

The Constitution by any other name:

An analysis of the Draft EU Treaty

Version 2.0

- 2 What people are saying around Europe:
 it's exactly the same as the original Constitution
- 4 A comparison of the old and new texts
- 5 Introduction: the starting point is the EU Constitution
- 7 Institutional Changes
- 14 Majority voting in foreign policy and other changes in external relations
- 18 The Charter of Fundamental Rights
- 21 Social security, economic coordination and public services
- 25 Justice and home affairs
- 31 Immigration and asylum
- 33 Annex 1: vetoes being given up
- 54 Annex 2: new powers of the European Parliament
- 55 Annex 3: A comparison of the Draft EU Treaty and the Constitution

**What people are saying around Europe:
it's exactly the same as the original Constitution**

Germany

“The substance of the constitution is preserved. That is a fact.”
(Angela Merkel, German Chancellor, Telegraph, 29 June 2007)

Ireland

“90 per cent of it is still there... these changes haven't made any dramatic change to the substance of what was agreed back in 2004.”
(Bertie Ahern, Irish Taoiseach, Irish Independent, 24 June 2007)

Czech Republic

“Only cosmetic changes have been made and the basic document remains the same.”
(Vaclav Klaus, Czech President, Guardian, 13 June 2007)

Spain

“We have not let a single substantial point of the Constitutional treaty go... It is, without a doubt, much more than a treaty. This is a project of foundational character, a treaty for a new Europe.”
(Jose Zapatero, Spanish PM, speech, 27 June 2007)

Finland

“There's nothing from the original institutional package that has been changed.”
(Astrid Thors, Finnish Europe Minister, TV-Nytt, 23 June 2007)

Denmark

“The good thing is...that all the symbolic elements are gone, and that which really matters – the core – is left.”
(Anders Fogh Rasmussen, Danish PM, Jyllands-Posten, 25 June 2007)

Austria

“The original Treaty for a Constitution was maintained in substance.”
(Austrian government website, 25 June 2007)

Belgium

The new treaty “takes up the most important elements of the constitutional treaty project.”
(Guy Verhofstadt, Belgian PM, Agence Europe, 24 June 2007)

Italy

“As for our conditions... I outlined four red lines with respect to the text of the Constitution: to keep a permanent president of the EU, to keep the single overseer for foreign policy and a common diplomatic service, to keep the extension of majority voting, to keep the single legal personality of the Union. All of this has stayed.”
(Romano Prodi, Italian PM, La Repubblica, 24 June 2007)

Lithuania

Lithuania has “100 percent fulfilled the tasks set forth before the meeting, including the primary objective of preserving the substance of the Constitutional Treaty.”
(Office of the President of Lithuania, official press release)

Luxemburg

“The substance has been preserved from Luxembourg’s point of view.”
(Jean-Claude Juncker, Luxemburg PM, Agence Europe, 24 June)

Slovenia

With the new treaty, the EU gets “content that is not essentially different from the constitutional treaty... All key institutional solutions remain... Some symbolic elements will be cleared up and some formulations toned down.”
(Janez Jansa, Slovenian PM, 23 June 2007, Slovenian Government Communication Office)

The European Commission

“It’s essentially the same proposal as the old Constitution.”
(Margot Wallstrom, EU Commissioner, Svenska Dagbladet, 26 June 2007)

The author of the EU Constitution

“This text is, in fact, a rerun of a great part of the substance of the Constitutional Treaty.”
(Valery Giscard d’Estaing, Telegraph, 27 June 2007)

European Parliament

The European Parliament “welcomes the fact that the mandate safeguards the substance of the Constitutional treaty.”
(European Parliament resolution, 10 July 2007)

Spot the odd one out....**The UK**

“The Constitutional Treaty has been abandoned.”
(David Miliband, Foreign Secretary, Hansard, 3 July 2007)

A comparison of the old and new texts:

Is it just the same document under a different name?

Old Constitutional Treaty	“New” Constitutional Treaty
Institutional changes	
EU President	EU President
Majority voting in Foreign Policy	Majority voting in Foreign Policy
EU diplomatic service	EU diplomatic service
EU Foreign Minister	EU Foreign Minister <i>[Renamed “High Representative of the Union for Foreign Affairs and Security Policy”]</i>
A self-amending treaty for the first time No more treaties or referendums	A self-amending treaty for the first time No more treaties or referendums
Sweeping new powers for the European Court of Justice over home affairs	Sweeping new powers for the European Court of Justice over home affairs
European Parliament electing the president of the Commission	European Parliament electing the president of the Commission
The end of one Commissioner per country	The end of one Commissioner per country
Cutting our power to block EU legislation by 30%	Cutting our power to block EU legislation by 30% (in 7 years time)
Near-meaningless protocol on national parliaments	<i>Totally</i> meaningless protocol on national parliaments
A ‘division of competences’ that means more and more power for the EU	A ‘division of competences’ that means more and more power for the EU
Single legal personality for the EU	Single legal personality for the EU
A European Public Prosecutor	A European Public Prosecutor
Safeguards on “enhanced cooperation” removed	Safeguards on “enhanced cooperation” removed
New powers of veto for the European Parliament in 40 new areas	New powers of veto for the European Parliament in 40 new areas
The Charter of Fundamental Rights	
Charter of Fundamental Rights made legally binding with face-saving fudge to stop it changing UK law	Charter of Fundamental Rights made legally binding with face-saving fudge to stop it changing UK law
Social security, the economy and public services	
Increased EU powers over social policy and more coordination of social security	Increased EU powers over social policy and more coordination of social security
New EU powers over economic coordination	New EU powers over economic coordination
New EU powers over employment policy	New EU powers over employment policy
End of veto on employment law for self-employed workers	End of veto on employment law for self-employed workers
New EU powers over trade policy and investment	New EU powers over trade policy and investment
End of the veto over the ECB’s powers of financial regulation	End of the veto over the ECB’s powers of financial regulation
Formalisation of the eurogroup and an increase in its powers	Formalisation of the eurogroup and an increase in its powers
New EU powers over public health	New EU powers over public health

New EU powers over public services	New EU powers over public services
Home affairs: justice, police and migration	
New EU powers to harmonise civil and criminal laws and legal procedures	New EU powers to harmonise civil and criminal laws and legal procedures
EU powers to define criminal offences and set minimum sentences	EU powers to define criminal offences and set minimum sentences
Increased powers for Europol	Increased powers for Europol
Enabling Eurojust to initiate investigations of EU citizens	Enabling Eurojust to initiate investigations of EU citizens
New powers for the European Court of Justice over asylum and immigration	New powers for the European Court of Justice over asylum and immigration
End of the veto on legal migration	End of the veto on legal migration
A legal basis for a common asylum and immigration system, and moves towards a single system	A legal basis for a common asylum and immigration system, and moves towards a single system
Other foreign policy and defence changes	
The “structured cooperation” group in defence	The “structured cooperation” group in defence
A new mutual defence commitment	A new mutual defence commitment
Vetoes abolished in other areas	
End of the veto over transport	End of the veto over transport
End of the veto over energy	End of the veto over energy
End of the veto over space policy	End of the veto over space policy
End of the veto over science policy	End of the veto over science policy
End of the veto over sport	End of the veto over sport
End of the veto over the yearly budget	End of the veto over the yearly budget

Introduction: the starting point is the EU Constitution

The draft treaty essentially reintroduces all the changes in the original Constitutional Treaty, with a few variations and changes of wording.

Open Europe's analysis finds that only 10 out of 250 proposals in the new treaty are different from the proposals in the original EU Constitution. In other words, 96% of the text is the same as the rejected Constitution. In fact the draft treaty amends the existing EU treaties using exactly the same text as that of the Constitution, and even makes explicit reference to articles in the latter document.

The draft treaty will add virtually all the innovations of the EU Constitution to the two existing treaties, the Treaty of European Union (TEU) and the Treaty Establishing the European Community (TEC). The latter will be renamed as the Treaty on the Functioning of the European Union (referred to as TFEU hereafter).

“The different structure of the Reform Treaty (ie amendments to the current EC and EU Treaties) as compared to the Constitutional Treaty means that the two treaties will look quite different. However, the content, as proposed in the draft mandate is largely the same.”

-Professor Steve Peers, University of Essex, 23 June 2007¹

Professor Steve Peers, EU law specialist, summarises the situation: “The different structure of the Reform Treaty (ie amendments to the current EC and EU Treaties) as compared to the Constitutional Treaty means that the two treaties will look quite different. However, the content, as proposed in the draft mandate is largely the same.”

The UK Government has refused to answer the most basic questions about its negotiating position, or make its so-called “red lines” meaningful by tying them to specific points (during the summit negotiations it instead ran implausible scare stories about having to “defend the veto on tax” – which has never been under discussion).

The high level of detail in the draft treaty (complete with alterations to the Constitution's article numbers and technical treaty drafting points) has not come out of nowhere overnight - and shows that the claim made to Parliament by former UK Foreign Secretary Margaret Beckett that “no negotiations have taken place” was utterly misleading.

¹ Steve Peers, *Statewatch analysis – The proposed “Reform Treaty” for the European Union* (23.06.07)

(1) Institutional changes

An EU President

The new Treaty will create powerful new positions and institutions, making EU institutions more powerful in relation to the member states. These institutions are likely to grow in strength over time. Control of the 3,500 civil servants in the Council Secretariat would give the President a substantial power base – and the Presidency would have an incentive to expand its own powers.

The new President would fundamentally change the nature of the legislative process in Brussels. Instead of negotiations between the supranational Commission and a national head of Government with a vested interest in protecting the rights of member states, negotiations would in future take place between one unelected, independent Brussels institution and another.

It has already been suggested that the new President of the European Council will be merged with the President of the Commission to create a US-style President for Europe.

During the drafting of the Constitutional Treaty the UK Government failed to block a last minute change which would allow this merger to happen. Early Convention drafts of Part One of the Constitution excluded this possibility: "The President of the European Council *may not be a member of another European institution* or hold a national mandate" (CONV 724/03). But in the final stages of the negotiations this separation was abandoned and the final text stated only that: "The President of the European Council shall not hold a national office.

Nicolas Sarkozy has recently called for the President to eventually be directly elected, as in the US.

EU Foreign Minister [High Representative of the Union for Foreign Affairs and Security Policy]

The Foreign Minister will have an "automatic" right to speak for the UK in the UN Security Council. The UK, through gritted teeth, will also accept that the new minister will be a member of the Commission (the UK has resisted giving the Commission a role in Foreign Policy since 1992). At the end of the negotiations the UK also eventually accepted that the Foreign Minister / HRUFASP will chair meetings of the EU General Affairs and External Relations Council. He or she would also have the power to appoint EU envoys.

The new text carries over the exact language of the Constitution (merely changing the name of the Foreign Minister), stating that "when the Union has defined a position on a subject on the agenda of the UN Security Council, the member states who sit there shall ask that the high representative be invited to present the position of the Union." (Old article III-305(2); now Article 19 TEU)

The name of the Minister may be changed, (though people are likely to use Foreign Minister for shorthand given the unwieldy title) but the new minister will have the same controversial powers as were envisaged in the Constitution. As Spanish Foreign Minister Alberto Navarro told the FT, "We were prepared to find a title other than Foreign Minister, but we are not prepared to change the substance of his role (19 June 2007). Italian Prime Minister Romano Prodi pointed out: "as long as we have more or less a European Prime Minister and a European Foreign Minister then we can give them any title." (Speech in Lisbon, 2 May 2007). German Foreign Minister Frank Walter Steinmeier highlighted the significance of the post created in

the new EU treaty: "The EU's foreign policy will be significantly strengthened by the introduction of the office of a High Representative of the Union for Foreign Affairs and Security Policy and the establishment of a European External Action Service." (Press release 27 June 2007)

EU Diplomatic Service

A single "European External Action Service" as proposed in the Constitutional Treaty would bring together national officials with the 745 civil servants in DG external relations and the 4751 members of staff in the Commission's existing "delegations" around the world.

The new TEU Article 13b (the Constitution's Article III-296 (3)) states that decisions relating to the creation of diplomatic service will be taken by qualified majority vote on a proposal from the EU Foreign Minister. A paper published by Javier Solana in March 2005 suggested that only a third of the staff of the service will come from member states' diplomatic services. Estimates of the size of the service vary widely. One EU official briefed that the number of diplomats alone would be 7,000, but that it could rise to 20,000. (European Voice, 9 November 2004)

A report by the European Parliament's External Relations Committee has raised concerns over the proposed EU diplomatic service. It warned that if the diplomatic service was set up as an independent institution it would "take on **an uncontrollable life of its own**" and would result in an "**independent super administration**". It suggested that the service would consist of between 5,000 and 7,000 diplomats. (EUobserver, 28 February 2005)

A self-amending treaty for the first time

The new version of the Constitutional Treaty re-introduces the proposals from the Constitution – particularly IV-444 and IV-445 (now Article 33 TEU), which would make the treaty self-amending for the first time.

At present, the treaties on which the EU is based can be amended only by the convening of an Intergovernmental Conference (IGC) such as the one that agreed the EU Constitution. Any amendments must be agreed unanimously by all governments and then ratified in the member states according to their constitutional traditions, i.e. by referendum or by parliamentary vote (Article 48 TEU).

- New Article 33 (3) TEU, (Article IV-444 of the Constitution) would also allow decision-making that is subject to unanimity in the new treaty to be changed to QMV (including foreign policy but excluding defence).
- Article IV-445 of the Constitution, now Art 33 (2) TEU, allows any of the text of the new *Treaty on the Functioning of the Union* to be rewritten. Under this article changes to the Constitutional Treaty can for the first time be proposed by the Commission and the European Parliament, as well as the member states. This would mean a shift of power towards the EU's leaders and away from national parliaments.

These mechanisms would mean that the new Constitutional Treaty could be incrementally changed. As the Commission has stated in reference to the new treaty, "Future changes to policies within existing competences, extensions to qualified

majority voting and use of co-decision can be agreed without needing to call a new IGC, while preserving the need for unanimous agreement.”²

In comparison, the process under the current treaties has meant that changes in the Single European Act, and the Maastricht, Amsterdam and Nice treaties have been ‘package deals’, introducing many changes at once, which attracted public interest and sparked debate. The mechanisms set out in the revised Constitution, which would allow it to be gradually altered would be likely to reduce the level of scrutiny of future changes – *in theory its adoption could be the last opportunity to call for a referendum.*

Pillar collapse and new powers for the European Court of Justice over home affairs and foreign policy

The EU will keep the present structure of two treaties. The UK Government initially briefed that this meant it has already agreed that there will be no “pillar collapse”. However, this is misleading.

What is clear is that the third pillar (justice and home affairs) would no longer exist. All of the (remaining) contents of “police and judicial cooperation in criminal matters” are listed in the IGC negotiating mandate as being inserted into the TEC, now known as the Treaty on the Functioning of the Union. **This would be a truly revolutionary change and mean:**

- Majority voting applies across the board
- Bringing police and judicial cooperation into the jurisdiction of the ECJ for the first time
- Giving the Commission the right to propose legislation in these fields
- Giving the Commission external competence in these fields (e.g. suggesting that the Union, not member states would agree deportation / extradition agreements with third countries)

The situation vis-à-vis foreign policy is more complex and suggests an erosion rather than total collapse of this pillar.

