ABSTRACT. In its original version, this paper was delivered by the authors to the Bureau Europeen des Unions des Consommateurs in April 2004 in order to provide the basis for that body’s submissions to the intergovernmental conference then charged with the task agreeing a new constitutional Treaty for the European Union. The aim: to improve the attention paid to the consumer interest in the Treaty. Ultimately the text agreed by the Heads of State and government of the Member States of the EU in June 2004 largely adopted the existing consumer-related acquis communautaire – in fact in most areas of substantive EU policy-making, not merely consumer policy, textual continuity is the hallmark of the newly agreed text. This paper has been revised to provide a commentary on the consumer-related provisions that were agreed in June 2004, in order both to show chances that have been missed (but may be revived should the ratification process founder) and to reveal areas of current debate that remain topical and controversial because of the preference simply to absorb existing provisions, lightly amended or left wholly unamended, into the constitutional Treaty agreed by the Heads of State and government of the Member States of the EU in June 2004.

THE PROCESS OF TREATY REVISION – A SUMMARY

A Declaration on the Future of the European Union attached to the Treaty of Nice, agreed in December 2000, called for “a deeper and wider debate about the future of the European Union”. The principal anxiety was that the arduous haggling about the details of Treaty revision among Heads of State and government that has characterised intergovernmental conferences over the last 20 years has contributed to a widespread sense of citizen alienation from the endeavours of the European Union.

The Laeken Declaration, issued by the Heads of State and government in December 2001, sought to inject fresh momentum into the European integration project by establishing a Convention on the Future of Europe. This body, which began its work in early 2002, was
chaired by former French President Valéry Giscard d’Estaing and was composed of national parliamentarians, representatives of the EU institutions, and other actors including representatives of civil society. Its task was to provide an arena for transparent and imaginative thinking about the future of the EU and it was hoped that both its composition and its working methods would invest it with more credibility as an agent for constructive change than the tired process of bargaining in the closed arena of the intergovernmental conference.

The Convention quickly focussed on the ambition of producing a complete text of a draft constitutional Treaty, which it urged be accepted without adjustment by the Member States.

The goal of offering a single text was duly achieved in July 2003 but the political momentum in favour of securing its adoption in an un-amended condition by the Member States proved insufficiently strong. Ultimately any proposed amendment to the EUs constituent Treaties must itself take the legal form of a Treaty and must be supported by and ratified by all the Member States. And, in the second half of 2003, it became apparent that some aspects of the Convention’s agreed text were unpalatable to some of the Member States. In Brussels in December 2003 agreement proved impossible to reach.

However, after the astute Irish Presidency that occupied the first half of 2004, a breakthrough was achieved in June 2004, and a constitutional Treaty was agreed by the Heads of State and government. An unofficial text was produced for information purposes on 25 June 2004 (CIG 86/04). A definitive final text was subsequently produced on 6 August 2004 (CIG 87/04) and has been presented for signature by the Member States, probably in late 2004. Thereafter, it will be open to ratification as an international Treaty and it cannot enter into force until all 25 Member States have ratified it.

Ratification depends on national constitutional procedures – some Member States are required to hold a referendum, others will choose to do so, while others again will ratify without resort to the electorate. Even if the ratification process proceeds smoothly in all 25 Member States it is improbable that the new Treaty will enter into force before late 2006. And it is highly likely that one or more Member States will encounter serious domestic difficulty in securing approval required to underpin ratification. It is perfectly conceivable that the deal struck in June 2004 will never be converted into a binding international Treaty.

The text finally agreed in June 2004 bears the scars of the disagreements that prevented a consensus in December 2003 and which