

The 2007 Reform Treaty or the Renamed EU Constitution

"The rejection of the Constitution is a mistake which will have to be corrected. If the Irish and the Danes can vote Yes in the end, so the French can do it too."

Valéry Giscard d'Estaing, former French President and Chairman of the Convention which drew up the EU Constitution, speech at the London School of Economics, 28 February 2006

"If it's a Yes, we will say 'On we go', and if it's a No we will say 'We continue.'"

Jean-Claude Juncker, Luxembourg Prime Minister, Daily Telegraph, 26 May 2005

"As the train sped on, these two groups, instead of braking the convoy, kept stoking the locomotive, some to enlarge and others to integrate, deaf to the complaints coming from the carriages. Since we had to ask for confirmation from time to time, the recalcitrant peoples were told they had no choice, that it was for their own good, that all rejection or delay would be a sign of egotism, sovereignty, turning inward, hatred of others, xenophobia, even "Le Penism" or fascism. But it didn't work."

Hubert Védrine, former French Foreign Minister, Irish Times, 8 August 2005

Letter from the editors

On the occasion of the European Council meeting in Lisbon in October 2007, the European leaders will agree upon the new “*Reform Treaty*”, the Treaty amending the two basic European treaties, the *Treaty on European Union* and the *Treaty Establishing the European Community*.

On 22 June 2007 the Intergovernmental Conference was given a precise mandate for drafting this new Treaty: “*The European Council agrees that, after two years of uncertainty over the Union's treaty reform process, the time has come to resolve the issue and for the Union to move on. The period of reflection has provided the opportunity in the meantime for wide public debate and helped prepare the ground for a solution.*”

Furthermore, as the “*Reform Treaty*” follows the “*Treaty Establishing a Constitution for Europe*” which had been rejected by popular referendums in France and the Netherlands in 2005, the IGC works under the leitmotiv to save as much as possible of the substance of that initially proposed EU Constitution, given that, to use the words of the Mandate, “*As far as the content of the amendments to the existing Treaties is concerned, the innovations resulting from the 2004 IGC will be integrated into the TEU and the Treaty on the Functioning of the Union ...*”.

This new “*Renamed Constitution*” will thus have a fundamental impact on the future structure, competence and legal order of the “*Union*”. In the light of these developments, EUWatch decided to produce a special edition on the “*Reform Treaty*”, with in-depth analyses and comparisons between it and the rejected Constitution.

The quotations below are meant to highlight the contradictory approaches of European leaders towards this new “*Constitutional Charter of a Community of Law*” and the overall objective of bringing this “*Renamed Constitution*” into force – yet this time without asking the people in referendums.

Hoping that you will enjoy reading our contributions and looking forward to receiving whatever comments or reactions you may care to give us, we remain,

Yours faithfully,

Klaus Heeger, Karoly Lorant

Chief Editors

The 2007 Reform Treaty or the Renamed EU Constitution – A Summary

"The substance of the constitution is preserved. That is a fact."
Angela Merkel, German Chancellor, European Parliament, 27 June 2007

"The good thing about not calling it a Constitution is that no one can ask for a referendum on it."
Giuliano Amato, former Italian Prime Minister and Vice-Chairman of the Convention which drew up the EU Constitution, speech at London School of Economics, 21 February 2007

- 1.) Almost all innovations resulting from the 2004 IGC, including the protocols and declarations, will be integrated into or annexed to the TEU or TFEU.
- 2.) The following exceptions should be mentioned:
 - The word "Constitution" will not be used;
 - The "Union Foreign Affairs Minister" will be called the "High Representative of the Union for Foreign Affairs and Security Policy";
 - The proposed terms "laws" and "framework laws" will be abandoned;
 - No article will mention the symbols of the Union;
 - The article clearly stating the primacy of EU law will be abandoned in favour of a Declaration referring to the existing case law of the Court of Justice, which embodies the principle of primacy.
- 3.) Furthermore,
 - the changes in the EU's legal order as proposed by the Constitution will be inserted into the *Treaty on European Union* and into the *Treaty Establishing the European Community* by the so-called "Reform Treaty" (RT),
 - the *Reform Treaty* will amend the *Treaty on European Union* (TEU) and the *Treaty Establishing the European Community* (TEC);
 - the TEU will keep its present title, but the TEC will be renamed the "*Treaty on the Functioning of the Union*" (TFEU),
 - the word "Community" will be replaced by the word "Union" throughout the treaties, the former and the latter both having a single legal personality,
 - whereas the term "Community" will disappear entirely with the new Treaty, its supranational "communitarian" concept will apply to both the TEU and the TFEU.
- 4.) The entire (new) "Union" will take over legal personality from the Community, the (1st, 2nd and 3rd) pillar structure of the present treaties will be abolished and all Union policies would either actually or potentially be brought within the ambit of the communitarian legal order because:
 - A new Article 32 TEU will be inserted stating that "*the Union shall have legal personality*";