The draft treaty states that the word ‘Community’ would be replaced by the word ‘Union’, with the Union having a single legal personality.

“Throughout the treaty, the words ‘Community’ or ‘the European Community’ shall be replaced by ‘the Union’, the words ‘of the European Communities’ shall be replaced by ‘of the European Union’ and the adjective “communautaire” is replaced by ‘of the Union’” (horizontal modifications)

It is not clear at present what the implication of this is for the remaining pillar. The draft treaty states:

“Common foreign and security policy is submitted to specific procedures. It is defined and put into effect by the European Council and the Council, which act by unanimity, except in those cases where the treaties allow otherwise, and the adoption of legislative acts is excluded. This policy is executed by the High Representative of the Union for Foreign Affairs and Security Policy and by the member states, in accordance with the treaties. The specific roles of the European parliament and of the Commission in this area are defined by the treaties. The Court of Justice of the European Union is not competent to deal with those measures concerning this area,

² EC, press release (10.07.07)

except for its competence to ensure respect for article [III-308] of the present treaty and to ensure the legality of certain decisions contained in article [III-376, second sub-paragraph] of the treaty for the functioning of the Union.”

In other words:

- Some majority voting
- Some limited jurisdiction for the ECJ
- Unclear on right of initiative (the Foreign Minister might have some?)
- Unclear on external competence (might depend on a number of other issues including legal personality)

On the subject of ECJ jurisdiction on foreign policy, Professor Peers argues that although the new treaty still envisages separate rules for second pillar treaties, the third pillar treaty rules would now be covered by the first pillar rules. That means that negotiating mandates and signature and conclusion of treaties in this particular area (for example extradition treaties) “would be adopted in the form of normal ‘decisions’ – (confirming the case law permitting them to be subject to ECJ jurisdiction).”³

European Parliament electing the President of the Commission

This draft treaty retains the original Constitutional Treaty’s proposal that the President should be elected by the European Parliament. Currently, the President of the Commission is elected by member states after approval from the European Parliament. Under the Constitution, the European Parliament would elect the European Commission President by a majority of its members, after the recommendation of a candidate by the European Council, deciding by QMV. The UK was against an elected president for the Commission fearing it was a further step towards a European Government.

Peter Hain said in an interview with the European Affairs Committee that electing the Commission President “is not something we sought and we remain deeply sceptical about it”, but conceded that, in order to get an elected President of the Council, it “is something that we might have to adjust to” (25 March 2004).

Hain also said, “Another suggestion is for the European Parliament to elect the Commission President. However, I am sceptical of that idea. My concern is that such an independent figure, who must be acceptable to the member states through the Council, will get caught up in the politics of the European Parliament.”

The end of the one Commissioner per country

Member states will no longer have a Commissioner each. This would mean that there will be periods in which member states do not know what’s going on within the Commission. The original version had proposed that one third of countries at a time would not have a Commissioner of their own, and member states would take it in turns to have a Commissioner.

While some argue that this would make the EU less bureaucratic, removing nine Commissioners at the top will not make much of a dent in the EU’s huge staff of 63,000 employees. On the other hand it will break down the idea of a Europe of nation states further, and will make it harder for countries with no Commissioner to find out what’s going on in the Commission.

³ <http://www.statewatch.org/news/2007/jul/eu-reform-treaty-ec-ext-rel-annotated.pdf>

Vetoes abolished

Under the original Constitution majority voting would have been extended to 69 more areas and become the norm (see Annex 1 for details of what this would mean). This remains the case in the draft treaty.

In the case of social security provisions for migrant workers the draft treaty repeats the 2004 text that “emergency brake” provisions will apply, with a slight strengthening of wording stressing that the European Council may choose to take no action (Art. 42 TFEU).

On judicial cooperation, police cooperation and the creation of the European Public Prosecutor, an emergency brake again applies, but compared to the 2004 text the “emergency brake” has been further weakened: if a third of member states want to go ahead with a piece of legislation without it applying directly to other member states they can automatically do so (“enhanced cooperation”). This will give integrationist member states significant leverage over member states who do not want to take part.

Cutting our power to block EU legislation by 30%

Another proposal from the Constitutional Treaty that resurfaces in the new treaty is the way that the EU takes votes. The system will be altered so that it is harder for member states to block legislation they are opposed to. Britain’s power to block legislation would be cut by nearly 30%. Several controversial measures the UK is currently blocking might then pass – for example the proposal to restrict the UK’s individual opt out from the working time directive. In general it will mean more EU regulations will be passed.

Some argue that unless the rules are changed to make it easier to pass legislation then the EU will “grind to a halt.” But a study of legislation by academics at Paris-based university Sciences-Po found that the EU has in fact been adopting new rules and regulations some 25% *faster* since enlargement and that “old” member states are twice as likely to block measures as “new” countries.

Indeed, most people in business believe that the EU is already producing too much regulation. An ICM poll of 1,000 UK Chief Executives at the end of 2006 found that 59% thought that the burden of EU regulation was rising, and 54% now think the benefits of the Single Market are outweighed by the costs of EU regulation.

Protocol on national parliaments made even more meaningless

Compared to the 2004 text, the protocol on parliaments has been altered so that half of national parliaments need to object to trigger the process rather than ‘just’ a third.

In the unlikely event that fourteen national parliaments all vote against their Governments on the same proposal, on subsidiarity grounds, during a six week window, then the Commission has to ‘reconsider’ - but it can still override national parliaments. Which is exactly what happened the very first time the mechanism was given a ‘trial run’ several years ago. Such proposals are actively damaging, because they give the impression of accountability without the reality, and are used to fob off proposals for real democracy in Europe.

A ‘division of competences’ that means more and more power for the EU

The original Constitutional Treaty was supposed to set out a clear division of powers between the member states and Brussels, to stop the gradual drift of powers from member states to the EU. However, it did the opposite - it defined most powers as

“shared”, and says that where powers are “shared” the member states can only act if the EU has chosen not to.

The draft treaty repeats the same article (which now becomes Article 2 (2) TFEU), merely changing the word ‘Constitution’ to ‘Treaties’:

“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, or has decided to cease exercising, its competence.”

More power for the European Parliament at the expense of national governments

The Constitution proposed that in 40 new areas the European Parliament would get power of co-decision over legislation – giving it an effective veto over decisions taken by the heads of Government. The European Parliament is generally the most federalist EU institution and presses for more power for the EU and more power for itself.

Exit clause

The draft treaty includes the “Article on voluntary withdrawal from the Union” from the previous version of the Constitution.

This establishes a procedure for leaving the EU in which the leaving member would negotiate with all the other member states. In reality this is a purely political proposal, designed to divert discussion onto leaving the EU. It also raises an important issue of principle – it is not the EU which grants its member states right to leave the EU. Member states already have the right to leave.

A European Public Prosecutor

The draft treaty retains the proposals in the original Constitution for a European Public Prosecutor – to be set up by unanimous vote – a move that the UK opposed vehemently.

During the original talks, the Government said that the Prosecutor should not be included, even if the decision to set it up was to be taken unanimously. In suggested amendments during the European Convention Peter Hain wrote, “We are firmly opposed to establishing a European Public Prosecutor. Unanimity does not mean that this article can be accepted. There is clearly no need for a separate prosecution body at EU level.” While there is an emergency brake, the UK cannot stop the prosecutor being set up.

A single legal personality for the EU

The draft treaty states that the Union shall have “a single legal personality”, as in the original Constitution. This would mean that for the first time the EU, not the member states, could sign up to international agreements on foreign policy, defence, crime and judicial issues. That would be a huge transfer of power and make the EU look more like a country than an international agreement.

Talking about the original version of the Constitution, Italian PM Romano Prodi said that this change was “A gigantic leap forward. Europe can now play its role on the world stage thanks to its legal personality”. The French Government’s referendum website argued that, “The European Union naturally has a vocation to be a

permanent member of the Security Council, and the Constitution will allow it to be, by giving it legal personality.”

Even the UK Government admitted that it could cause problems. When the Constitution was first being drafted, Peter Hain said that “We can only accept a single legal personality for the Union if the special arrangements for CFSP and some aspects of JHA are protected.” He told MPs: “we could support a single legal personality for the EU but not if it jeopardises the national representations of member states in international bodies; not if it means a Euro-army; not if it means giving up our seat on the United Nations Security Council; and not if it means a Euro-FBI or a Euro police force.”

Enhanced cooperation – safeguards removed

“Enhanced cooperation” is EU jargon for the idea that smaller groups of member states can go ahead with projects within the EU framework, while other member states choose not to get involved.

The UK Government has long been cautious about enhanced cooperation. After the Amsterdam treaty in 1997 Tony Blair said, “We secured a veto over flexibility arrangements which could otherwise have allowed the development of a hard core, excluding us against our will” (Hansard, 18 June 1997).

The Government has been particularly wary of extending enhanced cooperation into foreign affairs. In 2000 Robin Cook warned, “We have no idea what enhanced co-operation might lead to.”

Under the draft treaty many of the safeguards which currently apply to enhanced cooperation are removed. For the first time enhanced cooperation groups can decide to move to majority voting within their group, with no veto for non-members of the group (Art. 280H TFEU). So, for example, the veto could be abolished for a group working on tax issues, which could then be used to put pressure on the UK.

Enhanced cooperation would apply to the whole of foreign policy. An “emergency brake” mechanism which applies in foreign affairs to enhanced cooperation under the existing treaties is deleted by the new treaty.

2) Majority voting in foreign policy and other changes in external relations

Institutional changes pertaining to foreign policy – such as the EU foreign minister, the creation of an EU diplomatic service, and the incursion of ECJ jurisdiction in this area are dealt with in section (1). This section deals with other highly significant changes in EU foreign policy – not least the advent of majority voting in this area.

Majority voting in Foreign Policy

The draft treaty includes several moves to QMV in foreign policy, in particular on proposals from the EU Foreign Minister. The IGC mandate is somewhat opaque about this.

Previously Peter Hain promised that “QMV is a no-go area in CFSP” (Hansard, 25 March 2003). During the IGC, Jack Straw said that the move to QMV in this area was “simply unacceptable” (Hansard, 1 December 2003). Nonetheless the Government have now accepted it:

1. **On Proposals from the EU Foreign Minister.** The most important introduction of QMV relates to the new Foreign Minister. Article 27(2) TEU (formerly Article III-300 (2) of the Constitution) stipulates that the Council shall act by qualified majority, “when adopting decisions defining a Union action or position on the basis of a proposal of the High Representative of the Union for Foreign Affairs and Security Policy presented following a specific request to him or her from the European Council, made on its own initiative or that of the High Representative.”

This change could have important repercussions. EU states could (unanimously) ask the foreign minister to come up with a plan but then, if individual states such as the UK don't agree with what he comes back with, could find themselves in a majority voting situation. For example on the squabble between NATO and EU over who will supply air transport to the African Union troops in Darfur, the UK might not be able to block the EU from pointlessly duplicating NATO – if this was proposed as part of a plan from the Foreign Minister.

2. **On the diplomatic service.** The new Article 13B (2) TEU (formerly Article III-296 of the Constitution) also allows the organisation and functioning of the new EU diplomatic service to be decided by QMV.
3. **On setting up an inner core in defence.** Under Article 31 (1) TEU (Article III-312 in the Constitution), the decision to set up the “permanent structured cooperation” group would also be taken by QMV, as would subsequent decisions to expel members, or to admit new ones to the group.
4. **Majority voting within the inner core.** Article 280H (1) TFEU (the old Article III-422 (1) of the Constitution) allows for the Council to act by qualified majority voting in the context of enhanced cooperation, if the Council, acting unanimously, so decides. This is a new article. This is not supposed to cover “defence” decisions, but will affect the common foreign and security policy.
5. **On terrorism and mutual defence.** Article 188R (3) TFEU (Article III-329 of the Constitution) stipulates that the detail and meaning of the “terrorism solidarity clause” is to be decided by QMV. This is important because the Government has clear reservations about this article. A proposed amendment

by Peter Hain called for the key provision of the article - that "Should a Member State fall victim to a terrorist attack, the other Member States shall assist it" - to be deleted. In a separate proposal, the Government asked for the new EU power to "prevent" terrorist threats to also be deleted. At a plenary session of the European Convention Hain objected that, "if it carries real military obligations to offer military assistance it is duplicating the NATO guarantee. If it does not ... it is empty rhetoric." His objection has been ignored.

6. **Majority voting on urgent humanitarian aid.** Although this ostensibly seems a benign change, it could raise highly important questions. To give a past real-world scenario, this might have been used to decide whether the Union should continue to fund the Palestinian Authority after the 2006 elections which returned Hamas to power – the UK and other Member States disagreed about this, the UK being keen only to fund NGOs and not the Hamas-led authority.

As well as institutional changes like the EU Foreign Minister, EU Diplomatic Service, a single legal personality and moves to majority voting on foreign policy, the new version of the Constitutional Treaty is likely to propose several other new powers and tasks for the EU in this area.

Requirement to consult other EU members on foreign policy actions

Article I-40 of the original Constitution contained a requirement for a Member State to consult other Member States before taking foreign policy action. This will be retained as Article 17B in the TFEU:

"Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity."

The "structured cooperation" group – an inner core in defence

The new treaty will carry over the original Constitution's proposals on structured cooperation.

Articles 27B (6) and 31 (1) TEU (respectively carrying over I-41 (6) and III-312 of the Constitution) provides for the establishment of a special sub-group of member states "whose military capabilities fulfil higher criteria and which have more binding commitments to one another in this area with a view to the most demanding missions". This provision for so-called "permanent structured cooperation" within the EU framework would allow neutral countries to opt out, and create an "inner core" of EU members interested in taking forward military integration.

The arguments over this group are much like those over the European Defence Agency – that the focus on harmonisation of forces within Europe will work to the detriment of cooperation with NATO.

Article 31 (1) TEU will specify that the group can be set up by QMV. The rough outline of how the group would work is explained in a new protocol annexed to the original EU Constitution. This outlines a number of qualifications which member states would have to pass to join permanent structured cooperation. Clause 1 stipulates that it is open to any member state undertaking to:

a) “proceed more intensively to develop its defence capacities through the development of its national contributions and participation” in multinational forces and activities of the European agency; and b) “have the capacity to supply by 2007 at the latest, either at national level or as a component of multinational force groups, targeted combat units for the missions planned ... within a period of 5 to 30 days ... and which can be sustained for an initial period of 30 days.”

Article 2 of the Protocol specifies that participating member states would cooperate to:

a) achieve “approved objectives concerning the level of investment expenditure on defence equipment”; b) “bring their defence apparatus into line with each other”; c) “take concrete measures to enhance the availability, interoperability, flexibility and deployability of their forces”; d) “make good ... the shortfalls perceived in the framework of the “Capability Development Mechanism”; and e) “take part... in the development of major joint or European equipment programmes in the framework of the Agency.”

The Government was initially strongly opposed to the structured cooperation proposal. Peter Hain argued in an amendment, “The UK has made clear that it cannot accept the proposed ESDP reinforced cooperation provisions. While we support Member States making higher capability commitments and co-operating with partners to this end, the approach described here – a self-selecting inner group - undermines the inclusive, flexible model of ESDP that the EU has agreed.”

However, the Government failed in its attempts to remove the provision for enhanced cooperation from the Constitution, and after the meeting between the UK, France and Germany in October 2003, the UK agreed to back the idea in return for assurances that member states could not be excluded from the group if they wanted to join.

