

## Unofficial translation

2 November 2004

Political Agreement between the Government (the Liberal Party, the Conservative Party), the Social Democrats, the Socialist People's Party and the Social Liberal Party regarding Denmark in the Enlarged EU

### *"Denmark in the Enlarged EU"*

With the enlargement of the EU by 10 new Member States, we have a new, united EU. The divided Europe of the Cold War has been replaced by a democratic community of nations and peoples of Europe. The enlargement marks the achievement of the primary objective of Danish European policy since the fall of the Berlin Wall. A democratic, cooperating and strong EU is in Denmark's interest.

The enlarged EU must be open, effective and capable of taking decisions. This is imperative for our ability to fully exploit the benefits that the EU offers us. At the same time, the EU must be understandable. Consequently, it is necessary and proper that the new Treaty unifies and modernises the foundation for the enlarged EU.

The EU constitutes the framework for future European cooperation; a cooperation where results are achieved not only in the meeting between national interests, but also in the meeting between political views across borders. The EU is not an ideological project, but a common framework for political efforts.

Denmark's positions in the day-to-day work in the EU are determined by a political process in this country. The political process is characterised by the different views held by the parties to this Agreement and the other parties in the Folketing (Danish Parliament). This Agreement does not

change this, but simply reflects the fact that the parties behind the Danish endorsement of the Treaty share certain overall goals regarding the ways in which the new framework is to be utilised.

The Treaty is a result of negotiation between all EU Member States. Every Member State has had to make concessions and compromises – also Denmark. However, the overall result is a better Treaty that clarifies the EU's goals and structure in a single basic document for Europe and which:

- builds on the national constitutions of the individual sovereign states,
- is compatible with the Danish Constitution, and
- must be approved by all Member States in accordance with each Member State's national constitution, which in the case of Denmark is the Constitution.

At the same time, we are agree that the Treaty contains a number of significant improvements:

- The Treaty ensures that the enlarged EU can function more effectively. The decision-making procedures are simplified and streamlined, thus enhancing the ability of the EU to deliver the necessary results, even with 25 or more Member States.
- It is firmly stated that the EU is a cooperation between independent nation states, and that the EU's powers are conferred by the Member States. At the same time, it is made clear that any Member State has the freedom to withdraw from the cooperation.
- The division of labour between the EU and the Member States is clarified and clearly described.
- The EU's objectives and values are clearly presented and given far more prominence in the Treaty. The Treaty underlines that the EU is built on democracy, freedom, tolerance, equality and respect for human rights. The EU seeks to promote, among other things, social progress and a high level of environmental and consumer protection. The values are further emphasised by the decision to incorporate the EU Charter of Fundamental Rights into the Treaty.
- It is stipulated that EU legislation shall be adopted in accordance with the principles of full openness and transparency – in both the European Parliament and the Council. The democratic process in the EU is enhanced also by the role and opportunities afforded to the national Parliaments and by the fact that the European Parliament is given increased co-influence.

- The EU's ability to present our common views on the international scene is strengthened, as is the EU's ability to undertake crisis management tasks based on voluntary contributions from the Member States.
- The EU is given legal personality, thus allowing the EU to act as one entity in relation to the surrounding world, including when the EU concludes international agreements.

### A new, proactive Danish European Policy

The Treaty is not a goal in itself. It is first and foremost a means that can and must be used for the benefit of the nations and peoples of Europe. Results are generated in the political and democratic process that takes place in the Member States and in the EU institutions.

The Treaty offers a good foundation for Denmark's active and equal participation in European cooperation. The Treaty offers Denmark good opportunities to continue the efforts to achieve the overall European policy objectives that the parties to this Agreement share.

- We shall continue our efforts to promote openness, proximity and democracy in the EU. The Treaty takes us another step in the right direction. This applies to, among other things, openness regarding the legislative process. The provisions in the new Treaty regarding a strengthened role for the national Parliaments must be implemented in practice. Similarly, we must create optimal conditions for applying the Treaty's principle of promoting popular participation in the democratic life of the EU. We will take and support initiatives that can contribute to achieving this objective.
- We shall work to integrate EU policy issues more systematically in the work of the Folketing, thus affording the Folketing better opportunities to influence Denmark's EU policies at an early stage.
- We shall work to strengthen Europe's competitiveness. The EU must contribute to fostering economic growth, creating more and better jobs, promoting equal opportunities, and developing a well-educated and highly skilled workforce with particular focus on an effectively functioning Internal Market. We wish to see an increased focus on research and development as well as education and training that,

among other things, stimulate products and production within fields such as sustainable energy, cleaner technology and other environmental technology.