- Article 1, third paragraph, of the *Treaty on European Union* (TEU) will state that “*The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union. It shall replace and succeed the European Community*”;
- The word “Community” will be replaced by the word “Union” throughout the treaties, the latter referring to the “European Union”;
- The two Treaties will have the same legal value (Up to now, Article 47 determined that the TEU was subsidiary to the TEC; henceforth Article 47 TEU will be replaced by Article 25 TEU, the only stipulation being the subsidiarity of CFSP as against the other competences laid down by the treaties);
- The new Title III on the institutions of the Union will be inserted into the TEU and not into the TFU (present TEC).

5.) As proposed in the EU Constitution, the European Council would become a Union institution. As such it “*shall aim to promote its (the Union’s) values, advance its objectives, its interests*” and “*ensure the consistency, effectiveness and continuity of its policies and actions*” (Article 9 TEU). Up to now, the European Council has rather acted “intergovernmentally”. Furthermore, as a Union institution acts of the European Council or its “*failing to act*” will be subject to review by the Court of Justice (Articles 230 ff. TFU)

6.) Finally, the Reform Treaty aims at strengthening enhanced cooperation - beyond the already far-reaching provisions of the Constitution - by moving the provisions dealing with it from Title VII to Title V of the TEU. Explicit reference to the possibility of using enhanced cooperation will be made in those areas of cooperation in criminal matters for which unanimity or “QMV-brakes” are still foreseen.

Giving the EU a Federal State Constitution: Explanatory Notes on the 2007 Renamed Constitutional Treaty - the so-called "Reform Treaty"

By Anthony Coughlan

"The most striking change (between the EU Constitution in its older and newer version) is perhaps that in order to enable some governments to reassure their electorates that the changes will have no constitutional implications, the idea of a new and simpler treaty containing all the provisions governing the Union has now been dropped in favour of a huge series of individual amendments to two existing treaties. Virtual incomprehensibility has thus replaced simplicity as the key approach to EU reform. As for the changes now proposed to be made to the constitutional treaty, most are presentational changes that have no practical effect. They have simply been designed to enable certain heads of government to sell to their people the idea of ratification by parliamentary action rather than by referendum."
Dr Garret FitzGerald, former Irish Prime Minister (Taoiseach), Irish Times, 30 June 2007

The 2004 and 2007 EU Constitutional Treaties

It is useful to refer to the two treaties that have aimed or are aiming to establish an EU Constitution as the 2004 EU Constitutional Treaty and the 2007 Renamed Constitutional Treaty, for that is an accurate description of each of them.

The 2004 Treaty - which was titled the "*Treaty Establishing a Constitution for Europe*" - was **both** a Constitutional Treaty **and** a Constitution. The substantive clause of the first sentence of its first Article read: "*This Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common.*" Clearly this would have been a different European Union from the one currently existing.

The 2007 Treaty is likely to be known as the "*Reform Treaty*" or the Treaty of Lisbon. While being an EU Constitutional Treaty in that it amends and renames the two existing European Treaties, viz. the "*Treaty on (the?) European Union*" (TEU) and the "*Treaty Establishing the European Community*" (TEC), thereby turning these two treaties together into an EU Constitution, it is not in itself that Constitution. The two amended

* N.B. The English-language text of the IGC Mandate agreed last June by the EU Heads of State and Government used the definite article "the" to refer to the "*Treaty on (the) European Union*" (TEU), a title which the IGC Mandate states will remain unchanged after it becomes in effect Part 1 of the Constitution of the new Union which it would establish. Yet the official English-language title of the TEU has up to now been the "*Treaty on European Union*", without the definite article. Use of the article "the" would be justified if the Union were to be given legal personality, but that in turn would mean a change of name, at least in the English text, which the Mandate says should not happen as regards the first amended treaty, the constitutive part of the new EU Constitution.

treaties, one of them renamed, would be that. Together they would have exactly the same legal effect as the 2004 *"Treaty Establishing a Constitution for Europe"* in that they would turn the existing European Union, which is not at present a State, into a supranational European Federation and would make us all real citizens of that Federation, instead of being merely notional or honorary "EU citizens" at present.

