would approve a new Commission that should take office on 1 November 2004.

<sup>5</sup> See COM(2000)34, Commission Opinion "Adapting the institutions to make a success of enlargement", available at the following link: [http://europa.eu.int/comm/archives/igc2000/offdoc/opin\\_ig\\_c\\_en.pdf](http://europa.eu.int/comm/archives/igc2000/offdoc/opin_ig_c_en.pdf)

<sup>6</sup> "As the likelihood is that new Member States will enter the Union during the 2004-2009 term of office — and that as a result additional MEPs will be elected in these countries — it is anticipated that the maximum number of

New distribution of seats. Enlargement countries indicated in **RED**

Member States	EP seats
Germany	99
United Kingdom	72
France	72
Italy	72
Spain	50
<b>Poland</b>	<b>50</b>
<b>Romania (in 2007)</b>	<b>33</b>
Netherlands	25
Greece	22
<b>Czech Republic</b>	<b>20</b>
Belgium	22
<b>Hungary</b>	<b>20</b>
Portugal	22
Sweden	18
<b>Bulgaria (in 2007)</b>	<b>17</b>
Austria	17
<b>Slovakia</b>	<b>13</b>
Denmark	13
Finland	13
Ireland	12
<b>Lithuania</b>	<b>12</b>
<b>Latvia</b>	<b>8</b>
<b>Slovenia</b>	<b>7</b>
<b>Estonia</b>	<b>6</b>
<b>Cyprus</b>	<b>6</b>
Luxembourg	6
<b>Malta</b>	<b>5</b>
<b>TOTAL</b>	<b>682</b> (before 2007) <b>732</b> (from 2007)

### Court of Justice and Court of First Instance (Art. 220-245)

The Court of Justice and Court of First Instance see their caseload constantly increasing which makes it difficult for them to perform their tasks rapidly and efficiently: on average 21 months for a case to come to the Court of Justice and 30 months for the Court of First Instance. Reform is necessary, *a fortiori* in the context of enlargement.

*732 seats in the European Parliament may be temporarily exceeded in order to accommodate MEPs from the countries which will have signed accession treaties after the 2004 European elections* in Summary of the Treaty of Nice by Secretary General of the European Commission, SEC(201)99, 18.01.2001, p.3:  
[http://europa.eu.int/comm/nice\\_treaty/summary\\_en.pdf](http://europa.eu.int/comm/nice_treaty/summary_en.pdf)

### Treaty of Nice:

- **Court of First Instance** to be given **powers**, in principle of a comprehensive nature, to hear **direct actions**;
- Possibility of setting up, on the basis of a right of initiative shared between the Court and the Commission, **specialised** chambers which relieve the Court of First Instance of certain specific cases (in areas such as staff disputes);
- The possibility of conferring on the **Court of First Instance** the right to deliver preliminary rulings in certain specific areas;
- Insertion in the Treaty of a clause authorising, by unanimous decision of the Council and after ratification by the Member States, the Court of Justice to rule on disputes concerning **intellectual property rights** under Community law;
- The Court comprises the same number of judges as Member States and may sit in chambers, in **large chamber** (the membership of which is laid down in the Statute (11 judges)) or in plenary session;
- Council decision approving the **rules of procedure** of the Court of Justice and Court of First Instance to require a **qualified majority** rather than unanimity;
- Amendments to the **Statute** of the Court of Justice and Court of First Instance on the basis of a **right of initiative** shared between the Court and the **Commission**;
- Extension of Parliament's right to institute proceedings (Article 230 EC);
- Conferral on Parliament of powers to request the Court for an opinion on whether international agreement is compatible with the Treaty.

## Court of Auditors (Art. 246-248)

### Treaty of Nice:

- Provides for **one member from each Member State** with the possibility to set up chambers for certain categories of report or opinion.

## Economic and Social Committee (Art. 257-262)

### Treaty of Nice:

- Applies a ceiling limit of 350 members;
- Must be made up of representatives of the various economic and social groups in civil society.