- We must use the EU to promote economically and socially sustainable development. The EU must be used to secure the framework for the European welfare states. Through this framework, the EU must strengthen the opportunities for us to preserve the Danish welfare model. The organisation of the welfare state will remain a national responsibility.
- We must use the EU to promote environmentally sustainable development through targeted efforts to raise the level of protection in present and future Member States and to continually improve the level of environmental quality. We shall endeavour to ensure that the EU actively strives for an ambitious agreement on the reduction of greenhouse gases and that this is done in good time before the Kyoto Protocol's first phase expires in 2012. At the same time, we shall seek to promote the use of sustainable energy in the EU. We shall also seek to ensure a high level of food safety and animal welfare.
- We shall seek to ensure that the EU assumes greater global responsibility. We wish to see a multi-pronged approach where the EU plays an active role in the efforts to promote peace, disarmament and stability; in the efforts to strengthen democracy, human rights and the international rule of law; in the efforts to prevent and fight terrorism; in the efforts to foster development and fight hardship and poverty in the world; and in the efforts within the areas of international environmental and climate policy. The EU must also strengthen the civilian crisis management capacity.

We must actively support the wish of EU neighbouring countries for closer cooperation, for example by incorporating them in EU programmes and by offering access to EU markets in tandem with the progress of the reform efforts implemented in these countries.

At the same time, we note with satisfaction that the EU's security and defence dimension is developing in accordance with the principles of the UN Charter and on the basis of the Treaty's stipulations. The Treaty lays down the framework for civilian and military operations outside the EU. That includes joint disarmament operations,

humanitarian and rescue tasks, military and assistance tasks, conflict prevention and peace-keeping tasks, and tasks of combat forces in crisis management, including peace-making and stabilisation. In addition to this are contributions to the fight against terrorism, including by supporting third countries in combating terrorism in their territories. The Treaty stipulates that for Denmark and those States which are members of NATO, NATO will remain the foundation of their collective defence. The Treaty does not entail the creation of a European army nor does it infringe upon the exclusive right of the Government and the Folketing to dispatch Danish troops as laid down in the Danish Constitution. The Treaty's obligation to improve military capacities does not entail that this must be achieved through an increase in military expenditure. The goal can be achieved by other means. It will continue to be the Member States themselves that draw up their own national defence budgets. In this regard, it should be borne in mind that the Danish defence opt-out is preserved in the new Treaty.

We also wish to see the EU play a greater role in the efforts to solve refugee problems as well as fight illegal immigration and cross-border crime.

#### A Treaty with new adjustment possibilities

We find that the Treaty offers a foundation that can provide an effective, democratic and transparent framework for the future development of Europe for many years to come. In the years ahead, we must focus on strengthening EU cooperation to achieve concrete results. We are therefore satisfied that the Treaty in several areas holds new adjustment possibilities.

#### *Treaty amendments*

Article IV-445 of the Treaty contains a new provision stipulating that amendments may be made in the Treaty provisions regarding EU internal policies without convening an intergovernmental conference or a convention. The amendments may not give the EU more competence, and a decision demands unanimity in the European Council and subsequent ratification in accordance with the constitutional requirements of each individual Member State. Consequently, a double Danish right of veto has been secured in the same way as with the ordinary Treaty amendment procedure.

### *Majority decisions*

In an EU with 25 Member States, the point of departure must be that decisions are taken by qualified majority. However, in certain areas, it has been important for several Member States to uphold the principle of unanimity.

In this respect, the Common Foreign and Security Policy constitutes a special area. The EU must assume greater responsibility internationally. We are therefore satisfied that the Treaty allows for more decisions to be taken by qualified majority. However, the principal rule will continue to be unanimity, a rule that applies also to the overall guidelines for the common foreign and security policy which must be adopted by unanimity without the possibility of transition to qualified majority. In areas where decisions may be taken by qualified majority, the Treaty makes it possible for a specific country for vital reasons ultimately to secure unanimity voting. The EU cannot impose a particular foreign policy on a country. Similarly, a single country should not prevent the others from pursuing a particular foreign policy.

We find it proper that the Treaty allows for the possibility that the Member States at a later time through unanimity may move from unanimous voting to qualified majority voting in certain areas or give up a special legislative procedure for the Council in favour of the ordinary legislative procedure, where both the Council and the Parliament are co-legislators<sup>1</sup>. We would like to see majority decisions extended to several areas, including:

---

<sup>1</sup> This concerns a general possibility for amending decision-making procedures within EU policies and functioning under Article IV-444 of the Treaty. This also concerns the possibility for specific decisions hereon within parts of the social and labour market policy (Article III-210(3)), within parts of the environmental policy (Article III-234(2)), within parts of civil law (Article III-269(3)), within parts of the Common Foreign and Security Policy (Article III-300(3)), within the multiannual financial framework (Article 1-55(4)), as well as decision-making procedures within enhanced cooperation (Article III-422). The provision may not be applied to decisions with military or defence implications. The Treaty provisions that require special national ratification will inherently demand that all Member States are in agreement. This applies, for example, to the supplementing of EU citizen rights (Article III-129) and the electoral system for the European Parliament (Article III-330). The transition to qualified majority or the introduction of the ordinary legislative procedure in these areas thus make no sense. The described procedure between the parties to the Agreement governing the use of Article IV-444 and the specific possibility for transition to qualified majority or the ordinary legislative procedure will find corresponding use if the amendment to the decision-making procedure is made on the basis of the simplified Treaty amendment procedure as laid down in Article IV-445.

- minimum rates for environmental taxes (Article III-234(2)),
- minimum rates for energy taxes (Article III-256(3)),
- combat of various forms of discrimination (Article III-124(1)), and
- decisions regarding the EU's multiannual financial framework (Article I-55(4)).

We also welcome Article-223(2), which entails automatic transition to qualified majority voting and ordinary legislative procedure regarding the Structural Funds and the Cohesion Fund when the first provisions after the Treaty enters into force are to be adopted.

We agree that the Bill in connection with Denmark's ratification of the Treaty must hold a provision to the effect that the possibility of a transition to qualified majority voting or the ordinary legislative procedure cannot be used in any matter without the consent of the Folketing. We also agree that we will hold close consultations between the parties in each individual case.

The possibility of a transition to qualified majority voting or to the ordinary legislative procedure exists also in areas where special conditions require that such a decision be carefully considered. This applies, for example, to the possibility laid down in Article III-185(6) for, at a later time, conferring the supervision of certain financial institutions to the European Central Bank, on whose Governing Council Denmark is not represented, as long as Denmark stands outside the euro cooperation. This applies also to key parts of the social and labour market policy, to certain parts of the common commercial policy and to parts of the taxation area, where the implications of the Danish welfare model require that Denmark should exercise special care.

With respect to the social and labour market policy, we are satisfied that Article III-210 of the Treaty upholds unanimity in connection with decisions on the protection of workers regarding:

- social security and social protection of workers (1(c)),
- termination of an employment contract (1(d)),
- representation and collective defence of the interests of workers and employers (1(f)), as well as
- conditions of employment for third-country nationals (1(g)).

We agree that we will not support the transition to qualified majority or ordinary legislative procedure in these areas, if one of the parties to this Agreement remains opposed to the proposal in question following consultations between the parties. We agree that the same arrangement shall apply to regulation of issues under Article III-125(2) that concern social security or social protection. If a party has opposed a proposal, we agree that we will hold fresh consultation, if significant changes occur in the conditions on which the rejection of the proposal in question was based.

We are also satisfied that the Treaty underlines the role of the social partners at EU level in consideration of the diverse nature of national systems. As part of this, Articles III-211 and III-212 of the Treaty maintain the social partners' possibility of concluding voluntary collective agreements at EU level on the social and labour market policy, as well as their possibility of freely choosing whether the agreements are to be implemented by the EU. In this connection, we find it important that, as has been the case so far, it should be left to the Member States themselves to choose the form and means for the implementation, and that the Danish collective bargaining system on the labour market is maintained.

With respect to services, we are satisfied that Articles III-145-147 of the Treaty do not change the competence of the EU in relation to services within the Internal Market. Similarly, the Treaty maintains the definition of what, under the Treaty, shall be considered "services". We are also satisfied that the Treaty without changes establishes that the Member States themselves decide their systems of property ownership (Article III-425).

In respect of trade in services, Article III-315 on the common commercial policy underlines that the EU must not through the commercial policy change the distribution of competence between the EU and the Member States. This applies also to the negotiation and conclusion of trade agreements in the field of cultural and audiovisual services, as well as in the field of social, education and health services. We are satisfied that the external competence of the EU concerning services pursuant to Article III-315 cannot exceed the internal competence of the EU, and that it therefore cannot extend the internal competence of the EU by the backdoor regarding services in, for example, the field of cultural and



audiovisual services as well as in the field of social, education and health services.

We agree in this connection that, if necessary, we shall use the possibility laid down in Article III-325(11) of the Treaty for obtaining an opinion from the European Court of Justice if we find that a trade agreement will imply harmonisation in an area where the Treaty rules out harmonisation. If the European Court of Justice shares this view, the agreement may not enter into force unless it is amended.