The amended *"Treaty on European Union"* would become the constitutive part of the new EU Constitution, the part which would establish a new European Union that would be constitutionally, legally and politically quite different from the present EU, and the *"Treaty on the Functioning of the Union"* – the renamed TEC - would become the Constitution's "implementational" part, which would set out how this new Union would work and its main policies. The effect of this amending and renaming process would be that the Constitution of the new Union would be set out in two treaties instead of one, both having equal legal value.

The EU "constitutional concept" in rhetoric and reality

When the IGC Mandate stated that *"the constitutional concept is abandoned"* and that *"The TEU and the Treaty on the Functioning of the Union will not have a constitutional character"*, or when British Foreign Secretary David Miliband states that the 2007 Constitutional Treaty differs *"in absolute essence"* from the 2004 one, they are seeking to distract attention from the new method of giving the EU the Constitution of a European Federation, without actually calling it a Constitution or without admitting that they are engaged in a Constitution-making process.

Therefore, the IGC Mandate is profoundly misleading in referring to the "constitutional concept" as being a matter merely of legal form and nomenclature: *"The constitutional concept, which consisted of repealing all existing treaties and replacing them by a single text called 'Constitution', is abandoned"*, or, *"The TEU and the Treaty on the Functioning of the Union will not have a constitutional character."*

In reality the essence of the "constitutional concept" consists in bestowing a Federal-style State Constitution on the new European Union which the so-called "Reform Treaty" would have the effect of establishing. British Foreign Secretary Miliband is right in stating that the 2007 Treaty, unlike the 2004 one, does not embody such a Constitution in itself. The so-called "Reform Treaty" would nonetheless have the effect of creating a Constitution by amending and renaming the two existing European treaties and thereby turning them together into an EU Constitution. It is therefore perfectly valid to refer to the 2007 Treaty as being, like the 2004 one, an EU Constitutional Treaty, even if it is not in itself the EU Constitution. Instead, it creates that Constitution indirectly rather than directly.

As everyone knows, the whole purpose of this more roundabout legal path towards an EU Constitution is to avoid using the word "Constitution" in either the text or title of the new treaty. That alarms and upsets people, as V.Giscard d'Estaing and others have acknowledged. The legal-political effect of ratifying the so-called "Reform Treaty" however would be exactly the same as ratifying the 2004 EU Constitutional Treaty which French and Dutch voters rejected in their referendums.

Both treaties, the 2004 one and the 2007 one, would be international treaties that would hand over national State powers to a supranational Federal-type entity. The content of the handover and the extent of the diminution of national sovereignty involved would to all intents and purposes be identical in each. The Open Europe organization, London, estimates that all except 10 of the 250 or so Articles of the new treaty

would be the same in legal substance as its predecessor. They would be mostly identical in wording also, except that the word "Constitution" would be omitted throughout. In other words, 96% of the new text would be the same as the EU Constitution which the peoples of France and the Netherlands rejected.

In face of this strategy of deception it is necessary to explain to people that under the so-called "Reform Treaty", the EU Constitution would become the two amended and renamed constituent Treaties together: the "*Treaty on European Union*" and the "*Treaty on the Functioning of the Union*". It is also desirable that democrats and EU-critics concentrate on explaining to the public the character of the European Federation which the new Treaty would have the effect of establishing, rather than be distracted by the mechanics of the legal process involved. They need to point out that the abandonment of the word "Constitution" the second time around has no practical significance and is designed purely to obfuscate and deceive.

Supporters of the new Treaty will naturally try to make much of the change of name and legal procedure, for they have no other argument to fall back on. That is why democrats need to show that they are playing with words and procedural tricks. V.Giscard d'Estaing, who chaired the Convention which drew up the original Constitution, admits that the purpose of the new constitution-making process is deception: "*All the earlier proposals will be in the new text, but will be hidden and disguised in some way.*" Belgian Foreign Minister Karel de Gucht has said: "*The aim of the Constitutional Treaty was to be more readable; the aim of this treaty is to be unreadable. The Constitution aimed to be clear, whereas this treaty had to be unclear. It is a success.*"

The name and reality of a State Constitution

"Those who are anti-EU are terrorists. It is psychological terrorism to suggest the spectre of a European superstate."
Giorgio Napolitano, President of Italy, Sunday Express, London, 17 June 2007

"The Constitution is the capstone of a European Federal State."
Guy Verhofstadt, Belgian Prime Minister, Financial Times, 21 June 2004