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## II. DECISION-MAKING PROCESS

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The Council can take decisions two ways: unanimity, where all Member States must agree (i.e. one Member State can “veto” or block a decision) and a **qualified majority voting** system, where a majority threshold is determined and the votes are weighted depending on, for example, the population of a given country.

The Treaty of Nice marks an extension of qualified majority voting.

In addition, in most of the areas subject to qualified majority voting, the “co-decision” procedure that involves the European Parliament as co-legislator with Council, has also been extended.

### Qualified Majority Voting (QMV) in an enlarged Europe = need to re-weight votes!

At present, there are 87 votes in the Council, distributed between the 15 Member States.

The qualified majority means that 62 votes are needed to pass a proposal, rather than a simple majority of 44.

The reason for the qualified majority, rather than a simple 50% + 1, means that at least half the population of the

EU and half the Member States must be in favour of a motion to pass it.

But with enlargement, the balance between big and small countries will change.

If the distribution of votes remained the same, a group of small countries could potentially block the larger countries from adopting an act, even though the small countries together represent fewer people than the larger ones.

Under QMV, each Member State is given a certain number of votes in the Council, weighted according to its size and population. For example, Germany, the EU's largest State, has 10 votes, while Portugal has 5 and Finland 3.

The Nice Treaty allocates the 12 candidate countries their votes and adjusts the votes of the current Member States.

Once all the countries have joined, there will be 345 votes in total.

To reach a qualified majority, 258 votes will be required, as well as a majority of Member States. As an added control, the votes cast will have to represent 62% of the EU population.

### Treaty of Nice:

The qualified majority voting system will change from **1 January 2005**.

A qualified majority vote will be secured when:

- The **number of votes** in favour of a decision is close to the present threshold (71.26% of votes) in a Union of fifteen Member States. At first, the threshold will evolve in step with the accessions, up to a maximum of 73.4% of votes. Afterwards, once the twelve applicant countries with which the Union has already started accession negotiations joined, **the qualified majority threshold will be set at 258 votes out of 345<sup>7</sup>**.

#### AND

- A **majority of Member States** votes in favour of a decision

#### In addition:

- A Member State may ask for verification that the qualified majority comprises at least **62% of the total population** of the EU. Should this not be the case, the decision will not be adopted.

<sup>7</sup> "The Treaty restricts itself to setting out the principles and methods for changing this system as the Union grows. These principles and methods are listed in the **protocol on enlargement** (doc. SN 533/1, p.71) and **attached declarations**. The number of seats in the European Parliament for the new Member States, the number of votes allocated to them within the Council, and particularly the qualified majority threshold applicable in the future, will thus be legally determined in the **accession treaties**.

The changes brought by the Treaty of Nice to the composition of the Commission and the weighting of votes will be **applicable only as from 2005** and the new composition of the European Parliament will apply as from the elections in 2004. **For the applicant countries joining before these dates, the accession treaties must therefore also establish the number of MEPs, commissioners, votes within the Council which will be allocated to them, and the qualified majority threshold, up until the entry into force of the new rules.** These temporary provisions will be based on the principles which have applied up until now in the accession negotiations, i.e. the transposal of the current system, ensuring equal treatment with the Member States of equivalent size." in Summary of the Treaty of Nice by Secretary General of the European Commission, SEC(201)99, 18.01.2001, p1-2:  
[http://europa.eu.int/comm/nice\\_treaty/summary\\_en.pdf](http://europa.eu.int/comm/nice_treaty/summary_en.pdf)

New distribution of votes in Council.  
 Enlargement countries indicated in **RED**