A new mutual defence commitment

Article 27 (7) TEU (Art. I-41 (7) of the old Constitution) states that, “If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter. This shall not prejudice the specific character of the security and defence policy of certain Member States.” This is essentially a mutual defence commitment.

Irish Foreign Minister Dermot Ahern has said, “The European Constitution provides for a mutual defence commitment. This establishes an obligation to assist another Member State that is the victim of armed aggression on its territory.”

Lord Robertson, former Secretary General of NATO, warned that it is “dangerous to introduce a mutual defence clause into the Constitution if you do not have the means to carry it through.”

The Government did not want a mutual defence clause in the Constitution, and wanted it deleted from the first draft. During the negotiations Peter Hain wrote, “**The UK has made clear that it cannot accept a provision importing a mutual defence commitment in the European Union.** We support what the European Council at Nice stated: ‘NATO remains the basis for the collective defence of its members.’ Therefore the EU, most of whose members are NATO allies, cannot duplicate this role, either as a whole or through reinforced cooperation.”

The Government wanted this entire paragraph to be deleted from the Constitution, and issued an unsuccessful amendment to this end, in which Peter Hain wrote, "Common defence, including as a form of enhanced cooperation, is divisive and a duplication of the guarantees that 19 of the 25 Member States will enjoy through NATO." However, the UK Government abandoned this objection.

(3) The Charter of Fundamental Rights

When the Charter of Fundamental Rights was drawn up, the UK Government promised that it would not become legally binding:

“Our case is that it should not have legal status and we do not intend it to”
- **Tony Blair, 11 December 2000**

“It will not be legally enforceable”
- **Former Europe Minister Keith Vaz, 22 November 2000**

“It is certainly not the intention of this Government to see it as anything other than a political declaration.”
- **Baroness Jay, 11 December 2000**

Despite the Government’s assurances, the draft treaty uses a ‘cross reference’ to the Charter to give it legally binding value (this will be the new Art 6 (1) TEU).

The mandate goes on to set out a lengthy list of safeguards designed to stop the Charter from changing national law - inserted at the UK’s insistence. All of these caveats apart from one were also attached to the Charter in the original Constitution – they are nothing new.

Open Europe’s legal analysis, based on interviews with judges at the European Court of Justice, shows that there is a powerful body of evidence that even with such “safeguards”, the Charter would still come to change national law.

- We interviewed several judges at the European Court of Justice (ECJ), who said that they believed the Charter would change national laws, despite the safeguards. This is crucial, as it would be the Court’s judges who would ultimately decide on how to interpret the Charter if the Constitutional Treaty is ratified.
- One EU judge said it would “renew” member states’ labour laws and would be “a basis for challenging national law”. Another has said it is “foolish” to think it will not affect national laws. Even the President of the Court explicitly refused to deny that the Charter may be used to change member states laws.
- One judge told us: “The problem for the UK is that the social rights of the Charter could make it obligatory for the UK to accept some rights that they don’t accept in the same way as other European countries... they are afraid that because of the social rights in the Charter the Court and the EU would extend the practice of other member states to the UK. I’d say that it’s more [like] a continental model, than an English model of social relations. So in this sense I understand that the companies’ owners are worried because you could have the exportation of the continental model on them.”
- Several judges said that the Charter, despite the “safeguards”, would give the court “more power”. Asked whether the proposal for safeguards would work, one judge said “I guess not, because I saw what was the destiny of other safeguard clauses in the treaty.”
- A legal opinion previously commissioned by the TUC found that, “The attempt by the New Labour government to ‘protect’ the UK’s restrictive labour laws

from the fundamental rights proclaimed in the European Constitution failed...there will be no 'protecting' UK labour laws."

The only new element in the protocol on the Charter proposed in the IGC mandate is a specific reference to the UK, which the Government claims is "an opt out" from the Charter just for the UK.

However, as Swedish Prime Minister Frederick Reinfeldt has pointed out "It was important for the [Swedish] government to keep the Charter legally binding, which now is the case... the UK accepted this... It should be stressed that the UK was given a clarification, not an opt-out." (Swedish Parliament, 26 June)

Indeed, given the nature of EU law, it is hard to see how a carve out could work in practice, and it is likely the UK-specific opt-out deal will quickly unravel:

- Jacques Ziller, a professor at the European University Institute in Florence, said that the idea of one country opting out of the Charter was "nonsense" and would quickly be challenged in the courts (European Voice, 31 May 2007).
- EU Commissioner Margot Wallstrom has said the Charter will apply to large parts of British law, despite UK Government claims that the opt-out will prevent this. She noted that "The Charter will be binding for the European institutions, and also for member states when they implement EU law, even if it does not apply to all of them." (Telegraph 12 July 2007)
- Former EU Justice Commissioner Antonio Vitorino has also questioned the legal basis for the British opt-out from the Charter of Fundamental Rights and warned that it would not work. (Guardian 26 June 2007)
- More importantly, the Commission's legal experts take the same view, and expect that the British opt-out will be tested in the courts. (Guardian 26 June 2007) The Commission's legal service estimates that British opt-outs to the Charter are "limited" and quoted one legal source as saying that "the opt-out is potentially very thin". (Telegraph 12 July 2007)
- This has been confirmed through analysis that followed the publication of the draft mandate from Legal Adviser to the Commons European Scrutiny Committee, Michael Carpenter. He questions the claim by Tony Blair that the Charter of Fundamental Rights will not extend the ability of the European Court of Justice to challenge UK laws. Carpenter said: "This is a high standard to set, and I doubt if what appears to have been agreed secures this result." He indicated that the Charter could have an indirect impact on UK law, if the Court gave a ruling on the Charter's effect on a given EU law in another member state.
- A senior European Parliament source, close to negotiations on the new EU treaty told the Telegraph that MEPs are planning to sponsor early challenges to Britain's opt-outs. "We are going to make sure that this issue is constantly before the European Court of Justice," he said. "There is 30 years of EU jurisprudence to say there can be no two-tier system of European rights." (Telegraph 12 July 2007)

This is an obvious problem with the idea of trying to create a carve out for the UK. Firms operating in more than one member state would clearly be affected. Migrants coming from another member state to the UK would presumably still be covered.

And anyone who travelled to another EU country – e.g. to use health services – would still be able to use the Charter. British Liberal Democrat MEP Andrew Duff argues that “The Protocol also looks flawed juridically. Regardless of the UK’s exclusion clause, the EU courts will be bound to develop jurisprudence in fundamental rights matters which steadily evolve into general principles of EU law which all member states must respect. Moreover, the European Court of Justice will be blind to the nationality of an EU citizen who chooses to invoke the Charter under EU jurisdiction.”⁴

The Protocol is also curiously worded. It singles out part of the Charter (Title IV), but not all of it to say that it does not create justiciable rights applicable to the United Kingdom “except in so far as the United Kingdom has provided for such rights in its national law.”

Baroness Amos expanded on the Government’s position on this point, stating that “On the Charter of Fundamental Rights, I know that it looks as though the Government were seeking to opt out of issues. The charter ensures that the institutions, bodies and agencies of the Union will be bound to recognise rights in exercising any of their powers. The charter should help to ensure that citizens’ basic rights and liberties are protected at EU level, as they are in their own countries. However, we feel absolutely certain that, with our human rights legislation, employment protection legislation and other legislation, we have already secured those rights within current UK domestic law.”⁵

This itself raises questions however – as it will be the European Court of Justice that has to decide for itself whether the United Kingdom has provided for such rights in its national law.

The Government has potentially created a lawyers’ paradise with this messy fudge. It has clearly broken its repeated promise that the Charter would not become legally binding, whilst it is becoming increasingly clear that the much-vaunted safeguards simply will not work.

⁴ Andrew Duff, *A primer on the EU’s reform treaty* (02.07.07)

⁵ Hansard, 25 June

(4) Social security, economic coordination and public services

Increased EU powers over social policy and more coordination of social security

The Government is flagging up an emergency brake on one particular aspect of social security. But there are several other moves to QMV on aspects of social security which are not covered by the so-called emergency brake at all.

In a major alteration to the old Article 62 TEC, Article 69B (2b) TFEU (original Constitution Article III-267 (2b)) says that European laws or framework laws decided by QMV shall establish “the definition of 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”. During the original Constitution talks the UK unsuccessfully asked for this article to be brought back under unanimity.

Peter Hain argued that “Article 2(b) allows for decisions on all aspects of the rights of third country nationals including access to the labour market and social security – ***this is a considerable extension of the Union’s competence from that in the current treaty***. The UK accepts that this legal base could be used for measures relating to the rights of third country nationals legally resident in one Member State who move to another Member State, ***provided that social security provision for third country nationals is still on the basis of unanimity***. Our amendment is intended to make this clear.” However, the government has given way.

Article II-94 (2) of the old Constitution (contained in the Charter of Fundamental Rights), states that “Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages”. This is a major step away from the current treaties, which stress free movement for workers, and limit access to other countries’ social security and welfare systems to those who are in work.

Changes to Article 42 of TEC (now Article 42 TFEU, or Article III-136 of the old version of the Constitution) ends the veto on social security for EU migrant workers. The UK opposed this and wanted to insert a clause that said, “the Council shall act unanimously for the purposes of this article”. The end of the veto over the social security rights of migrant workers is likely to spill over and affect other aspects of member states’ social security systems. On this point, despite having failed to keep the veto the government now claims “victory” because there is – as in the original Constitution – an “emergency brake” on Article 42 on the social security rights of EU citizens working in other EU countries. This itself is a questionable strategy – the “emergency brake” is clearly not “as good as a veto” or there would be no point making the change. The brake would probably end up being the subject of legal dispute and it would certainly make it more difficult for reluctant member states to steer legislation in their own direction.

Increased EU powers of economic coordination?

Article III-179(4) of the original Constitution proposed changes (contained within the draft treaty) to the provisions relating to the EU’s annual Broad Economic Policy Guidelines. Unlike the present treaty provisions (Article 99 TEC), this article stipulates that a member state which is threatened with censure under the guidelines would have its vote taken away when it comes to decide on whether or not it should be censured. This is likely to lead to much tighter enforcement of the guidelines. During the negotiations on the Constitution, the Government opposed this change. In an amendment Peter Hain wrote, “The Praesidium draft would disturb the existing institutional balance on the Broad Economic Policy Guidelines. It would particularly

be a problem to exclude the Member State concerned ... There is no consensus in the Convention to change this article.”

Increased EU powers over employment policy?

Article 5(2) TFEU (Article I-15 of the original EU Constitution) will state 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”. In an amendment issued to the European Convention, UK Government negotiator Lord Tomlinson called for this clause to be deleted. However, this objection was ignored. The Government also asked for employment policy to be moved from the list of “shared competences” into the list of “supporting competences”, so that it would not be covered by the provision that where competences are shared, member states may only act if the EU chooses not to. But this request was also ignored.

New powers over EU trade policy, trade policy as an “exclusive competence?”

Under the current treaties (Article 133 TEC) EU ministers generally act unanimously when negotiating trade deals relating to trade in services and intellectual property rights (wherever these would touch on issues where unanimity is required for the adoption of internal rules). The current treaties also provide for unanimity when negotiating over health and education services. Agreements in these areas remain shared competences, and require national parliaments to ratify them. Foreign Direct Investment is not mentioned at all in the current treaties, and a proposal to include it was defeated at the Nice conference in 2000.

“The Reform Treaty will extend the scope of the trade policy to include all foreign direct investments and makes it clearly an exclusive competence of the Union.”

- European Commission, July 2007

Under the new Article 188C (1) TFEU (the original Constitution’s Article III-315), trade in services, intellectual property rights, and foreign direct investment are brought under the umbrella of the “uniform principles” on which the Common Commercial Policy is based, for the first time. This would give the EU the same powers over these issues that it has over trade in goods. According to a statement from the Commission published in response to the IGC mandate agreement, “The Reform Treaty will extend the scope of the trade policy to include all foreign direct investments and makes it clearly an exclusive competence of the Union.”⁶

The UK also wanted to reinstate the clause in the existing treaties which says that the EU’s new powers “shall not affect the rights of the Member States to maintain and conclude agreements with third countries”. In a proposed amendment Peter Hain wrote, “This paragraph introduces a significant change from the current Article 133, by placing trade in services and commercial aspects of intellectual property on the same basis as trade in goods rather than limiting the application of the Common Commercial Policy in these areas to the negotiation and conclusion of agreements in the fields of trade... we cannot support the present formulation.”

Under current arrangements in some fields both the member states and the EU can negotiate trade deals, allowing member states to have their own trade agreements

⁶ EC, press release (10.07.07)

alongside those of the EU as a whole. For example, the UK and other EU member states have signed a number of Bilateral Investment Treaties with other countries around the world. Exclusive competence in this area would make such bilateral agreements impossible. The revised Constitution deletes the clause in the existing treaty (Article 133.5 TEC) which states that EU trade policies “shall not affect the rights of the Member States to maintain and conclude agreements with third countries”.

Ending the veto over the ECB’s regulatory powers – a step to an EU financial regulator?

The original version of the Constitutional Treaty proposes ending the veto on changes to the role of the European Central Bank (ECB). This would enable the (long discussed) creation of a “euro-sec” – an EU equivalent of the US’s powerful Securities and Exchanges Commission.

Article III-187 of the old version (which will now become an amendment to Article 107 TEC) states that a number of articles in the Statute of the European Central Bank can, for the first time, be amended by QMV on a proposal from the Commission. Article 107 of the existing TEC states that such articles “may be amended by the Council, acting either by a qualified majority on a recommendation from the ECB and after consulting the Commission or unanimously on a proposal from the Commission and after consulting the ECB.” This provision for unanimity has disappeared from the Constitution.

The articles which can be changed include significant ECB powers such as: the power to set minimum reserve requirements for banks and the power to fine financial institutions; the power to conduct foreign exchange operations and make international agreements for currency coordination; the power to set up and regulate clearing systems; and arrangements for sharing the profits of the ECB.

Formalisation of the eurogroup and an increase in its powers

Article 114 (1) TFEU (Article III-194 of the EU Constitution) will make the eurogroup – the informal meetings of finance ministers from eurozone countries – into a formal body with its own President, elected for two and a half years. It also gives the group of euro members the power to pass laws to “strengthen cooperation” by voting amongst themselves. Luxembourg Prime Minister Jean-Claude Juncker has already been appointed as President ahead of ratification of the EU Constitution.

Article 115 (1) (Art 196 of Constitution) also states that the council will pass laws on the representation of euro members in international financial bodies (IMF, OECD, World Bank etc). This is likely to mean a move towards a single external representation for euro members in these bodies.

During the negotiations in the Convention Peter Hain tried three times to have the whole article and protocol removed, arguing that it would create an unfair system by which euro members could vote on laws that affect the UK, whilst the UK would be unable to vote on measures affecting them. He wrote, “Formalisation of the Eurogroup and strengthening the powers of the “ins” is inappropriate ... We have always recognised that the “ins” will want to meet to discuss issues to do with sharing a currency, but greater powers for the Eurogroup to decide on the BEPGs or excessive deficits of Euro-ins will create an asymmetry, whereby the outs will vote only on outs’ issues, while ins will vote on ins and outs.” Nonetheless the UK allowed it to go ahead.