"When we build the euro - and with what a success - when we advance on the European defence, with difficulties but with considerable progress, when we build a European arrest-warrant, when we move towards creating a European prosecutor, we are building something deeply federal, or a true union of states ... The Charter of Fundamental Rights of the European Union must become a charter of rights that is applicable and effective ... I wish this Constitution to be the Constitution of a rebuilt Union, able to reflect its social cohesion, deepen its political unity, express its power externally."
Pierre Moscovici, former French Minister for Europe, Le Monde, 28 February 2002

"We already have a federation. The 11, soon to be 12, member States adopting the euro have already given up part of their sovereignty, monetary sovereignty, and formed a monetary union, and that is the first step towards a federation."
German Foreign Minister Joschka Fischer, Financial Times, 7 July 2000

"... And I am also quite clear that I am advocating a more powerful Europe, also a more closely integrated Europe ... In short I am advocating a United States of Europe."
Guy Verhofstadt, Belgian Prime Minister, speech at the London School of Economics, 21 March 2006

As regards nomenclature, what makes a State Constitution into a Constitution is not that there is a legal document which has the word "Constitution" in its title, but that there is a legal and political act, sometimes though not always expressed in a constitutional document, which constitutes and establishes a State, which maintains that State in being thereafter and which lays down the rules for running it as its Constitution is implemented over time.

In some countries the State Constitution calls itself just that: a Constitution. In Germany the Constitution is called a Basic Law. In other countries the Constitution is a resolution or act of a Constituent Assembly which has the effect of establishing a State and setting up its basic rules and institutions. As is well-known, the United Kingdom itself does not have a written Constitution that one can point to as establishing and maintaining in being the British State. Britain has a Constitution nonetheless, namely the sovereignty of the Crown in Parliament over the territory and citizens of the UK, a Constitution which is expressed and implemented continually in successive Acts of Parliament.

The existing and proposed new European Union

Both the 2004 and 2007 EU Constitutional Treaties aim to constitute or establish quite a new European Union for the first time, in the constitutional form of a supranational Federation, and in each case with exactly the same difference from the existing European Union, which is constitutionally, legally and politically quite a different entity from a State. What we call the European Union today - a name which derives from the 1992 Maastricht *Treaty on European Union* - is merely a general descriptive term for the various areas of cooperation between its 27 Member States: the so-called "Community" area of supranational European law deriving from our continuing membership of the European Community, and the "intergovernmental" areas of foreign policy, justice and home affairs, where Member States still interact on the basis of retained sovereignty.

This is made clear in Article A of the Treaty on European Union (TEU), introduced by the Maastricht Treaty, 1992, which states: *"By this Treaty, the High Contracting Parties establish among themselves a European Union... The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established in this Treaty. Its task shall be to organize, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples."*

The Maastricht *"Treaty on European Union"* did not establish the EU as a corporate entity with its own legal personality. If it had done, it would have been a "Treaty OF Union" rather than "ON" Union. The proposed EU Constitution, which would be brought into being by the 2007 "Reform Treaty" and its amending and renaming the two existing European treaties, would in effect become the *"Treaty OF European Union"*.

"After Nice the forces of political Europe joined others in stoking the fire. The Commission, the Parliament, the federalists, French proponents of integration, the media, all found Nice too 'intergovernmental'. Together, they imposed the idea that Nice was a disaster, that we urgently needed a new treaty. Soon a 'new treaty' wasn't enough. It had to be a 'Constitution', and little did it matter that it was legally inappropriate. When the time came, the result had to be ratified. What tiny national parliament, what people, would then dare to stand in the way of this new meaning of history? The results of the Convention, at first deemed insufficient by maximalists, became the holy word when it was realised that selfish governments might water it down".

Hubert Védrine, former French Foreign Minister, Irish Times, 8 August 2005

The three steps the “Reform Treaty” would take to turn the EU into a supranational European Federal State:

1. GIVING THE EU LEGAL PERSONALITY

The first legal step would be for the treaty to give the new European Union which it would establish its own legal personality and distinct corporate existence for the first time, something that all States possess. This new Union would be thereby endowed with a Federal-type State sovereignty of its own, separate from and superior to that of its present Member States. This would make the new European Union into a Federation rather like the United States of America in that the USA is separate from and constitutionally superior to its constituent states, California, Texas etc. The local states of the USA still retain their own state Constitutions and differ from one another as regards tax levels, social service provisions and issues such as the death penalty and marriage laws, while being subordinate to the US Federal Constitution. So it would be with the new EU. Likewise Federal Germany is separate from and superior to the various German Länder

Giving legal personality to this newly constituted Federal EU would enable it to sign treaties with other States, have its own political President, Foreign Minister - however called - diplomatic corps and Public Prosecutor, and take to itself all the powers and institutions of the existing European Community, which already has legal personality and which now makes the majority of laws for its Member States each year. The Constitutional Treaty would enable the new Union to sign the European Convention of Human Rights just like any other European State, as its 27 component States have already done and as the new Treaty proposes. It would enable the new Union to speak on behalf of its Member States on the United Nations Security Council on agreed foreign and security policy positions, and to have its own UN seat. The latter situation would be analogous to the position of the old USSR, which had its own United Nations seat while some of its constituent republics, Ukraine, Byelorussia etc., had UN seats too.