Member States	N° votes
Germany	29
United Kingdom	29
France	29
Italy	29
Spain	27
<b>Poland</b>	<b>27</b>
<b>Romania (in 2007)</b>	<b>14</b>
Netherlands	13
Greece	12
<b>Czech Republic</b>	<b>12</b>
Belgium	12
<b>Hungary</b>	<b>12</b>
Portugal	12
Sweden	10
<b>Bulgaria (in 2007)</b>	<b>10</b>
Austria	10
<b>Slovakia</b>	<b>7</b>
Denmark	7
Finland	7
Ireland	7
<b>Lithuania</b>	<b>7</b>
<b>Latvia</b>	<b>4</b>
<b>Slovenia</b>	<b>4</b>
<b>Estonia</b>	<b>4</b>
<b>Cyprus</b>	<b>4</b>
Luxembourg	4
<b>Malta</b>	<b>3</b>
<b>Total</b>	<b>345 (from 2007)</b>

### Extension of Qualified Majority Voting (QMV)

The Treaty of Nice extends QMV to 27 provisions. However, for 8 of those provisions, the change to QMV is deferred to a later date. Some of the provisions where QMV has been extended will also be subject to the co-decision procedure, which enables the European Parliament to act as co-legislator with Council. The EP can also be involved on a consultative basis.

The tables below summarize the areas which will come under QMV, respectively as soon as the Treaty of Nice enters into force and at a later stage as specified.

Subjects newly covered by QMV	Treaty Article – European Parliament involvement indicated in RED
Appointment of special representatives	Art. 23 EC Treaty
International agreement implementing joint action or common position (clause provides for appeal to European Council)	Art 24 paragraph. 2 and 3 EC Treaty
Countering discrimination (applies only to incentive measures)	Article 13 EC Treaty <i>Co-decision</i>
Cooperation measures: modernisation of social protection	Article 137 EC Treaty <i>Co-decision</i>
Legislation: social security and social protection, protection against dismissals, collective defence of interests of workers (including co-determination), conditions of employment of third country nationals	Article 137 EC Treaty remains subject to unanimity and consultation of EP but the <i>Council can decide by unanimity to switch to QMV and co-decision</i>
Facilitating freedom of movement for the citizens of the EU (but limitation of the field of application)	Article 18 EC Treaty <i>Co-decision since Amsterdam Treaty</i>
Judicial cooperation in civil proceedings (with the exception of aspects relating to family law)	Article 65 EC Treaty <i>Co-decision</i>
Financial assistance in the event of serious difficulties	Article 100 EC Treaty
Representation of the European Community at international level as regards issues of particular relevance to EMU	Article 111, paragraph 4, EC Treaty
Measures necessary for the introduction of the Euro	Article 123, paragraph 4, EC Treaty
Negotiation and conclusion of international agreements on services and the commercial aspects of intellectual property (with exceptions)	Article 133 EC Treaty
Specific support measures in the industrial field	Article 157, paragraph 3, EC Treaty <i>Co-decision</i>
Specific actions outside the Structural Funds	Article 159, indent 3, of the EC Treaty <i>Co-decision</i>
Economic, financial and technical cooperation with third countries	Article 181a (new) EC Treaty <i>Consultation</i>
Regulations and general conditions governing the performance of the duties of members of the European Parliament (with the exception of aspects relating to taxation)	Article 190 EC Treaty <i>Approval of the decision of the Parliament</i>
Statute and financial regulations governing political parties at European level	Article 191 EC Treaty <i>Co-decision</i>
Appointment of the HR/SG and Deputy-SG of the Council	Article 207 EC Treaty
Appointment of the President and the members of the Commission	Article 214 EC Treaty
Approval of the rules of procedure of the Court of Justice	Article 223 EC Treaty
Approval of the rules of procedure of the Court of First Instance	Article 224 EC Treaty
Appointment of the members of the Court of Auditors	Article 247 EC Treaty
Approval of the internal rules of the Court of Auditors	Article 248 EC Treaty
Appointment of the members of the Economic and Social Committee	Article 259 EC Treaty
Appointment of the members of the Committee of the Regions.	Article 263 EC Treaty