New EU powers over public health

176E TFEU (Article III-278 of the old Constitution) puts the EU in charge of standards for pharmaceuticals, medical equipment and medical products like blood and tissue. The EU would also be given the power to take action on any “serious cross border threats to health”. The British Medical Association has noted that “the clause which empowers the EU to act on ‘serious’ threats to health, opens the way for the EU to initiate legislation on a whole range of health determinants.”

New powers to pass laws on what count as public services, and the application of competition policy to them

Article III-122 (now to becoming 14 TFEU) states that: “given the place occupied by services of general economic interest as services to which all in the Union attribute value as well as their role in promoting its social and territorial cohesion, the Union and the Member States, each within their respective competences and within the scope of application of the Constitution, shall take care that such services operate on the basis of principles and conditions *in particular economic and financial conditions*, which enable them to fulfil their missions. *European laws shall establish these principles and set these conditions without prejudice to the competence of Member States, in compliance with the Constitution, to provide, to commission and to fund such services*” (new sections in italics).

(5) Justice and home affairs

Introduction

Home affairs is probably the area where the new treaty will make the biggest difference. Vetoes in this area are abolished across the board. A large chunk of the original Constitution is simply dropped into title IV of the TEC.

Old Constitution article number	New article number	Area in which the veto is abolished
III-260	Art. 64 TFEU	Evaluation of home affairs and enforcement of mutual recognition of legal judgments
III-263	Art. 67 TFEU	Administrative cooperation in justice and home affairs
III-265	Art. 69 TFEU	Visas / borders
III-266	Art. 69A TFEU	Asylum
III-267 (2)	Art. 69B (2) TFEU	Migration
III-267 (3)	Art. 69B (3) TFEU	Repatriation treaties
III-267 (4)	Art. 69B (4) TFEU	Integration of migrants
III-270	Art. 69E TFEU	Criminal judicial cooperation / mutual recognition *
III-271	Art. 69F TFEU	Substantive criminal law harmonisation*
III-272	Art. 69G TFEU	Crime Prevention
III-273	Art. 69H TFEU	Eurojust
III-275 (2)	Art. 69J TFEU	Police cooperation – common procedures*
III-276	Art. 69K TFEU	Europol

Areas with asterisks include emergency brake mechanisms

- The ‘emergency brake’ arrangements (whereby a Member State may refer a matter to the European Council) are kept, but in a weakened form compared to the Constitution, because integrationist member states can use “enhanced cooperation” to gain leverage of resistant member states. The emergency brake is extended to police cooperation.
- It is not at all clear that the emergency brake would work. It is clearly not as good as a veto (otherwise why make the change?). Given that the new treaty would allow the European Council to take votes by QMV for the first time it is not clear “booting issues upstairs” to the European Council should act as a veto.
- The UK stresses that these areas will be covered by opt-in arrangements. **But the whole opt-in approach has been radically undermined by a landmark ruling of the European court of Justice.**

Why the 'opt-in' is no longer an effective safeguard.

Legal experts have warned that a controversial ruling by the European Court of Justice in September 2005 (Case C-176/03) will undermine the UK's opt-in arrangement.

As a result of the case the EU is able to propose criminal sanctions in all areas of 'Community competence'. When it does so, the UK has no option not to 'opt-in', and therefore would have to participate in any criminal justice measure that the Commission feels is necessary to "ensure the full effectiveness of a Community policy". This was a dramatic and unexpected ruling. At the time a dismayed British official told the Times, "We firmly believed it was inappropriate to harmonise criminal law at EU level" (Times, 14 September 2005).

However, so far the impact of the ruling has been limited by the restricted scope of community competence – e.g. the Commission can propose criminal legislation for environmental crimes, which are under its competence, but not criminal laws in general, as criminal law in general is not currently in its competence.

Making criminal justice a community competence through the new version of the Constitutional Treaty would effectively unshackle the Commission from the current constraints by bringing criminal law in general within its competence.

Richard Plender QC, who represented the UK in the case in question, told us that the ruling would create "a problem" for the UK when attempting to use its opt-in as **"There is no opt-in or opt-out under this judgment"** (Interview, 7 September 2006).

Even without the court ruling, the 'opt-in' arrangement clearly would not give the UK as much control as a veto. Member states have to opt in at the start of the process of drawing up a piece of legislation. If, as the legislation is drafted, the UK or Ireland do not like the way it subsequently develops, it is not possible to opt back out again. Ireland is the only other EU country which has an opt-in procedure apart from the UK. In evidence to the House of Lords Irish Justice Minister Michael McDowell cast doubt on the claim that the 'opt in' was like a veto.

"I am not clear that the opt-in power gives us effectively the same outcome—it may or may not. Politically obviously opt-in means that the other Member States will go and be able to do their own thing, so to speak, and politically that may be more difficult to resist and more difficult to resist an opt-in rather than a unanimity requirement, and that depends on the politics of any issue at the time it comes to be decided."

Pillar collapse – more powers for the ECJ over home affairs

For the first time the ECJ would get full jurisdiction over justice and home affairs issues. This would cover all issues except "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" (Old Constitution article III-377, now Article 240c TEFU).

New EU powers to enforce “mutual recognition” of legal judgments

The Constitution's articles III-269 and III-270 (now set to be inserted into the TEC Title IV, becoming articles 69D and 69E TFEU respectively) set out a legal basis for the mutual recognition of legal judgments in civil and criminal cases respectively. Mutual recognition of Judgments is intended to end existing barriers to successful prosecution of cross-border crimes. The article covers the mutual recognition not just of final judgments on cases, but also other judicial decisions such as the power to search homes and seize evidence.

There are two main problems with mutual recognition. Firstly, there are potential complications with mutual recognition in itself. Several of the other member states have poor records of fairness in their legal systems. Secondly, mutual recognition is intended to lead to legal harmonisation.

Problems with mutual recognition

Civil rights activists have voiced concerns, among other things, about standards of trials, legal aid, access to counsel, rules on admissibility of evidence which will vary considerably across an enlarged EU.

Mutual recognition in civil cases raises concerns that there could be what Steve Peers, Lecturer in Law at Essex University, calls a “race to the bottom”, where “the risk is that defendants will fall subject to the member state with the lowest standards of rights for the accused”. As well as the high profile Greek “plane spotters” case in 2001 there have been recent examples of problems with procedure in other member states.

Creating pressure for harmonisation

Mutual recognition is sometimes presented as an alternative to harmonisation. However, in other areas of EU policy - such as the development of the single market during the 1980s - mutual recognition has led quickly to pressure for harmonisation.

In the Constitutional Treaty the link between mutual recognition and harmonisation is quite explicit. The Constitution's Article III-270 on mutual recognition of criminal judgments explicitly states that mutual recognition “shall include the approximation of the laws and regulations of the member states”.

In a proposed amendment to the article on mutual recognition of civil law, Peter Hain wrote that, “the principle of mutual recognition is welcome. However there is no need for ... approximation of the civil law. It is neither necessary nor appropriate. The purpose of civil judicial co-operation should be to ensure that borders do not represent an obstacle to litigation or the recognition and enforcement of judgments. Whilst that might require a degree of harmonisation of civil law and procedure we should respect and recognise each others' legal systems and work on the interface between them, promoting compatibility between them. Unfortunately the current draft suggests that approximation of law should be an end in itself.”

The House of Lords' EU select committee has warned that, “Approximation of the criminal laws of Member States is likely to have a significant impact on Member States' legal cultures and traditions and on national sovereignty... the more progress that is made on developing the mutual recognition programme, the greater the need will be for some sort of minimum standard across the EU of procedures in the legal processes for which mutual recognition will be claimed.” The Lords warn that “A

degree of harmonisation of the criminal laws of Member States may be necessary to facilitate the development of the mutual recognition programme.”

The Law Society has also warned that it is concerned that mutual recognition could result in harmonisation “through the back door”

The cross-party European Scrutiny Committee of the House of Commons said, “We draw attention to the danger that measures which are ostensibly concerned with mutual recognition will have the effect of creating uniform rules which will then apply to all cases, whether they have any cross-border implications or not. As we have commented before, Commission proposals on the ‘area of freedom security and justice’ have appeared to treat this ‘area’ as synonymous with a unitary State, with only one legal system.” (European Scrutiny Committee, 28th report July 2004)

New EU powers to harmonise civil and criminal laws and legal procedures

Articles III-270 and 271 of the Constitution (which become 69E and 69F TFEU respectively) allow the EU to set common rules concerning legal procedures in criminal cases. EU rules, decided by QMV, could determine the rights of criminal suspects and control the admissibility of evidence in court. There is also a provision for EU rules to cover “any other specific aspects” of legal procedure if EU leaders so decide.

One problem with this proposal is that it would no longer be possible for voters in individual member states to alter the balance of the legal system between the rights of victims and suspects rights. For example, if EU rules were to set the balance in such a way as to favour protection for suspects, voters in any one member state would not be able to vote for a policy which would make it easier to secure convictions. The rules could only be changed subsequently if the majority of other members agreed.

The UK Government was initially unhappy with this proposal, and called for major changes. However, it gave way on this issue as part of the overall agreement on the EU Constitution.

Peter Hain told the cross-party European Scrutiny Committee that the current Article was “unacceptable” and that his principle was “cooperation yes, harmonisation no”. (25 March 2003)

In a series of proposed amendments to these articles Peter Hain wrote that, “Criminal procedures and evidence go to the heart of Member States’ legal systems. It is essential that the legal base for procedural standards is not so broad that it would provide a basis for harmonisation of legal systems. We must recognise and respect the diversity of our legal systems, rather than seek to create a common system.” But his call for the proposed EU powers to be watered down was ignored.

He described the article as “unacceptable” because it “would cover almost any aspect of criminal procedure during an investigation, prosecution and conviction”.

EU powers to define criminal offences and set minimum sentences

Article III-271 (69F TFEU) allows the EU to set “rules concerning the definition of criminal offences and sanctions”. This is intended to prevent criminals “shopping around” for countries where their activities will carry the lightest penalties. Article III-271 lists the types of crimes over which the EU can harmonise sentences. These include drug trafficking, people smuggling and money laundering. The list was supposed to limit the EU to dealing with crossborder crimes. But the list of crimes

over which the EU can rule includes vaguely-defined categories such as “organised crime” and “corruption”, which is likely to enable the EU to rule over a wide variety of offences.

The list of offences is also designed to be expanded over time, and a clause allows EU leaders to add to the list of crimes on which the EU can legislate.

Franco Frattini, the Justice and Home Affairs Commissioner, has already begun to propose EU-wide minimum standards. In January 2005 he called for minimum prison sentences of five years for gang members and a minimum of ten years for gang leaders. He has argued that he will not prescribe the sentences member states’ justice systems should set because “the method I prefer is to indicate minimum and maximum, a range leaving Member States free to harmonise”. He claimed that, “We cannot live without a European definition of what is a criminal organisation and trafficking in human beings.”

The Government opposed giving the EU this power to set minimum and maximum sentences. Peter Hain wrote, “Framework laws on substantive criminal law must not require the imposition of mandatory minimum penalties. We hope that the Treaty would exclude the possibility of measures requiring all Member States to impose a minimum penalty of at least x years on anyone convicted of a crime... irrespective of the circumstances or any mitigating factors.” However, the UK Government later abandoned its objections.

Increased powers for Europol

The Constitution’s Articles III-275, 276, and 277 (becoming 69J, K and L of the TFEU) strengthen the role and powers of Europol. Previous treaties have gradually expanded the role of Europol but its scope has remained limited to coordination. The Constitution’s Article III-276 would widen its role to include “organisation and implementation of investigative and operational action, carried out jointly with the member states’ competent authorities.”

The new power directly to implement operational action could mean that Europol would be able to take part in police raids alongside national police, giving it a similar sort of role to America’s FBI.

During the hearings of the justice working group of the European Convention, the then head of Europol, Jurgen Storbeck, made a distinction between investigations, in which he could imagine a greater role for Europol (for example allowing Europol to interrogate witnesses) and executive powers (such as confiscation or arrest warrants), which he agreed should remain with national authorities.

The UK Government has raised various objections to this proposal. In an amendment Peter Hain wrote, “the word ‘operational’ should be deleted. ‘Investigative’ is sufficient and avoids the suggestion of Europol having operational powers on the territory of Member States.”

Hain added that “[the words] ‘carried out jointly’ should be replaced by ‘in support of’. It is essential that Europol is not able to carry out independent operational activities or to direct Member States’ operational activities.” However, the changes Hain called for have not been made.

The European Scrutiny Committee has argued, “We see objections of principle to giving Europol its own investigative powers... This would fundamentally change

Europol from an agency for the exchange and analysis of criminal intelligence into a European police force”

Caroline Flint also admitted that the Government does “not think that there is a role for” Europol to have investigative powers, but would prefer it to concentrate on information sharing.

Europol has already acquired major new powers and a much enlarged budget since the Amsterdam Treaty. It now has a staff of over 350, projected to rise to 480.

Europol has major problems which have not yet been addressed. In 2001, its offices were themselves raided by Dutch police over fraud allegations. Europol has a very poor record in transparency, refusing to share information with the European Parliament and classifying a great deal of its material as confidential for the use of Europol officers only. Bodies appointed in order to supervise it formally have complained that they are being denied information. Officers of Europol are not compelled to testify in court, unlike members of national police forces, and are immune from prosecution for acts performed in the course of duties under the Europol convention.

Enabling Eurojust to initiate investigations of EU citizens

Article 69H TFEU (formerly Article III-273 of the Constitution) gives Eurojust sweeping new powers. The article says that the tasks of Eurojust “may include the initiation of criminal investigations”. Eurojust also gains the power to “coordinate” the subsequent investigation. Laws defining Eurojust’s powers and responsibilities would be made by majority vote.

The UK Government was initially opposed to giving Eurojust these new powers. Peter Hain called for the article to be amended so that Eurojust would only be able to propose to member states that they initiate investigations.

Hain argued that the article needed to “set boundaries on Eurojust’s tasks”. He threatened that, “this is an essential precondition for majority voting ... Eurojust should have the power only to ask that an investigation or prosecution is initiated.” However, the Government gave way on this issue.

(6) Immigration and asylum

Introduction

There appears to be no significant changes to the original Constitution's provisions for immigration and asylum in the new draft treaty. The original concerns about the Constitution's sweeping changes in these areas remain.

New powers for the European Court of Justice over asylum and immigration

The Constitution would have, for the first time, given the European Court of Justice substantial jurisdiction over asylum and immigration policy. The increased role of the court is likely to impact not just on whether applicants gain asylum, but also on the welfare and work entitlements of asylum applicants. The Government sought to limit the role of the Court in this area in an amendment – but the changes it requested were not made. There are two ways in which the Court will gain more powers:

a) Through the Charter of Fundamental Rights

Article II-79 of the Charter of Fundamental Rights specifies that, "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

This would give the ECJ a powerful mandate to rule on asylum and repatriation decisions. The Court would have to decide for itself what counts as a "risk" of "degrading treatment" – which is the basis of almost all asylum claims. According to the explanations to the Charter, this right has been "derived" from the ECJ's own case law – rather than any existing treaty agreement. This means that there is scope for the development of ECJ case law to expand the Court's remit in this area even further. Experts also predict that the Court would also gain a major role in ruling on the social welfare rights of asylum seekers and migrants.