The symbols of European statehood - flag, anthem, motto and annual holiday - would be removed from the new treaty for, as Irish Taoiseach

Bertie Ahern said after the June 2007 Brussels summit, they annoy a lot of people. But the EU State reality they symbolise would nonetheless come into being. The EU flag, anthem and annual Europe Day would continue in use anyway, as they have done for years, without any legal basis in a European treaty.

To grasp the constitutional significance of this key step to Federal Statehood for the EU it is necessary to realise that what we call the European Union at present does not have legal personality or corporate existence in its own right, and what we term EU "citizenship" does not have supranational legal content. Properly speaking, therefore, there is no such thing as "EU"(European Union) law, only "EC"(European Community) law. That would change with the new treaty.

The first sentence of the first Article of the 2004 *Treaty Establishing a Constitution for Europe* stated: „*This Constitution establishes the European Union.*“ Clearly this would have been quite a new Union in constitutional terms compared with the EU which currently exists. The 2004 EU Constitution would have created a Federal European Union distinct from and superior to its Member States, with its own legal personality and distinct corporate existence in its own right, empowered to interact with the other sovereign States that make up the international community. The proposed 2007 "Reform Treaty" would achieve exactly the same constitutional result by inserting the following amendment in Article 1 of the *Treaty on European Union*: "*The Union shall be founded on the present Treaty and on the Treaty on the Functioning of the European Union. It shall replace and succeed the European Community*". The 2004 Treaty says "*this Constitution establishes*" a new Union; the 2007 Treaty says the new Union "*shall be founded*" on the two amended constituent treaties. The two treaties do exactly the same thing.

If the "Reform Treaty" is ratified, the two treaties that it would amend would have the same legal value as being in effect the joint constituent treaties, and the joint Constitution, of a newly established Federal Union. This would be in contrast to the relative position of these treaties in the current EU, where the "*Treaty Establishing the European Community*"(TEC) has legal primacy over the "*Treaty on European Union*"(TEU).

2. MERGING THE SUPRANATIONAL “COMMUNITY” AND “INTERGOVERNMENTAL” AREAS

The second legal step in giving the constitutional status of statehood to the new EU Federation would be to abolish the distinction between the supranational "Community" and the "intergovernmental" areas - or "pillars" as they are called in EU jargon - of the two existing European treaties, the *Treaty on European Union* (TEU) and the *Treaty Establishing the European Community* (TEC). This would be done by merging the existing European Community with the newly established European Union and giving the latter a unified constitutional structure. Thus all spheres of public policy would come within the scope of supranational EU law-making, either actually or potentially, as in any constitutionally unified State.

One emphasises "*potentially*" because new inter-state treaties would still be required to transfer further national powers to the new Union in the future, or to shift powers from the new Union to its Member States. This is because State sovereignty in a Federation such as the “Reform Treaty” would establish is divided between the Federal level and the provincial state level. A Federal State is normally an entity governed by law. In classical Federations both the Federal level and the provincial state level are constitutionally bound to act within their respective spheres

of competence. Neither level can shift power between them unilaterally, whether bottom up or top down, and the proposed EU Constitution contains provisions of this kind.

The abolition of the separate "Community" and "intergovernmental" pillars of the present EU is significant also because the existing "Community" pillar already establishes a supranational authority over the EU Member States, a step which might be regarded as already constitutional in character in that it gives the existing European Community several State-like features - for example the power to make laws binding on its Member States.

An important aspect of the new Union's constitutional structure would be the provision of the "Reform Treaty" which for the first time would turn the European Council - the quarterly meetings of the EU Heads of State or Government - into one of the institutions of the new Union. This would mean that in constitutional terms these meetings henceforth would no longer be intergovernmental in character. Those taking part, whether collectively or individually, would be legally bound to act with their Union hats on, at least in so far as they took their obligations under the EU Constitution seriously. The Constitutional Treaty lays down that the European Council shall define the general political directions and priorities of the new Union and that as one of the new Union's institutions it "*shall aim to promote its values, advance its objectives, serve its interests*" and "*ensure the consistency, effectiveness and continuity of its policies and actions*" Furthermore, like all the Union's institutions, acts of the European Council, or if it "*fails to act*", would be subject to review by the European Court of Justice (Article 230 ff TEC as applied in the TFU). All spheres of public policy, supranational and national, would thus in principle come within the purview of the EU Heads of State or Government in the European Council as they exercise the political government of the new Union.