**DEFERRED QUALIFIED MAJORITY VOTING:**

Subjects to be newly covered by QMV	Deferred till when?	Treaty Article – European Parliament involvement indicated in RED
Checks at external borders	After agreement on the field of application of these measures / see Conference declaration annexed to Treaty of Nice	Article 62, paragraph 2(a), EC Treaty <i>Co-decision</i>
Movement of nationals of third countries in possession of a visa	2004 / see Conference declaration annexed to Treaty of Nice	Article 62, paragraph 3, EC Treaty <i>Co-decision</i>
Policy on asylum	After adoption of a Community framework / see new Art 67 paragraph 5	Article 63, paragraph 1, EC Treaty <i>Co-decision</i>
Persons under temporary protection	After adoption of a Community framework/ see new Art 67 paragraph 5	Article 63, paragraph 2(a), EC Treaty <i>Co-decision</i>
Clandestine immigration	2004 / see Conference declaration annexed to Treaty of Nice	Article 63, paragraph 3(b), EC Treaty <i>Co-decision</i>
Administrative cooperation in areas under Title IV	2004 / see protocol annexed to Treaty of Nice	Article 66 EC Treaty <i>Consultation</i>
Cohesion	From 2007	Article 161 EC Treaty <i>Assent</i>
Financial regulations and rules on the responsibility of financial controllers, authorising and accounting officers	From 2007	Article 279, paragraph 1 EC Treaty <i>Consultation</i>

**Enhanced cooperation (Art. 40, 43-45 EU Treaty and Art 11 EC Treaty)**

The Treaty of Amsterdam introduced the possibility for a number of Member States to establish special cooperation between them within the institutional framework of the Treaty. The current conditions require the participation of a majority of Member States and allow for any Member States to oppose the

enhanced cooperation initiative. In practice, enhanced cooperation has not yet been used.

The Treaty of Nice has lightened the strict conditions for establishing enhanced cooperation.

**Treaty of Nice:**

- The possibility of establishing closer cooperation will in future also be possible within the "second pillar", i.e. common foreign and security policy, in order to implement a joint action or common position. It may not, however, involve matters with military or defense implications;
- **A minimum of eight Member States** is required to form enhanced cooperation (in the three "pillars");
- The **veto** mechanism has been **abolished**. However, each Member State will have the right to refer a matter to the European Council. This option does not alter the fact that the decision to authorise enhanced cooperation is taken by the Council by a qualified majority. In the second pillar, however, the final decision is taken by the European Council, acting unanimously;
- Enhanced cooperation in the area covered by the EC Treaty (the first pillar) may be initiated in a field subject to co-decision only with the **assent** of the **European Parliament**.

### III. SELECTION OF OTHER CHANGES

#### Fundamental rights

##### Treaty of Nice:

- **Adds to Article 7 of the Treaty on European Union a provision aimed at preventing infringements of human rights.** The Council, acting by a majority of four-fifths of its members, after receiving the assent of the European Parliament and having heard the Member State concerned, may decide that there is a clear risk of a serious breach by a Member State of the fundamental rights or freedoms on which the Union is based. The Council may send appropriate recommendations to that State. The initiative for such decisions can come from one-third of the Member States, the Commission or the European Parliament. The assent of Parliament is required in all cases.
- **Does not include a reference to the Charter of Fundamental Rights in the Treaties.** On the other hand, a declaration was adopted on the future of the Union and this topic will be put on the agenda of an Intergovernmental Conference to be held, according to the declaration, in 2004

#### Judicial cooperation in criminal matters (Art. 31 EU Treaty)

##### Treaty of Nice:

- Supplements Article 31 of the Treaty on European Union with reference to and the description of the tasks of "Eurojust", a unit of seconded magistrates whose task will be, within the framework of judicial cooperation in criminal matters, to contribute to proper coordination of the national authorities responsible for criminal proceedings.

#### Social Protection Committee (Art. 144)

##### Treaty of Nice:

- A new Article 144 of the EC Treaty incorporates within the Treaty the Social Protection Committee that had been established by the Council pursuant to the conclusions of the Lisbon European Council.