There are also implications for immigration policy in the Charter. Articles 7 and 9 on the "right to family life" and the "right to marry and found a family" could tip the balance in various cases relating to immigration and family reunification.

b) By allowing the Court jurisdiction in all areas unless specifically excluded

Under the current treaties, the role of the Court is very limited in this area, which was originally in a separate pillar for decision between Governments. The provisions in the original Constitution would remove the restrictions on the role of the Court. Under the current treaty articles (35 and 46 TEU and 68.1 TEC) the Court only has jurisdiction where specified, and 68 TEC allows only a very limited role for the Court, including provisions that the ECJ can only take up a case once it has exhausted all appeals in the member state.

During the original negotiations on the Constitution the UK Government unsuccessfully attempted to re-insert limits on the role of the court in assessing asylum cases. In an amendment to the European Convention Peter Hain called for two new paragraphs to be added to the text of article III-377, which would have meant that the ECJ could only have been called upon to make a preliminary ruling after a high court ruling on a case. However, the changes the UK proposed were not made. The growth of preliminary rulings which the Government forecast may well lead to a greater number of delays in processing claims, leading to higher costs and a longer period of uncertainty for asylum applicants.

End of the veto on legal migration

The Constitution also proposes the end of member states' right of veto over asylum and all categories of immigration. In December 2004 the UK Government agreed to give away the veto on asylum and *illegal* immigration, but did not agree to end the veto on legal migration.

The UK has an "opt in" arrangement over asylum and immigration decisions. However, the way the opt in arrangement works means that the UK makes an *on principle* decision to opt in, before legislation is actually drawn up. The end of the veto would mean that if the UK opts into an area, but does not subsequently agree with the way legislation is drawn up, it will not be able to opt out again – something which the Government has admitted to.

A legal basis for common asylum and immigration systems, and moves towards a single system

The Constitutional Treaty sets out a framework and a legal basis for the further development of the EU common asylum and immigration system. The Commission has recently announced the completion of the first phase of the Common European Asylum System and the Constitution and subsequent Commission proposals have suggested that the trend in the second phase of the development of the common systems will be to move away from minimum standards, and towards a single set of rules and common processing.

During the original negotiations the UK called for the main article on the common asylum system (Art III-266, now becoming 69A TFEU) to be completely rewritten. In particular the Government called for the deletion of the proposals to create "a uniform status of asylum for nationals of third countries, valid throughout the Union... common system of temporary protection for displaced persons in the event of a massive inflow", "common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status" and "partnership and cooperation with third countries with a view to managing inflows of people applying for asylum or subsidiary or temporary protection."

The UK Government also protested in general against the plans to create a single set of rules, and suggested that the proposals violated the UK's previous understanding about how the European Asylum System would work. Peter Hain wrote, "The Tampere conclusions nowhere said that the second stage of work on a common system should consist of converting the minimum standards under negotiation as part of the first stage into common rules." But the article was not changed.

In the article on the common immigration system (Article III-267, becoming 69B TFEU) the Government called for the deletion of a new EU power which would have implications for migrants' access to labour markets and social security. Peter Hain wrote, "Article 2(b) allows for decisions on all aspects of the rights of third country nationals including access to the labour market and social security – **this is a considerable extension of the Union's competence from that in the current treaty.**" When the article was not deleted the UK Government called for any such powers at least to be kept under unanimous voting. But the article was not changed.

The Government also called for changes to the new article (III-268, now likely to become a protocol) which would establish "burden sharing" for the cost of asylum. The UK tabled an amendment to rule out the possibility that the cost of processing asylum and immigration claims would be funded from the EU budget. Again, the article was not changed.

Annex 1: Giving up the veto?

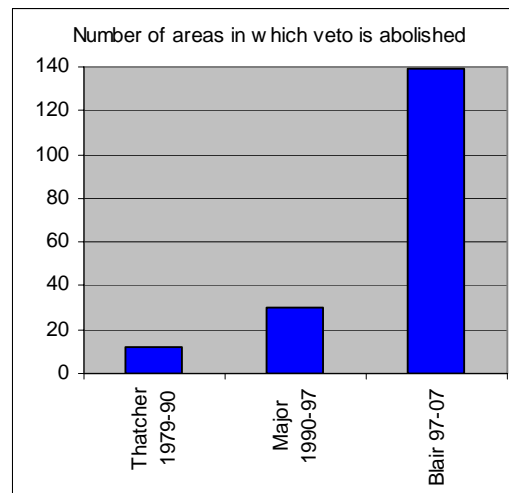
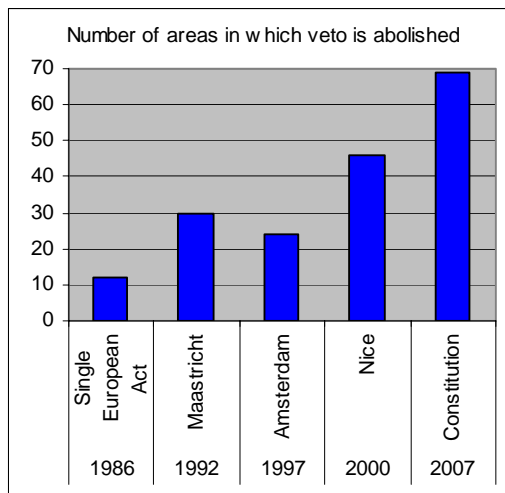
In a written answer in Parliament the Government back in 2004 the Government listed 41 areas in which the EU Constitution would mean giving up the veto.⁷ In reality the number of areas in which the national right of veto would have been abolished is far higher. A full list of the vetoes that would have been given up is below.

In total there were 69 articles of the original version of the Constitution which either introduced a new EU power under qualified majority voting (QMV) or moved an existing power from unanimity to majority voting.

In the new negotiations the Government has made it clear that it will only accept a move to QMV in justice and Home Affairs or the Social Security rights of migrant workers if the UK has an opt-out arrangement.

Initially the Government were briefing that there would be no new moves to QMV in the new version of the Constitutional Treaty. But the Government has not made this a red line and has not ruled out re-introducing the other moves to QMV which were proposed in the original Constitution. It is unclear what is likely to emerge.

The original Constitution would have meant a much larger transfer of powers than any of the previous treaties of Maastricht, Amsterdam or Nice. Adding up the powers transferred under treaties signed by Tony Blair shows the rapid increase in the pace of integration in recent years. This contradicts the Government's claim that, the new draft Constitutional Treaty will have less impact on the UK than previous treaties like the Single European Act or Maastricht.



Significant moves to QMV which were included in the first version of the Constitution included:

- **Electing the new EU President**
- **Appointing the new EU Foreign Minister**

⁷ <http://www.theyworkforyou.com/wrans/?id=2004-07-05.180436.h&s=eu+veto#g180436.q0>

- **Some foreign policy decisions.** During the first negotiations the UK said that “majority voting in foreign policy is a no-go area” – but it later gave way. The most important shift was to majority voting on proposals from the EU foreign minister. But the original version of the Constitution also proposed (i) Majority voting on a new EU foreign policy fund; (ii) majority voting on the organisation and running of the new EU Diplomatic Service; and (iii) majority voting on consular issues.
- **The definition of public services and their exemption from competition law.** This would cover whether hospitals have to put parts of their services out to competitive tender.
- **Employment law for self-employed workers.** This covers everything from whether plumbers electricians have their qualifications recognised in other countries to health and safety questions, to employment law, health and safety and their rights at work. A Commission green paper in 2006 suggested that the EU should extend the same rights that full time workers have to the self-employed.
- **How the EU budget is spent**
- **Science policy**
- **Public health.** The British Medical Association has said that “the clause which empowers the EU to act on “serious” threats to health, opens the way for the EU to initiate legislation on a whole range of health determinants.” The old 278 would have put the EU in charge of standards for pharmaceuticals, medical equipment and medical products like blood and tissue. It could also lead to the EU making decisions about the right of people to use public services in other member states. The ECJ has already ruled that under some circumstances people can go and get treatment abroad and then ask to be reimbursed. There are concerns that if this became more standard it would become impossible to prioritise NHS spending.
- **Transport.** The EU is keen to get involved in road pricing. Road charging is one of the few possible uses of the EU’s £12 billion Galileo satellite system, and the Commission’s work programme for 2008 stresses that it wants to do lots of work on “urban transport”. Jacques Barrot, EU Transport Commissioner, recently suggested “Pricing of the use of infrastructures”, going on to say, “this is an important aspect and results achieved in London through congestion charging should incite to envisage extension to other cities.”⁸
- Matthias Ruete, Director General of the European Commission’s DG Transport commented recently that “For many years, the issue of urban transport was kept hidden behind the principle of subsidiarity. As a consequence, very little initiatives and proposals were put forward by the EC for the last ten years. The time has come to change that attitude.”

⁸ PREPARATION OF A GREEN PAPER ON URBAN TRANSPORT STAKEHOLDER CONFERENCE "URBAN TRANSPORT: PROBLEMS, SOLUTIONS AND RESPONSIBILITIES" MINUTES OF MEETING CONTRACT TREN/CC/05-2005/06/8/S07.67131 (31/1/2007) Barrot argues that “The EC may play the role of a catalyst and utilise several instruments, possibly of legislative nature, and federate qualifications in the view of achieving common objectives. Concerns about the respect of the subsidiarity principle should not be in any way a barrier to proposals for new initiatives.”

- The EU has already begun intervention on road charging, and has introduced legislation setting limits on the technology that can be used in any charging scheme - including satellite tracking systems.⁹ This 'interoperability' is designed to ensure that equipment used in any road pricing system would be useable in all 27 member states – and could be a precursor to a later push towards a future pan-European road charging system. The British Government notes that the Directive will “set a framework for the management of charging schemes across Europe.”¹⁰
- The EU is also working on a “single European sky”. The Commission would like to move to a single air traffic control system. The UK is sceptical about both of these plans. As an example of a controversial decision in this area the EU has already adopted a single list of which airlines can and can't fly into the EU (e.g. if the UK wants to ban a questionable airline, it can't).
- The Commission has also suggested other possible areas for intervention, such as regulation of infrastructure use. This could mean new traffic management and control systems – possibly including speed cameras, speed limits (which again, could be enforced through the Galileo satellite system), and changed road signs.
- **Energy policy.** The Commission made several controversial proposals on energy in its 2008 work programme. These included:
 - o *A gas network and European Grid:* critics ask to what extent might these proposals imply a single regulator? To what extent are problems with energy markets due to a lack of physical infrastructure rather than due to dominant players in the market? How much would an increase in interconnection cost and what would the benefits be for the UK.
 - o *An oil stocks system and enhanced energy solidarity:* If this implies an increase in statutory reserve requirements the cost could be quite substantial (the offshore operators association has warned of costs of up to £3 billion. The UK Government has vetoed such requirements in the past.
- Unlike the original EU Constitution, the new Treaty contains a new clause stipulating “a spirit of solidarity between Member States... notably in the area of energy”¹¹. This allows the EU Commission to propose “measures appropriate to the economic situation” during times of supply shortage. This suggests that member states such as the UK could be compelled to shift national energy resources during times of serious shortage in other parts of the EU. The UK currently has well-diversified gas supplies and crucially, low levels of dependency on Russian gas. But reduction of this energy independence could mean power shortages and higher costs for UK consumers during such a scenario.

⁹ Directive on Interoperability of Charging Systems 2004/52/EC

¹⁰ DTI, Feasibility study of road pricing in the UK – Report (June 2004)

¹¹ "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." Draft IGC Mandate, Annex 2, Para. 3. (new text is underlined)

- The Council has asked the EU to come up with a proposal to phase out incandescent lightbulbs. Some people want to avoid an outright ban and allow some to be sold for locations where fluorescent light-bulbs would not work (e.g. on dimmer switches, etc)
- **The powers of Europol and Eurojust.** There is a long running row over what powers these two bodies should have. The UK is keen to stop them being turned into a de facto euro-FBI and a European Public Prosecutor. In particular the UK has always blocked giving Europol the right to run prosecutions
- **Police cooperation**
- **Criminal justice cooperation**
- **Tourism**
- **Culture.** New powers over culture might allow the Commission to push through its pet project of a “European Institute of Technology. The UK has been blocking the idea – intended to rival MIT in the US’
- **Space.** The EU wants to spend £12 billion building the “Galileo” satellite system. It was supposed to be built as a commercial venture – but private sector partners have refused to fund it. The UK and the Netherlands oppose the Commission’s plan to bail out the system using public funds from the EU – but this could go through under QMV. The Galileo project has important implications for EU transport policy (see above).
- **Sport.** Could, for example, mean EU setting wage and transfer caps for professional football. The EU Commission is considering plans to restrict the amount European football clubs can spend on players’ wages and transfer fees. Clubs would not be allowed to spend more than they earn in these areas of expenditure. This would have implications for clubs subsidised by rich owners - like Chelsea.¹² In addition to these innovations, an earlier report from Portuguese Sports Minister Jose Luis Arnaut suggested creating a “European Sports Agency”, which would “institutionalise” its relationship UEFA, giving the EU Commission power over football throughout Europe.¹³

¹² Independent, 21 September 2006

<http://www.independentfootballreview.com/doc/A3619.pdf>

¹³ Jose Luis Arnaut, “Independent European Sport Review 2006”

	# in existing Treaties	New?	Subject	Original Constitutional treaty text	Explanation
1	I-22.1	New	Election of the Council President	The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once.	Post did not exist before – EU Council presidency currently rotates automatically among member states.
2	I-24.7	New	Setting rules for how the presidency of council meetings will be rotated among the member states	The Presidency of Council configurations, other than that of Foreign Affairs, shall be held by Member State representatives the Council on the basis of equal rotation, in accordance with the conditions established by a European decision of the European Council. The European Council shall act by a qualified majority.	Currently automatic rotation every six months. Though the Council can alter the order of rotation it has to do so by unanimity
3	1-28.1	New	Appointment of EU Foreign Minister	The European Council, acting by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs.	Post did not exist before
4	I-37.3	New – though existing power	Arrangements for control of Commission's implementing powers	European laws shall lay down in advance the rules and general principles for mechanisms for control by Member States of the Commission's exercise of implementing powers.	Control over the "Comitology" committees which monitor what the EU Commission is doing. Decisions on this are currently taken by unanimity
5	I-47.4	New	Control over the citizens' initiative	Not less than one million citizens coming from a significant number of Member States may take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Constitution. A European law shall determine the provisions for the procedures and conditions required for such a citizens' initiative, including the minimum number of Member States from which	The citizens' initiative is a new process. It allows the Council to control the rules governing such initiatives by majority voting.