This newly constituted Federal European Union would then possess all the key features of a fully developed State except the power to impose taxes and to take its constituent Member States to war against their will. Indeed the obligation on the new Union to raise its "own resources" in order to finance the attainment of its objectives, may be regarded as conferring on it taxation powers, although these would require unanimity to exercise. The new Union would have its own government, with a legislative, executive and judicial arm, its own political President, its own citizenship and citizenry, its own currency, economic policy and revenue, its own human rights code, international treaty-making powers, foreign policy, foreign minister and diplomatic corps, crime and justice code and Public Prosecutor.

All the classical Federal States which have been formed on the basis of power being gradually surrendered by lower constituent states to a higher Federal authority have developed in this way over sometimes quite a long period of time. The USA, Canada, Australia, Switzerland and 19th century Germany are the most obvious examples. Indeed the EU has obtained its powers much more speedily than some of these classical Federations, in the short historical time-span of some 60 years. The difference between these classical Federal States and the new European Union however is that the former were established by distinct national communities with their own languages, histories, cultures and communal solidarities, which gave them a democratic basis, whereas there is no European people or "*demos*" except statistically. The EU elite is seeking to construct a European Federation artificially, from the top down, out of Europe's many nations, peoples and States, without their free consent.

3. TRANSFORMING US FROM NOTIONAL EU CITIZENS INTO REAL ONES

The third legal step would be to make us all real citizens of this new EU State entity, with the normal citizens' duties of obedience to its laws and loyalty to its authority and institutions. A State must have citizens, who are its members and inhabitants, and it cannot exist without them. One can only be a citizen of a State. If the so-called "Reform Treaty" is ratified, the new European Union would thereafter have prime call on its citizens' allegiances as the constitutionally, legally and politically superior entity, over and above their obligations to their national constitutions and laws, with all the implications of that.

At present EU "citizenship" is an entirely notional status attaching to membership of one of the 27 Nation States that make up the current EU/EC. Citizens of the Member States have certain European Community rights attaching to their national citizenship, but they are not citizens of a supranational entity, for one can only be a citizen of a State and neither the Union nor Community is yet that. The so-called "Reform Treaty" would radically alter this position by establishing a real supranational EU Federation which people would be made real and not just notional or honorary citizens of.

Henceforth EU citizenship would entail real rights and duties vis-a-vis the new Union, over and above the rights and duties entailed in national citizenship. Those pushing the EU State-building project hope that voters will not notice the radical character of the constitutional change proposed, for after all does not the "European Union" exist already and are we not already EU "citizens"? These already familiar terms would continue to be used as if nothing had changed, although their legal substance would be transformed fundamentally. One indicator of the change would be that the European Parliament, which at present consists of "*representatives of the peoples*" of the Member States, would under the Constitutional Treaty consist of "*representatives of the Union's citizens*."

The audacious plan of the Euro-integrationists is to turn the citizens of the 27 EU Members States into citizens of a European Federation, with all the implications of that, if possible without their realising it and without permitting them any say in the matter. One indicator of the change would be that the European Parliament, which at present consists of "*representatives of the peoples*" of the Member States, would under the Constitution consist of "*representatives of the Union's citizens*".

That is why the 1992 Maastricht Treaty, which got people to use the terms "European Union" and EU "citizenship" for the first time, was titled a "*Treaty ON European Union*", not **OF** Union. By amending the two existing European treaties, the so-called "Reform Treaty" would effectively bring into being the "Treaty **OF** Union", although it would be called something else. It would in effect be the capstone of the EU Federal State edifice, which its champions hope to set in place nearly sixty years after the 1950 Schuman Declaration, which is commemorated annually on 9 May, Europe Day, proclaimed the European Coal and Steel Community to be the "*first step in the federation of Europe*".

Continuing to use the same terms, "*European Union*" and "*EU citizenship*" for the present EU and the new Union which would be established by the Constitutional Treaty, while radically changing their legal content so that people will not realise what is happening, is fundamental to the stratagem of deception being currently employed.

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Constitutional Treaty No.2: What Will Change?