The Treaty holds an innovation under which the Commission is required, in each individual case, to carefully consider whether national organisation of social, health and education services may be seriously disrupted, or whether the responsibility of Member States to deliver them may be prejudiced. Similarly, as another innovation, the Commission is also required, in connection with trade agreements in the field of cultural and audiovisual services, to carefully consider whether cultural and linguistic diversity in the EU is put at risk. We agree that we will turn down any proposals for a transition to majority decisions in these areas, if merely one of the parties to this Agreement is opposed to the proposal in question following consultations between the parties.

We believe that strengthening the EU cooperation in certain taxation areas is in Denmark's interest. This applies, among other things, to:

- the establishment and harmonisation of minimum rates for indirect taxes (Article III-171), and
- cooperation on direct and indirect tax fraud and evasion as well as administrative cooperation (Articles III-171 and III-173).

In these areas, we are therefore prepared to support any proposals for a transition to majority decisions or ordinary legislative procedure.

In certain other taxation areas, we shall, however, reject any proposals for a transition to majority decisions or ordinary legislative procedure under Articles III-171 and III-173, if merely one of the parties to this Agreement is opposed to the proposal in question after consultations between the parties. This applies to proposals for a transition to majority decisions or ordinary legislative procedure that may relate to:

- direct personal taxes (Article III-173), as well as
- harmonisation of indirect taxes, apart from minimum harmonisation (Article III-171).

The same applies to proposals for a transition to majority decisions or ordinary legislative procedure concerning approximation of legislation that impacts directly on the establishment or function of the Common Market in pursuance of Article III-173; except for a transition to majority decisions or ordinary legislative procedure concerning the updating of Partnership and Cooperation Agreements with third countries as well as taxation issues that do not relate to direct personal taxes.

If a party has opposed a proposal, we agree that we will hold fresh consultations, if significant changes occur in the conditions on which the rejection of the proposal in question was based.

#### *Migrant workers*

We agree that within the Internal Market there is a need for the possibility of coordinating social security arrangements for migrant workers. At the same time, we are fully convinced that the organisation and financing of the individual Member States' welfare systems are, first and foremost, a national responsibility.

The provision of Article III-136 on social security enables a qualified majority to adopt arrangements for the calculation and payment of benefits to migrant workers in the EU. The provision holds, simultaneously, an effective emergency brake mechanism laid down in paragraph 2, which makes it possible to refer a proposal that affects fundamental aspects of the social security system or the financial balance of that system to the European Council for decision by consensus. Prior to determining Denmark's position on a proposal in this area, the Government will naturally, as has been the case so far, have to assess the consequences of the proposal and obtain negotiating positions from the European Affairs Committee of the Folketing. We agree that we will conduct close consultations between the parties to the Agreement on any proposal in pursuance of Article III-136 with a view to ensuring that the proposal does not affect fundamental aspects of Denmark's social security system or the financial balance of that system.

If a proposal according to expert assessment, if necessary with the involvement of external expertise, is considered to affect fundamental

aspects of Denmark's social security system or the financial balance of that system, we agree on insisting that the proposal be referred to the European Council, and we agree that Denmark will oppose the adoption of the proposal. Where it is deemed necessary to involve external expertise for the purpose of the expert assessment, the relevant experts will be appointed subject to agreement between the parties. Where the expert assessment raises reasonable doubts as to whether a proposal is liable to affect fundamental aspects of the social security system or the financial balance of that system, any party to the Agreement may require that the emergency brake mechanism be applied. If changes occur in significant preconditions of the assessments, including if the Commission changes its proposal, we agree to reconsider the matter. Any party to the Agreement may demand a reassessment, if the party finds that the political preconditions have changed significantly.

### Status of Agreement

This Agreement is an expression of a fundamental political understanding between the participating parties with respect to the areas covered by the Agreement. It is included in the explanatory notes to the Bill on ratification of the Treaty, without this changing the fact that it is a matter of a political agreement.

The Agreement shall remain in force for as long as the Treaty that was signed in Rome on 29 October 2004. Any amendment to the Agreement shall be subject to consensus between the parties to this Agreement.

\* \* \*

### Denmark's special position

The Danish opt-outs are laid down in the Edinburgh Decision and supplemented by a special protocol to the Amsterdam Treaty. Denmark's special arrangements cannot be changed without Danish consent and will, therefore, be maintained as long as Denmark so wishes. In Edinburgh, Denmark indicated that we would not prevent other countries from developing the cooperation in the areas where we have opt-outs.

The opt-outs are maintained in the new Treaty. At the same time, the Treaty opens up for the possibility that Denmark's opt-out regarding the EU cooperation on Justice and Home Affairs may change, subject to

approval by referendum. If relevant, this means that Denmark on a case-by-case basis will decide on participation in the cooperation in this area.

It is altogether vital that the Danish EU policy also in these areas rests on the necessary popular foundation. A change of Denmark's special position is only possible through a later, separate referendum.