				they must come.	
6	I-50.3	New but based on 255 TEC	Access to EU documents	A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.	
7	I-51.2	New	EU data protection laws	A European law or framework law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by Union Institutions.	This could be significant – e.g. problems that data protection rules have caused for the police in the UK. While the EU has passed some data protection legislation, home affairs and foreign policy have been specifically excluded.
8	I-54.3	New but based on 269 TEC	The Union's own resources	A European law of the Council shall lay down the provisions relating to the system of own resources of the Union; in this context it may establish new categories of own resources or abolish an existing category.	Determines how the EU raises its budget, what kinds of taxes and contributions from members. This in turn could affect how much each member pays in.
9	I-60.2	New	Voluntary withdrawal from the Union	The Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article III-227(3); it shall be concluded by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.	New procedure setting out formal procedure for member states to leave the EU. The remaining member states would have a majority vote amongst themselves about how to come to an agreement with the leaving member state.
10	III-122	New / 16 TEC	Public services	Member States... shall take care that such services operate on the basis of principles and conditions, in particular economic and financial, which enable them to fulfil their missions. European laws shall define these principles and conditions.	Introduces majority voting on what counts as a public service and is exempted from normal competition policy. Could be used by a majority to avoid opening up industries to competition.
11	III-127	20 TEC&20 TEU	Access to embassies and consulates for EU	Member States shall adopt the necessary provisions to secure diplomatic and consular	

			citizens outside the EU	protection of citizens of the Union in third countries... A European law of the Council may establish the measures necessary to facilitate such protection.	
12	III-136	42 TEC	Social security for migrant workers	In the field of social security, "European laws or framework laws shall establish such measures as are necessary to bring about freedom of movement for workers by introducing a system to secure for employed and self-employed migrant workers and their dependants.	Very significant, as social security rules for migrant workers are likely to "spill over" and affect social security systems in general.
13	III-141	47 TEC	Law relating to self employment	European framework laws shall make it easier for persons to take up and pursue activities as self-employed persons	Could have wide ranging consequences, also likely to spill over into affecting wider employment law. Also covers mutual recognition of qualifications.
14	III-152	135 TEC	Customs cooperation between member states and the Commission	Within the scope of application of the Constitution, European laws or framework laws shall establish measures in order to strengthen customs cooperation between Member States and between the latter and the Commission.	The scope of QMV has been widened here because the TEC previously specified that "These measures shall not concern the application of national criminal law or the national administration of justice." This has now been deleted.
15	III-160	Based on 60 TEC but mostly new	Administrative and financial measures to prevent terrorism	As regards preventing and combating terrorism and related activities, European laws shall 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.	
16	III-167.2(87 TEC	Repeal of East German	Five years after the entry into force of the Treaty establishing	

	c)		exemption from state aid policy	a Constitution for Europe, the Council, acting on a proposal from the Commission, may adopt a European decision repealing [the exemption].	
17	III-176	New	Intellectual property law	European laws or framework laws shall establish measures for the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.	
18	III-187.3	107 TEC	Changes to the parts of the Statute of the European Central Bank	The Statute of the European System of Central Banks and the European Central Bank may be amended by European laws: (a) either on a proposal from the Commission and after consultation of the European Central Bank; (b) or on a recommendation from the European Central Bank and after consultation of the Commission.	The banks statute can now be amended by majority vote on a proposal from the Commission. Previously it could only be changed by QMV if the bank itself recommended the change. The articles which can be changed include significant ECB powers such as: the power to set minimum reserve requirements for banks and the power to fine financial institutions; the power to conduct foreign exchange operations and make international agreements for currency coordination, and the power to set up and regulate clearing systems.
19	III-191	123.4 and .5 TEC on launch of euro but new	Measures necessary for the use of the euro	Without prejudice to the powers of the European Central Bank, a European law or framework law shall lay down the measures necessary for use of the euro as the single currency.	TEC 123.4 talked about "other measures necessary for the rapid introduction of the ecu" but this is much broader.

20	III-194	New	Closer economic coordination between the euro member countries & exclusion of non members from voting	The Council shall... adopt measures specific to those Member States whose currency is the euro: (a) to strengthen the coordination of their budgetary discipline and surveillance of it; (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.	This article would enable the euro countries to pass any law needed to “strengthen coordination”. Euro members would have no veto and non euro members would not even have a vote.
21	III-196	New - some overlap with TEC 111	Single representation of the eurogroup on international financial bodies.	The Council, on a proposal from the Commission, may adopt appropriate measures to ensure unified representation within the international financial institutions and conferences.	The Eurogroup would decide on a common position in international financial negotiations and move towards having a single “Eurogroup” representation at the IMF, World Bank, UNCTAD etc
22	III-236	70.3 TEC	Transport	By way of derogation... [where] provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities, they shall be laid down by the Council acting unanimously	The Constitution removes the option for a member state to demand unanimous voting if it believes a proposal is a threat to a particular region.
23	III-243	78 TEC	East Germany exception	Five years after the entry into force of the Treaty establishing a Constitution for Europe, the Council, acting on a proposal from the Commission, may adopt a European decision repealing the present Article.	Option to end the exemption of eastern Germany from state aid rules by majority vote
24	III-251(4)	166 TEC	European Research Area	A European law shall establish the measures necessary for the implementation of the European Research Area	The ERA is intended to coordinate scientific research in the EU
25	III-254	New	European Space Policy	European laws or framework laws shall establish the necessary measures, which may take the form of a European space programme.	New policy, decided by QMV. The UK Government was originally opposed and asked for it to be

					deleted.
26	III-256	New	Energy policy	Union policy on energy shall aim to: ensure the functioning of the energy market, ensure security of energy supply in the Union, and promote energy efficiency and saving and the development of new and renewable forms of energy.... Without prejudice to the application of other provisions of the Constitution, the objectives in paragraph 1 shall be achieved by measures enacted in European laws or framework laws.	The Government is now happy with this article because energy taxes are still covered by unanimity. But other EU policies in energy e.g. reserve requirements, could be very costly and could be adopted by majority vote.
27	III-260	New	Security and justice – mechanisms to lead to mutual recognition of judgments	The Council may... adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition [of legal judgments].	
28	III-265	62 TEC	Border controls	European laws or framework laws shall establish measures concerning: (a) the common policy on visas and other short-stay residence permits; (b) the controls to which persons crossing external borders are subject; the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period; (d) any measure necessary for the gradual establishment of an integrated management system for external borders; (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.	
29	III-266	63.1	Common Asylum	European laws or framework	The existing treaties

		and2 & 64.2 TEC	Policy	laws shall lay down measures for a common European asylum system comprising: (a) a uniform status of asylum for nationals of third countries, valid throughout the Union; (b) 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; (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status; (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection; (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection; (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.	have much more limited objectives in asylum which are covered by unanimity. The Government was very strongly opposed to the way this article was drawn up and called for it to be totally re-written. But it was ignored.
30	III-267.2	63.3 &63.4 TEC	Common immigration policy	European laws or framework laws shall establish measures in the following areas: (a) 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 reunion; (b) the definition of 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; (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation; (d) combating trafficking in	

				persons, in particular women and children.	
31	III-267.3	New	Common immigration – EU right to make readmission agreements with 3 rd countries	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.	
32	III-267.4	New	Common immigration – EU measures to integrate migrants into society	European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.	
33	III-269	65 TEC	Judicial cooperation in civil law	European laws or framework laws shall lay down measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring: (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases; (b) the cross-border service of judicial and extrajudicial documents; (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction.	Not clear why the Government has not included this in its list of vetoes given up... Option to move to QMV after 5 years is there but hasn't been used.
34	III-171.1	31.1 TEU	Judicial cooperation in criminal law	European laws or framework laws shall establish measures to: (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgments and judicial decisions; (b) prevent and settle conflicts of jurisdiction between Member States; (c) encourage the training of the judiciary and judicial staff; (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to	

				proceedings in criminal matters and the enforcement of decisions.	
35	III-270.2	31.1 TEU	Criminal law harmonisation	European framework laws may establish minimum rules... mutual admissibility of evidence between Member States; (b) the rights of individuals in criminal procedure; (c) the rights of victims of crime; (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision., for the adoption of this decision., for the adoption of this decision, the Council shall act unanimously.	
36	III-271	New	Definition of crimes and sentences	European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension	NB 172.2 also allows the EU to adopt criminal laws to enforce any other aspect of EU policy – using the same voting method as was used to establish the other EU policy.
37	III-272	New	EU laws to “prevent” crime	European laws or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention.	
38	III-273.2	31.2 TEU	EU laws to give extra powers to Eurojust	European laws shall determine Eurojust's structure, operation, field of action and tasks. Those tasks may include: (a) 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; (b) the coordination of investigations and prosecutions referred to in point (a); (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.	EU laws passed by majority vote could give Eurojust new powers and change the way it operates.
39	III-	30.1	EU laws to	European laws may establish	Majority voting could

	275.2	TEU	enhance police cooperation	measures concerning: (a) the collection, storage, processing, analysis and exchange of relevant information; (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime- detection; (c) common investigative techniques in relation to the detection of serious forms of organised crime.	increase police cooperation further in the future especially on cross border crime.
40	III-276	30.2TEU	EU laws to give more powers to Europol	European laws shall determine Europol's structure, operation, field of action and tasks, which may include: (a) the collection, storage, processing, analysis and exchange of information; (b)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, in liaison with Eurojust. European laws also lay down the procedures for scrutiny of Europol.	Majority voting controls Europol's activities, and can give it new powers.
41	III-278	278 TEC but (5) (6) and (7) on public health are new	EU laws on public health, particularly alcohol and tobacco	European laws or framework laws may also establish incentive measures designed to protect and improve human health and in particular to combat the major cross-border health scourges, as well as measures which have as their direct objective the protection of public health regarding tobacco and the abuse of alcohol, excluding any harmonisation of the laws and regulations of the Member States. They shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.	152 was under QMV before, but the competence to pass laws over public health is new. There is also a new competence (under QMV) to "encourage cooperation between the Member States to improve the complementarity of their health services in cross-border areas". The implications of this are unknown.
42	III-280	151 TEC	EU laws on cultural policy.	European laws or framework laws shall establish incentive actions, excluding any harmonisation of the laws and	151.5 TEC stated that "The Council shall act unanimously throughout the

				regulations of the Member States [to promote] (a) improvement of the knowledge of the culture and history of the European peoples;(b) conservation and safeguarding of cultural heritage of European significance;(c)non-commercial exchanges;(d)artistic and literary creation, including in the audiovisual sector.	procedure referred to” but these words have been deleted in the Constitution. Culture policy is sometimes used as a defence against competition e.g. at a national level the French amendment Pelchat from 1996 enforced a 40% minimum quota of French music on radio.
43	III-281	New	EU laws on Tourism	A European law or framework law shall establish specific measures to complement actions within Member States to achieve the objectives referred to in this Article... Promoting competitiveness... encouraging the creation of a favourable environment..., promoting cooperation between Member states	The aims of this article are very general.
44	III-282	TEC 149, but sport is new	Education, training and Sport	The Union shall contribute to the promotion of European sporting issues, while taking account of its specific nature, its structures based on voluntary activity and its social and educational function... developing 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 young sportsmen and sportswomen.	A new competence in sport has been added to an article which was already under QMV. “Sport” was never mentioned in the old treaties. TEC Article 149 which was headed “Education, vocational training and youth” is now called education, youth, sport and vocational training”.
45	III-284	New	EU laws to create civil protection regulations	Union action shall aim to (a)support and complement Member States’ action at national, regional and local level in risk prevention, in preparing civil-protection personnel and in responding to natural or man-made disasters within the Union;(b)promote swift, effective operational	Goals such as “risk prevention” are loosely worded. The EU’s new powers over civil protection would be likely to “spill over” and affect emergency services more generally.

				cooperation within the union between national and civil-protection services;(c) promote consistency in international civil-protection work. The measures necessary ... shall be enacted in European laws or framework laws.	
46	III-285	New	EU laws to increase administrative capacity to implement EU laws	Effective implementation of Union law by the Member States... shall be regarded as a matter of common interest. The Union may support the efforts of Member States to improve their administrative capacity to implement Union law. European laws shall establish the necessary means to this end.	
47	III-296	New	Creation of a European External Action Service	In fulfilling his or her mandate, the Union Minister for Foreign Affairs shall be assisted by a European External Action Service... The organisation and functioning of the European External Action service shall be established by a European decision of the Council. The Council shall act on a proposal from the Union Minister for Foreign Affairs after consulting the European Parliament and after obtaining the consent of the Commission.	The EU diplomatic service will be set up by QMV.
48	III-300.2 (b)	23 TEU - but Foreign Minister proposals are new	Foreign policy decisions when acting on Foreign Minister's proposals	[The Council shall act by majority vote] When adopting a European decision defining a Union action or position, on a proposal which the Union Minister for Foreign Affairs has presented following a specific request to him or her from the European Council, made on its own initiative or that of the Minister.	If the European Foreign Minister is asked by the European Council to come up with a proposal, the decision based on that proposal is then taken by QMV.
49	III-311	New	European Armaments Research and Military Capabilities Agency.	The Agency shall be open to all Member States wishing to be part of it. The Council, acting by qualified majority, shall adopt a European decision defining the Agency's statute, seat and operational rules. That decision should take account of the level of effective	

				participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects.	
50	III-312.2	New	"Permanent Structured Cooperation"	The Council shall adopt a European decision establishing permanent structured cooperation and determining the list of participating Member States. The council shall act by qualified majority after consulting the Union Minister for Foreign Affairs.	This new sub-group of EU members will take forward EU defence without some members having to be involved. The UK Government has signalled that it is likely to join the group.
51	III-312.3	New	A country wishing to join structured cooperation later on	Any member state which at a later stage, wishes to participate in the permanent structured cooperation shall notify its intention to the Council... The Council shall adopt a European decision confirming the participation of the Member State concerned... the Council shall act by a qualified majority after consulting the union Minister for Foreign Affairs.	The UK can be outvoted on the decision to allow another country into the structured cooperation group – membership is not automatic for members who want it.
52	III-312.4	New	Suspending of member state from Structured Cooperation	If a participating Member State no longer fulfils the criteria or is no longer able to meet the commitments, referred to in Articles 1 and 2 of the Protocol mentioned in paragraph 1, the council may adopt a European decision suspending the participation of the Member State concerned. The Council shall act by qualified majority.	Member states can be ejected from structured cooperation by QMV if the other members decide it no longer meets the objectives of the group.
53	III-315.1	133 TEC	Common commercial policy – QMV on trade agreements in services and Intellectual Property	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 liberalization, export policy and measures to protect trade such as those to	Under TEC 133.5 services and IP were covered mainly by unanimity: "the Council shall act unanimously when negotiating and concluding an agreement in [services and IP] where that agreement includes provisions for which unanimity is required for the

				be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the union's external action.	adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it."
54	III-315.4	133 TEC	Common commercial policy – QMV on trade in education and health services	QMV would apply to international agreements in health and education unless member states can prove that the agreement would "risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them." Whether this was the case would be decided by the European Court of Justice.	TEC 133.6 said, "By way of derogation... agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services... shall require the common accord of the Member States."
55	III-319	181a TEC Covering 310 TEC	Agreements with EU candidate countries and association agreements - aid to countries near the EU other than developing countries	The Union shall carry out economic, financial and technical cooperation measures, including financial aid in particular, with third countries other than developing countries. European laws or framework laws shall establish the measures necessary for the implementation of paragraph 1.	TEC 181a said "The Council shall act unanimously for the association agreements referred to in Article 310 and for the agreements to be concluded with the States which are candidates for accession to the Union." But this has been deleted from the Constitution.
56	III-320	New	Urgent Financial Aid	When the situation in a third country requires urgent financial aid from the Union, the Council shall adopt the necessary European decisions on a proposal from the Commission.	The Government protested about this but was ignored.
57	III-321.3	New	Humanitarian Aid	European Laws or framework laws shall establish the measures defining the framework within which the Union's humanitarian aid operations shall be implemented.	
58	III-322.2	301 TEC	Restrictive Measures	Where a European decision adopted on the basis of Chapter II of this Title so provides, the Council may adopt restrictive measures	Although restricting aid was already done by QMV, it appears the Constitution gives the EU a new