By Christophe Beaudouin

In spite of the absence of a single European people or of any example of a viable artificial Federation, and in face of its rejection twice in referendums, the European constitutional process continues. Showing extraordinary haste to negotiate, draft, sign and soon ratify a Constitutional Treaty, the Member States are determined to "rescue" the European Constitution rejected by the citizens of France and the Netherlands. On the basis of the mandatory instruction given to themselves(!) through the IGC (intergovernmental conference), we offer this Table comparing key aspects of the current treaties, the first EU Constitution and this proposed "Reform Treaty", which recycles by means of amendments the rejected European Constitution.

	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
Legal personality :	- Recognition only for the "Community" (mainly economic competences)	- Recognition for the European Union itself	- Recognition for the European Union itself
<i>According to the case-law (AETR, 1971) the Member States are replaced in their international relations by the "Community" - now, the "Union"—with its own legal personality. From a legal and diplomatic point of view this is an important step to the building of a European State.</i>			

	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
Primacy of the EU Treaties and laws :	- A protocol N°7 on subsidiarity annexed to the Amsterdam Treaty recalls the existing case law of the Court of Justice	- Explicit recognition of this primacy	- Recognition by means of an annexed declaration which recalls this primacy over the laws of the Member States as set out in the case law of the Court of Justice

*Relevant case law: Costa vs/Enel, 1964; Internationale Handelsgesellschaft, 1970; Simmenthal, 1977; The Greens, 1986; Kreil, 1970.
EU law (treaties, directives and regulations) is becoming a superior law, a federal law, which has primacy over national laws and constitutions.*

	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
Symbols and terminology :	- No provisions	- The flag, anthem, motto, currency and “Europe Day” become Treaty-based symbols of the Union. - The terms “law”, “framework law” and “Minister for Foreign Affairs” to be deleted	- Deletion of mention of symbols and terminology proper to a State

These changes are purely cosmetic, like the abandonment of the word “Constitution” itself.

	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
Institutions			
- <i>Commission :</i>	- 27 commissioners (1 per country) appointed <i>en groupe</i> by QMV. The rule has to be revised before November 2009. - Appointment of the President of the Commission “approved” by the Parliament.	- 27 commissioners (28 with Croatia): one per country until 2014. From 2014, 18 commissioners (2/3 of the Member States). - President of the Commission is chosen by QMV of the European Council and “elected” by the Parliament.	- 27 commissioners (28 with Croatia): one per country until 2014. From 2014, 18 commissioners (2/3 of the Member States). - President of the Commission is chosen by QMV of the European Council and “elected” by the Parliament.

	<ul style="list-style-type: none"> - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of Community legislation - Monitoring, preventive, and controlling functions 	<ul style="list-style-type: none"> - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of the Community legislation - Monitoring, preventive and controlling functions 	<ul style="list-style-type: none"> - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of the Community legislation - Monitoring, preventive and controlling functions
<p><i>By abolishing the link between a Country and a Commissioner, the Commission will become more supranational, looking only to the “European general interest”. Also for every two mandates, around one- third of the Member States will not have any Commissioner for the next five years. This is a potentially serious change for small and middle-sized countries.</i></p>			
<p><i>-European Council</i></p>			
<p><i>The Six-monthly Council presidency system is maintained, but the creation of the office of President is supposed to give visibility to EU action. This new EU political President could enter into competition with the six-monthly Presidency, the President of the Commission and the High Representative for Foreign Affairs and Security Policy, and with the Heads of State or Government themselves. The transformation of the European Council into a Union institution will make the acts and failures to act of the Heads of State and Government subject to review by the Court of Justice.</i></p>			
<p><i>- Council of Ministers :</i></p>	<ul style="list-style-type: none"> - Six-monthly Council presidency. - QMV: 258 votes out of 345. Germany, France, Italy, United Kingdom : 29 votes Spain, Poland : 27 votes 	<ul style="list-style-type: none"> - Six-monthly Council presidency. - Double majority system: QMV reached with 55% of the number of Member States (i.e. 15 out of 27) and 65% of the aggregate EU population. 	<ul style="list-style-type: none"> - Six-monthly Council presidency. - Double majority voting system delayed to 1 November 2014. During a transitional period until 31 March 2017, a country will be allowed to ask for votes according to the rules of Nice. Until 31 March 2017, if a group of States is