#### Name of the Official Journal (Art. 254)

##### Treaty of Nice:

- The name of the Official Journal of the European Communities will be changed to "Official Journal of the European Union".

#### Venue for European Council meetings

##### Treaty of Nice:

- A declaration annexed to the Treaty of Nice stipulates, "*as from 2002, one European Council meeting per Presidency will be held in Brussels. When the Union comprises 18 members, all European Council meetings will be held in Brussels*".

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## AFTER NICE: DECLARATION ON THE FUTURE OF THE UNION

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In a **declaration on the future of the Union** annexed to the Treaty of Nice, the **Intergovernmental Conference** calls for a deeper and wider debate on the future of the European Union.

The declaration envisages three phases:

In **2001** the Swedish and Belgian Presidencies, in cooperation with the Commission and involving the European Parliament, will encourage wide-ranging discussions with national Parliaments and the general public. At its meeting in Laeken in December 2001, the European Council will agree on a declaration containing appropriate initiatives for the continuation of this process in **2002 and 2003** (see the [European Convention](#)<sup>8</sup> presided by Mr Valéry Giscard d'Estaing).

Finally, a new Intergovernmental Conference will be convened in **2004** to deal with the issues discussed. This Conference is not to constitute any form of obstacle to enlargement.

The **Intergovernmental Conference** decided that the process should address, **inter alia**, the following questions:

- a more precise delimitation of powers between the Union and the Member States;
- the status of the Charter of Fundamental Rights of the European Union;
- simplification of the Treaties with a view to making them clearer and more readable without changing their meaning;
- the role of national Parliaments in the European system.

UNICE, as social partner, has official "Observer" status in the Convention on the future of Europe. In this context, UNICE has made several interventions and contributions to the debate. For further information, you can access UNICE Comments and interventions at the following link: <http://www.unice.org>

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### FURTHER INFORMATION CAN BE OBTAINED FROM THE FOLLOWING WEBSITES:

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European Commission website on the Treaty of Nice

[http://europa.eu.int/comm/nice\\_treaty/index\\_en.htm](http://europa.eu.int/comm/nice_treaty/index_en.htm)

Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, OJEC C 80, 10.3.2001

[http://europa.eu.int/eur-lex/en/treaties/dat/nice\\_treaty\\_en.pdf](http://europa.eu.int/eur-lex/en/treaties/dat/nice_treaty_en.pdf)

Summary of the Treaty of Nice by Secretary General of the European Commission, SEC(201)99, 18.01.2001

[http://europa.eu.int/comm/nice\\_treaty/summary\\_en.pdf](http://europa.eu.int/comm/nice_treaty/summary_en.pdf)

Consolidated version of the Treaty on European Union and of the Treaty establishing the European Community (further to the entry into force of the Nice Treaty on 1<sup>st</sup> February 2003), OJEC C 325, 24.12.2002.

[http://europa.eu.int/eur-lex/en/oj/2002/c\\_32520021224en.html](http://europa.eu.int/eur-lex/en/oj/2002/c_32520021224en.html)

European Commission website on the Future of the Union debate

[http://europa.eu.int/futurum/index\\_en.htm](http://europa.eu.int/futurum/index_en.htm)

UNICE press release, 7 November 2000: "European Business leaders set out priorities for Nice to President Chirac"

[http://195.35.110.66/unice/Website.nsf/HTML+Pages/UK\\_index\\_UK2.htm](http://195.35.110.66/unice/Website.nsf/HTML+Pages/UK_index_UK2.htm)

UNICE press release, 1 December 2000: "Europe cannot afford failure in Nice"

[http://195.35.110.66/unice/Website.nsf/HTML+Pages/UK\\_index\\_UK2.htm](http://195.35.110.66/unice/Website.nsf/HTML+Pages/UK_index_UK2.htm)

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<sup>8</sup> European Convention website: <http://european-convention.eu.int/>