				under the procedure referred to in paragraph 1 against natural or legal persons and non-State groups or bodies.	Competence to take restrictive measures against people or non-state groups.
59	III-329	New	Solidarity clause	The arrangements for the implementation by the Union of the solidarity clause referred to in Article I-42 shall be defined by a European decision adopted by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs. The Council shall act in accordance with Article III-201(1) where this decision has defence implications. The European Parliament shall be informed.	If another member state falls victim to a disaster etc, the Council decides by majority whether and how the rest of the members should help or give aid. This could have very significant implications, and what counts as a “disaster” is very broadly defined. Only measures taken under this article having defence implications would still be taken by unanimity.
60	III-341.3	New	European Council rules of procedure	The European Council shall act by simple majority for procedural questions and for the adoption of its Rules of Procedure.	The European Council has never adopted rules of procedure before e.g. its voting rules are currently not defined anywhere. Now they could be determined by majority vote.
61	III-357	223 TEC	Choosing candidates for Judges and Advocates-General of the Court of Justice and High Court	A panel shall be set up in order to give an opinion on candidates' suitability... The Council shall adopt a European decision establishing the panel's operating rules and a European decision appointing its members. It shall act on the initiative of the President of the Court of Justice.	223 TEC said: “ they shall be appointed by common accord of the governments of the Member States”. How the panel would operate would be decided by QMV. This could mean less say over how the judges are chosen.
62	III-359	225aTE C	Establishing specialised courts for particular issues	European laws may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall be adopted either on a proposal from the Commission after consultation	TEC only allowed the creation of judicial panels not whole new courts, and even this was by unanimity

				of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.	
63	III-364	229aTEC	European intellectual property rights	Without prejudice to the other provisions of the Constitution, a European law may confer on the Court of Justice of the European Union, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create European intellectual property rights.	Currently unanimous and on the basis of a recommendation in accordance with member states' Constitutional requirements.
64	III-381	245TEC	Amending the Statute of the Court of Justice	A European law may amend the provisions of the Statute, with the exception of Title I and Article 64. It shall be adopted either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.	In the TEC this had to be unanimous.
65	III-382	112TEC	Appointing the Executive Board of the ECB	The President, the Vice-President and the other members of the Executive Board shall be appointed by the European Council, acting by a qualified majority, from among persons of recognised standing and professional experience in monetary or banking matters, on a recommendation from the Council, after consulting the European Parliament and the Governing Council of the European Central Bank.	These important figures would be appointed by QMV, instead of by "common accord".
66	III-397	218TECplus new provision	Inter-institutional agreements	The European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the	Agreements can cover anything and the Council votes by QMV.

				Constitution, conclude interinstitutional agreements which may be of a binding nature	
67	III-398	New	European administration to support institutions	In carrying out their missions, the Institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration. In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article III-333, European laws shall establish specific provisions to that end.	QMV to establish how the EU's civil service operates. This is broader than the staff regulations in III-333 which are already decided by QMV – and would allow general legislation on the role of the EU machinery
68	III-412.2	279.2TE C	EU budget	The Council shall, on a proposal from the Commission adopt a European regulation laying down the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and the measures to be applied, if need be, to meet cash requirements.	The words “acting unanimously” have been deleted.
69	III-415	280 TEC	Combating Fraud	European laws or framework laws shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests with a view to affording effective and equivalent protection in the Member States and in all the Union's Institutions, bodies, offices and agencies.	The scope of this article – already decided by QMV – has been expanded to cover national criminal law. At the end of point 4 TEC said “These measures shall not concern the application of national criminal law or the national administration of justice.” But this has been deleted.

Annex 2: new powers for the European Parliament

The 40 areas to which co-decision was extended under the original Constitution

(Source: FCO Commentary on the EU Constitution, FCO website)

I-37 Comitology
I-47 Citizens' initiatives
III-359 Specialised courts
III-364 ECJ jurisdiction on intellectual property rights
III-381 ECJ Statute
III-398 Principles of European Administration
III-427 Staff Regulations of Union officials
III-412 Financial Regulations
III-122 Services of general economic interest
III-139 Official and Government Employment
III-144 Freedom to provide services for established third country nationals
III-147 Freedom to provide services
III-157 Movement of capital to or from third countries
III-160 Freezing of assets
III-174 Distortion of competition
III-176 Authorisation, co-ordination and supervision of intellectual property rights protection
III-319 Economic, financial, and technical cooperation with third countries
III-321 Humanitarian aid operations
III-179 Multilateral surveillance procedure
III-187 Amendments to certain parts of the Statute of the European System of Central Banks
III-191 Use of the euro
III-223 Structural and Cohesion Funds
III-231 Agriculture and Fisheries
III-236 Transport
III-251 European Research Area
III-254 Space Policy
III-256 Energy
III-281 Tourism
III-282 Sport
III-284 Civil protection
III-285 Administrative co-operation
III-265 Border checks
III-267 Immigration and Frontier Controls
III-270 Judicial co-operation in Criminal Matters
III-271 Minimum rules for criminal offences and sanctions
III-272 Crime prevention
III-273 Eurojust
III-275 Police co-operation
III-276 Europol
III-315 Aspects of the Common Commercial Policy

Annex 3: A comparison of the Draft EU Treaty and the Constitution

New article number	Content	How is it altered?	How does it compare to the Constitution?
Treaty on European Union			
1	Establishment of the Union	This is altered to include part of Article I-1 of the Constitution	Some but not all of the same content
2	The Union's values	Article I-2 of the Constitution inserted	Exactly the same text
3	Objectives of the union	Replaced with Article I-3 of the Constitution	Exactly the same text
4	Relations between the Union and its members	Replaced with Article I-5 of the Constitution	Exactly the same text
5	Fundamental principles of union competence	Replaced with Article I-11 of the Constitution	Exactly the same text + 1 extra line on security
6	Fundamental Rights	An even more extended version of Article I-9 of the Constitution	Exactly the same text + more
7a	Suspension of membership rights	Makes the same amendments as Article I-59 of the Constitution	Same content
7b	The unions near abroad (NB partnership not membership for Turkey). This has been inserted at the request of Sarkozy	New article on the Union's near abroad	New
8	The principle of democratic equality	Inserts Article I-45 of the Constitution	Exactly the same text
8a	The principle of representative democracy	Inserts Article I-46 of the Constitution	Exactly the same text
8b	The principle of participatory democracy	Inserts Article I-47 of the Constitution (47.4 moved to 21 TFEU)	Exactly the same text
8c	National parliaments	New article on national parliaments - controversy over this in papers 23/07	New
9	The institutions of the union	Inserts Article I-19 (though section 3 on the ECB is moved to a later article)	Exactly the same text
9a	The European Parliament	Inserts Article I-20 of the Constitution	Exactly the same text
9b	The European Council and its president	Inserts Article I-21 and I22 of the Constitution	Exactly the same text
9c	Definition of a qualified majority	Inserts Article I-25 of the Constitution	Same content but delayed
9d	The European Commission and its President	Inserts Article I-26 and I27 of the Constitution	Exactly the same text
9e	The Union Minister for Foreign Affairs	Inserts Article I-28 of the Constitution	Same text with name change

9f	The Court of Justice of the European Union	Inserts Article I29 of the Constitution	Exactly the same text
10	Enhanced cooperation	Inserts Article I-44 of the Constitution	Exactly the same text
10a	External action: general principles	Inserts Article III-292 of the Constitution	Exactly the same text
10b	Role of the European Council in Foreign Policy	Inserts Article III-293 of the Constitution	Exactly the same text
10c	External action: general principles	Based on 292.3	Same content
11	Common Foreign and Security Policy general principles	II.1 and II.2 insert Article I-16 of the Constitution, and a new paragraph from the IGC mandate is added	Exactly the same text + new paragraph
12	Common Foreign and Security Policy general principles	Inserts Article III-294.3 of the Constitution	Exactly the same text
13	Common Foreign and Security Policy - emergency meetings	Inserts Article III-295 of the Constitution	Same content
13b	Role of the Foreign Minister	Inserts Article III-296 of the Constitution	Exactly the same text
14	European decisions in foreign policy	Modifies article 14 in exactly the same way as Article III-297 of the constitution	Same text
15	European decisions in foreign policy	Modifies article 15 as proposed in Article I-40.3	Same text
16	Foreign Minister can call extraordinary meetings in foreign policy	Inserts Article III-299	Exactly the same text
17b	Obligation to consult before taking any action on the international scene	Inserts Article I-40.5 of the Constitution	Exactly the same text
18	Appointment of Special Representatives by the Foreign Minister	Turns this into Article III-302 of the Constitution	Exactly the same text
19	Foreign Minister shall be asked to present the Union's position at the UN	Inserts Article III-305 of the Constitution	Exactly the same text
20	Union delegations in third countries	Inserts Article III-306 of the Constitution	Exactly the same text
21	Foreign Minister to consult the European Parliament	Inserts Article III-304 of the Constitution	Exactly the same text

22	The EU can sign treaties with countries or groups of countries	Inserts Article III-303 of the Constitution	Exactly the same text
23	Foreign Minister to run the political and security committee	Turns this into Article III-307 of the Constitution	Same content
24	Data protection	Amends this to introduce Article I-51 of the Constitution	Same content
25	Foreign policy must not affect the competences of the community and vice versa	Inserts Article III-308 of the Constitution	Exactly the same text
26	Urgent financing of foreign policy decisions	Inserts Article III-313 of the Constitution	Exactly the same text
27	Common Security and Defence policy - including "will lead to a common defence"	Inserts Article I-41 of the Constitution	Exactly the same text
27	Majority voting in some areas of foreign policy	Inserts Article III-300	Exactly the same text
28	List of the tasks of the Common Security and Defence Policy	Inserts III-309 of the Constitution	Exactly the same text
29	Creation of EU task forces	Inserts III-310 of the Constitution	Exactly the same text
30	European Defence Agency	Inserts III-311 of the Constitution	Exactly the same text
31	Permanent Structured cooperation	Inserts III-312 of the Constitution	Exactly the same text
32	Legal personality for the EU	Inserts I-7 of the Constitution	Exactly the same text
33	Simplified revision procedures (ratchet clause and flexibility clause)	Inserts articles IV-443, IV-444 and IV-445	Exactly the same text (+ couple of words on how it can be used to increase "or reduce" the powers of the EU)
34	New obstacles to countries joining	Modified version of article 49 TEU with new stress on admission criteria	Modified
35	Right to leave the EU	Inserts Article I-60 of the Constitution	Exactly the same text
36	Protocols and annexes	Inserts IV-442 of the Constitution	Exactly the same text
37	Territorial application	Inserts IV-440 of the Constitution	Exactly the same text
38	Duration	Inserts IV-446 of the Constitution	Exactly the same text

39	Relation to the TEC / TFEU	Technical article establishing the relationship between the treaties	New article
40	Ratification and entry into force	This cuts words out of 52 TEU but does not name a date for ratification	Different article
41	Authentic texts	Inserts IV-448 of the Constitution	Exactly the same text
Treaty on the Functioning of the European Union			
1	Introduces the Treaty on the Functioning of the Union (aka TEC)	A new header article explaining the role of the TFEU	New technical article
2	Categories of competence	Inserts Article I-12 of the Constitution	Exactly the same text
3	Areas of exclusive competence	Inserts Article I-13 of the Constitution	Exactly the same text
4	Areas of shared competence	Inserts Article I-14 of the Constitution	Exactly the same text
5	The coordination of economic and employment policies	Inserts Article I-15 of the Constitution	Exactly the same text
6	Areas of supporting, coordinating or complementary action	Inserts Article I-17 of the Constitution	Exactly the same text
7	Power to ensure consistency	Inserts Article III-115 of the Constitution	Exactly the same text
8	Goal of eliminating inequalities	Inserts Article III-116 of the Constitution	Exactly the same text
9	Promoting high social standards	Inserts Article III-117 of the Constitution	Exactly the same text
10	Combating discrimination	Inserts Article III-118 of the Constitution	Exactly the same text
11	Environmental protection	Inserts Article III-119 of the Constitution	Exactly the same text
12	Consumer protection	Inserts Article III-120 of the Constitution	Exactly the same text
13	Animal welfare	Inserts Article III-121 of the Constitution	Same text + words "as far as sensible"
14	EU laws on services of general interest	Inserts Article III-122 of the Constitution	Exactly the same text
15	Status of churches and religious groups	Inserts Article I-52 of the Constitution	Exactly the same text
17	Laws on non discrimination	Inserts Article III-123 of the Constitution	Exactly the same text
17b	Laws on non discrimination - ending veto	Inserts Article III-123 of the Constitution	Exactly the same text
17c	European Citizenship	Inserts Article I-10 of the Constitution	Exactly the same text

18	EU laws on passports and Identity cards	Inserts Article III-125 of the Constitution	Exactly the same text
19	Euro laws on right to vote and stand in elections	Veto removed to make this the same as Article III-126	Exactly the same text
20	EU laws on harmonisation of diplomatic and consular protection	Inserts Article III-127 of the Constitution	Exactly the same text
21	Laws on the operation of the citizens initiative mechanism	Inserts I-47.4 of the Constitution	Exactly the same text
21b	Openness and limits on openness of EU procedures	Inserts article I-50 of the Constitution	Exactly the same text
21c	Data protection - European laws on	Inserts Article I-51 of the Constitution	Exactly the same text
22	Regular reports on the development of European Citizenship	Amended to rule out using article 22 to expand 21	New technical article
22b	Establishing the internal market	Inserts Article III-130.1 - III-130.3 of the Constitution	Exactly the same text
22c	Establishing the internal market	Inserts Article III-130.4 of the Constitution	Exactly the same text
27	EU Laws (and criminal laws) on customs cooperation	Inserts article III-152	Exactly the same text
32	Agriculture and Fisheries	Inserts detail on fisheries as Article III-225	Same content
36	State aid must be granted by the council on a proposal from the Commission	Inserts text from Article III-230	Same text
37	Running of the CAP - introduces codecision with MEPs	Inserts article III-231 of the Constitution	Exactly the same text
42	Social Security for migrant workers	Inserts article III-136 of the Constitution	Exactly the same text (except "employed" becomes "salaried")
44	Freedom of establishment	Inserts Article III-138 of the Constitution	Exactly the same text
45	Exceptions from freedom of establishment	Inserts Article III-139 of the Constitution	Exactly the same text
47	Employment law for self employed workers - end of veto	Inserts Article III-141 of the Constitution	Exactly the same text

48b	Equal treatment of foreign firms	Inserts Article III-143 of the Constitution	Exactly the same text
50	Definition of services	Inserts Article III-145 of the Constitution (wording tweak)	Exactly the same text
52	EP codecision over services liberalisation	Inserts Article III-147 of the Constitution	Exactly the same text
54	Freedom to provide services	Inserts Article III-149 of the Constitution	Exactly the same text
57	Permitted restrictions on investment - EP codecision	Inserts Article III-157 of the Constitution	Exactly the same text
58	New powers to launch restrictive tax measures against third countries	Inserts Article III-157 of the Constitution	Exactly the same text
61	An area of Freedom Security and Justice	Inserts Article III-257 of the Constitution	Exactly the same text
62	European Council defines guidelines	Inserts Article III-258 of the Constitution	Exactly the same text
63	Review by national parliaments	Inserts Article III-259 of the Constitution	Exactly the same text
64	Evaluation & mutual recognition of legal judgements	Inserts Article III-260 of the Constitution	Exactly the same text
65	Standing committee for internal security	Inserts Article III-261 of the Constitution	Exactly the same text
66	Member states responsibility	Inserts Article III-262 of the Constitution + another paragraph repeating same point	Same text
67	EU legislation on administrative cooperation	Inserts Article III-263 of the Constitution	Exactly the same text
67b	Financial measures against terrorism	Inserts Article III-160 of the Constitution	Exactly the same text
68	Commission right of initiative, end of individual member states right of initiative in this field	Inserts Article III-264 of the Constitution	Exactly the same text
69	Border Control, Visas and Asylum	Inserts Article III-265 of the Constitution	Exactly the same text
69a	Common asylum policy	Inserts Article III-266 of the Constitution	Exactly the same text
69b	Common immigration policy	Inserts Article III-267 of the Constitution	Exactly the same text
69c	Burden sharing for the cost of asylum	Inserts Article III-268 of the Constitution	Exactly the same text
69d	Harmonisation of civil law	Inserts Article III-269 of the Constitution + tweak to involve parliaments in use of passerelle	Same text
69e	Harmonisation of criminal law	Inserts Article III-270 of the Constitution (with tweak to emergency brake to allow enhanced cooperation)	Same text

69f	Definition of criminal offences and penalties	Inserts Article III-271 of the Constitution (with tweak to emergency brake to allow enhanced cooperation)	Same text
69g	Crime Prevention	Inserts Article III-272 of the Constitution	Exactly the same text
69h	Powers of Eurojust	Inserts Article III-273 of the Constitution	Exactly the same text
69j	European public prosecutor	Inserts Article III-274 of the Constitution (with automatic enhanced cooperation added)	Same text
69k	Police cooperation	Inserts Article III-275 of the Constitution (with automatic enhanced cooperation added)	Exactly the same text
69l	Europol	Inserts Article III-276 of the Constitution	Exactly the same text
70	Transport	Wording tweak to bring into line with III-236.1 of the Constitution	Same content
71	Exceptions from rules on transport	Inserts Article III-236.2 - of the Constitution	Exactly the same text
75	Codecision on transport	Inserts Article III-240 of the Constitution	Exactly the same text
78	End of special measures for Germany	Inserts Article III-243 of the Constitution	Exactly the same text
79	Deletion of role of EcoSoc	Inserts Article III-244 of the Constitution	Exactly the same text
80	Regulation of sea and air transport - codecision	Inserts Article III-245 of the Constitution	Exactly the same text
85	Infringement of state aid rules	Inserts Article III-165 of the Constitution	Exactly the same text
87	State aid, special measures for Germany	Inserts Article III-167 of the Constitution	Exactly the same text
88	Commission regulations on categories of state aid exempt from normal rules	Inserts Article III-168.4 of the Constitution	Exactly the same text
93	VAT harmonisation - changes to text	Inserts Article III-171 of the Constitution	Exactly the same text
94	Fiscal harmonisation	Inserts Article III-172 of the Constitution	Exactly the same text
95	Harmonisation of administrative measures	Inserts Article III-173 of the Constitution	Exactly the same text
96	Distortions of competition	Inserts Article III-174 of the Constitution	Exactly the same text
97b	EU intellectual property rights	Inserts Article III-176 of the Constitution	Exactly the same text
97c	Euro - wording changed	Inserts Article III-177 of the Constitution	Exactly the same text
99	Broad economic policy guidelines - country criticised cannot vote	Inserts Article III-179 of the Constitution	Exactly the same text

104	Commission can reprimand members directly over deficits	Inserts Article III-184 of the Constitution	Exactly the same text
105	EP only needs to be consulted over ECB powers of financial regulation	Inserts Article III-185 of the Constitution	Exactly the same text
106	Euro bank notes	Inserts Article III-186 of the Constitution	Exactly the same text
107	Abolishing the veto over changing the statute of the ECB	Inserts Article III-187 of the Constitution	Exactly the same text
109	Regulations of the ESCB	Inserts Article III-189 of the Constitution	Exactly the same text
110	Regulations of the ESCB	Inserts Article III-190 of the Constitution	Exactly the same text
111	Measures necessary for the use of the euro	Inserts Article III-191 of the Constitution	Exactly the same text
114	Fiscal discipline in the euro group	Inserts Article III-192 of the Constitution	Exactly the same text
115	Eurogroup	Inserts Article III-195 of the Constitution which in turn inserts the protocol on the euro group	Exactly the same text
115b	Provisions for members whose currency is the euro	Inserts Article III-194 of the Constitution	Exactly the same text
116	Conditions for members with a derogation	Inserts Article III-197 of the Constitution	Exactly the same text
117	Convergence reports and criteria for joining	Inserts Article III-198 of the Constitution	Exactly the same text
118	Coordination with non-euro members	Inserts Article III-198 of the Constitution	Exactly the same text
118b	Exchange rates to be regarded as a matter of common interest	Inserts Article III-200 of the Constitution	Exactly the same text
119	Balance of payments crises	Inserts Article III-201 of the Constitution	Exactly the same text
120	Balance of payments protective measures	Inserts Article III-202 of the Constitution	Exactly the same text
136b	Official role of the social partners and tripartite summit	Inserts Article I-48 of the Constitution	Exactly the same text
137	Laws on working conditions	Inserts Article III-210 of the Constitution	Exactly the same text
138	European social dialogue	Inserts Article III-211 of the Constitution	Exactly the same text
139	European social agreements	Inserts Article III-212 of the Constitution	Exactly the same text

140	Equal pay - guidelines on best practice	Inserts Article III-213 of the Constitution	Exactly the same text
153	Consumer protection	Inserts Article III-235 of the Constitution	Exactly the same text
158	Territorial cohesion added as new objective	Inserts Article III-220 of the Constitution	Exactly the same text
161	Codecision on structural funds	Inserts Article III-223 of the Constitution	Exactly the same text
163	Creation of a European research area	Inserts Article III-248 of the Constitution	Exactly the same text
165	Research coordination	Inserts Article III-248 of the Constitution	Exactly the same text
166	Framework programme funds for space	New 166.5	New article
167	Management of the Framework Programme for Research	Amendments to give effect to Article 252 of the Constitution	Same text broken into three
168	Management of the Framework Programme for Research	Amendments to give effect to Article 252 of the Constitution	Same text broken into three
170	Management of the Framework Programme for Research	Amendments to give effect to Article 252 of the Constitution	Same text broken into three
172b	European Space Policy	Inserts Article III-254 of the Constitution	Exactly the same text + without prejudice
174	Environmental policies	Adds to the dash on "worldwide environmental problems" specific words on climate change	Adds words "in particular the fight against climate change."
175	Passerelle on environmental laws	Inserts Article III-234 of the Constitution	Exactly the same text
176a	Energy policy	Inserts Article III-256 of the Constitution + new reference to "energy solidarity"	Exactly the same text
176b	Sport policy	Inserts Article III-282 of the Constitution	Exactly the same text
176c	Vocational training - EU can adopt legislation	Inserts Article III-283 of the Constitution	Exactly the same text
176d	Culture - EU can adopt incentive measures	Inserts Article III-280 of the Constitution	Exactly the same text
176e	Public health - new powers for EU	Inserts Article III-278 of the Constitution	Exactly the same text
188j	Humanitarian aid - sets EU strategy and creates various new bodies	Inserts Article III-321 of the Constitution	Exactly the same text
188k	Restrictive	Inserts Article III-322 of the Constitution	Exactly the same text

	measures		
188l	International agreements	Inserts Article III-323 of the Constitution	Exactly the same text
188m	Establishing association agreements	Inserts Article III-324 of the Constitution	Exactly the same text
188n	Negotiating treaties - procedure	Inserts Article III-325 of the Constitution (tweaked to specify council negotiates ECHO membership)	Exactly the same text
188o	International monetary agreements	Inserts Article III-326 of the Constitution	Exactly the same text
188p	Liaison with UN and other international bodies	Inserts Article III-327 of the Constitution	Exactly the same text
188q	EU delegations in third countries	Inserts Article III-328 of the Constitution	Exactly the same text
188r	Solidarity / mutual defence clause	Inserts Article III-329 of the Constitution	Exactly the same text
190	European Parliament	Amends 190 to make it into III-330	Same content
191	Laws on European Political Parties and their funding	Inserts Article III-331 of the Constitution	Exactly the same text
192	Parliament can request proposals from the Commission, and it has to explain if it refuses	Inserts Article III-332 of the Constitution	Exactly the same text
195	Role of the EU ombudsman	Inserts Article III-335 of the Constitution	Exactly the same text
196	Parliament annual session	Wording tweak to bring it into line with III-336	Exactly the same text
197	Council right to speak to parliament	Inserts Article III-337 of the Constitution	Exactly the same text
198	European Parliament voting	Wording tweak to bring it into line with III-338	Exactly the same text
199	European Parliament rules of procedure	Wording tweak to bring it into line with III-339	Exactly the same text
201	Motion of censure - Foreign Minister can be sacked independently	Inserts Article III-340 of the Constitution	Exactly the same text
201b	European Council rules of procedure + introduction of voting	Inserts Article III-340 of the Constitution	Exactly the same text
201c	Configurations of the Council of Ministers - decided by QMV	Inserts Article I-24 of the Constitution	Same content

205	New voting system making it easier to pass legislation	Inserts Article I-25 of the Constitution	Exactly the same text + delay for 7 years
207	COREPER + council secretariat	Inserts Article III-344 of the Constitution	Exactly the same text
208	Commission has to explain if it refuses to publish a proposal	Inserts Article III-344 of the Constitution	Exactly the same text
209	Council to consult commission on its structures	Wording tweak to bring it into line with III-346	Exactly the same text
210	Decision on the salaries of the Foreign Minister etc	Inserts Article III-400 of the Constitution	Exactly the same text
211	Appointment of the European Commission	Establishes new system for rotating commissioners between member states	New article
213	Independence of Commissioners	Inserts Article I-26.7 of the Constitution	Exactly the same text
215	President and EP have power over appointments to the Commission when there are vacancies	Inserts Article III-348 of the Constitution	Exactly the same text
217	President allocating responsibilities in Commission except for Foreign Minister	Inserts Article III-348 of the Constitution	Exactly the same text
218	Annual report of the Commission	Wording tweak and move to bring it into line with III-352	Exactly the same text
219	Parliament rules of procedure	Wording change to bring it into line with III-338	Exactly the same text
221	Court of Justice	Wording change to bring it into line with III-353	Exactly the same text
223	Court of Justice	Wording change to bring it into line with III-354	Exactly the same text
224	Consultation of new panel on judicial appointments	Inserts Article III-355 of the Constitution	Exactly the same text
224b	Creation and composition of the new Judicial Appointments Panel	Inserts Article III-357 of the Constitution	Exactly the same text
225	Creation of "specialised courts"	Changes to make it into III-358	Exactly the same text
225a	QMV on the creation of specialised courts	Inserts Article III-359 of the Constitution	Exactly the same text
228	New penalty procedures including lump sum fines	Inserts Article III-362 of the Constitution	Exactly the same text

229A	ECJ can be given jurisdiction over Intellectual Property	Wording change to bring into line with III-364	Same content
230	Changes to the right of standing at the European Court	Inserts Article III-365 of the Constitution	Exactly the same text
231	ECJ striking down acts - process	Wording change to bring into line with III-366	Exactly the same text
232	Action against EU bodies and agencies if they fail to act	Inserts Article III-367 of the Constitution	Exactly the same text
233	Duty to comply with judgements	Wording change to bring into line with III-368	Exactly the same text
235b	Limits on court jurisdiction over suspension of membership rights	Inserts Article III-371 of the Constitution	Exactly the same text
236	ECJ jurisdiction over staff cases	Wording tweak to bring into line with III-372	Exactly the same text
237	ECJ	Wording tweak to bring into line with III-373	Exactly the same text
204b	ECJ jurisdiction over anti-terrorist financing measures and article III-308 (boundary between foreign policy and rest of EU)	Inserts Article III-376 of the Constitution	Exactly the same text
240c	ECJ jurisdiction over police and justice does not include over operational police decisions	Inserts Article III-377 of the Constitution	Exactly the same text
241	Grounds for appeal at court	Inserts Article III-378 of the Constitution	Exactly the same text
242	Technical point about court judgements	Wording change to bring into line with III-379 of the Constitution	Exactly the same text
245	Statute of the European Court of Justice can be now amended by majority vote	Inserts Article III-381 of the Constitution	Exactly the same text
245b	Tasks of the European System of Central Banks	Inserts Article I-30 of the Constitution	Exactly the same text
245c	Appointment of the executive board of the ECB now by QMV	Inserts Article III-382 of the Constitution	Exactly the same text
246	Composition of the European Court of Auditors	Inserts Article I-31 of the Constitution	Exactly the same text

247	Composition of the European Court of Auditors	Edited to bring into line with III-379 of the Constitution	Exactly the same text
248	"Bodies office or agency"	Wording change	Exactly the same text
249	Different types of act	A modified version of I-33	Same content
249a	QMV becomes the "normal legislative procedure"	A modified version of I-34	Same content
249b	Introduces new category of "Delegated European Regulations" and mechanisms for their control	Inserts Article I-36 of the Constitution	Same text
249c	QMV over control of Commission's implementing powers	Inserts Article I-37 of the Constitution	Same text
249d	Use of Recommendations	Inserts Article I-35.3 of the Constitution	Same text
250	Budget not in list of things council cannot amend	Inserts Article III-395 of the Constitution	Exactly the same text
277	Multiannual Financial Framework	Wording change to bring into line with III-410	Exactly the same text
279	QMV on financial management of the budget	Inserts Article III-412 of the Constitution	Exactly the same text
279b	Obligations to third parties	Inserts Article III-413 of the Constitution	Exactly the same text
279c	Sets up regular three way meetings of Council Commission and Parliament to manage the budget	Inserts Article III-414 of the Constitution	Exactly the same text
280	Anti-fraud provisions - can now affect criminal law	Inserts Article III-415 of the Constitution	Exactly the same text
280a	Enhanced cooperation	Inserts Article III-416 of the Constitution	Exactly the same text
280b	Enhanced cooperation	Inserts Article III-417 of the Constitution	Exactly the same text
280c	Enhanced cooperation	Inserts Article III-418 of the Constitution	Exactly the same text
280d	Enhanced cooperation	Inserts Article III-419 of the Constitution	Exactly the same text
280e	Enhanced cooperation	Inserts Article I-44.3 of the Constitution	Same text
280f	Enhanced cooperation	Inserts Article III-420 of the Constitution	Exactly the same text

280g	Enhanced cooperation	Inserts Article III-421 of the Constitution	Exactly the same text
280h	Enhanced cooperation	Inserts Article III-422 of the Constitution	Exactly the same text
280i	Enhanced cooperation	Inserts Article III-423 of the Constitution	Exactly the same text
282	Legal capacity of the Union	Wording change to bring into line with III-426	Exactly the same text
283	Codecision on the staff regulations of the EU	Inserts Article III-427 of the Constitution	Exactly the same text