	Blocking minority : 91 votes		opposed to a Council measure and approaches a blocking minority, the text cannot be adopted and the negotiations must continue.
<p><i>“The population of the Union” is assessed in aggregate and replaces the current “people of the Member States. This indicates an important change of philosophy. The six-monthly presidency sequence is: Germany, Portugal: 2007; Slovenia, France: 2008; Czech Republic, Sweden: 2009; Spain, Belgium: 2010; Hungary, Poland: 2011. The current system governed by the Treaty of Nice can remain for 10 years.</i></p>			
- <i>European Parliament :</i>	<ul style="list-style-type: none"> - 736 MEP elected for 5 years from 2009. - UK, Italy, France:72 ; Netherlands:25 ; Denmark:13 ; Ireland:12 ; Greece:22 ; Sweden:18 ; Poland:50 ; Czech Republic R:20 ; Roumania:33, etc, and Germany: 99... 	<ul style="list-style-type: none"> - No change in the composition of the EP. - EP now represents globally the “Union’s citizens”, not the different “peoples” of the Member States. - Generalization of the co-decision procedure, the “ordinary legislative procedure”, where the Parliament co-decides for 40 new areas: e.g. the EU budget and own resources, visas, asylum, immigration, comitology, agriculture, services, space, energy, intellectual property etc. 	<ul style="list-style-type: none"> - European Council asked the EP to propose a new composition for the Elections of 2009 - EP represents the « citizens of the Union » - Generalization of the co-decision procedure.
<p><i>Strengthening of the powers of the Parliament, which is not a representative assembly of the peoples of the EU’s nation States anymore, but the Parliament of a State. However, without a European people, this is pretence of democracy. A start to democratizing the EU would have given rights of opposition to and participation in EU legislation to National Parliaments. Under the new arrangements they will only be informed earlier of draft EU legislative acts and will have the right to give an opinion and protest, but not to block any European text. The Court of Justice remains the master of the subsidiarity and proportionality principles, interpreting the treaties to the detriment of the powers of Member States in the interest of increasing Union power.</i></p>			
- <i>Union Minister for Foreign Affairs :</i>	- "Mr CFSP".	- Creation of the office of Union “Minister for Foreign Affairs” (elected by QMV) and an accompanying European diplomatic service	- Creation of the office of “High Representative of the Union for Foreign Affairs and Security Policy”, appointed by QMV of the European Council, with a

		<ul style="list-style-type: none"> - Decisions in CFSP are taken by unanimity, with four important exceptions. By using the “passerelle” clause (modification of the voting system without revision of the treaties) the European Council can unanimously extend QMV and abolish the national veto in the relevant area. 	<p>diplomatic services. He or she will also be a Vice-President of the Commission and President of the Council of Foreign Affairs Ministers.</p> <ul style="list-style-type: none"> - Decisions in CFSP are taken by unanimity, with four important exceptions. By using the “passerelle” clause (modification of the voting system without revision of the treaties) the European Council can unanimously extend QMV and abolish the national veto in the relevant area.
<p><i>Four issues :(1) Foreign Affairs is a sensitive and strategic area and central to the sovereignty and independence of States; (2) There is no real political responsibility of this High Representative except to the European Council); (3) Who will give the main political impulsion to the High Representative’s decisions ?; (4) Who will represent the EU in international relations, the HR or the President of the European Council ?</i></p>			
<p><i>- Court of Justice :</i></p>	<ul style="list-style-type: none"> - Interpretation of the treaties. 	<ul style="list-style-type: none"> - Becomes the Supreme Court of the Union because of the primacy of the EU law and the single legal personality of the EU. - Becomes the supreme judge of human rights in the EU, because of the incorporation of the Charter of Fundamental Rights - Its competences are enlarged by the merging of the pillars (immigration, visas, asylum, movement of people etc., even CFSP) - Decision as to the boundaries of the new exclusive or shared competences are given to the Union through the ECJ - Acts of or failures to act by the European Council are subject to review by the Court, because of the Council’s transformation into a Union institution 	<ul style="list-style-type: none"> - Becomes the Supreme Court, of the Union because of the primacy of the EU law and the single legal personality of the EU. - Becomes the supreme judge of human rights in the EU, because of the incorporation of the Charter of Fundamental Rights. - Its competences are enlarged by the merging of the pillars (immigration, visas, asylum, movement of people etc., even CFSP) - Decision as to the boundaries of the new exclusive or shared competences are given to the Union through the ECJ - Acts of or failures to act by the European Council are subject to review by the Court, because of the Council’s transformation into a Union institution

<i>The Court of Justice is becoming a Supreme Constitutional Court.</i>			
- Enhanced cooperation (reduced number of States)	<ul style="list-style-type: none"> - Threshold of Member States : 8 - Approval by the Parliament in the areas of co-decision. - Establishment by QMV 	<ul style="list-style-type: none"> - Approval by the Parliament in all areas where introduced - Threshold : 1/3 of the Member States (9 with 27 States and 10 with 30 States) - Forbidden in the area of the exclusive competences of the Union, which includes currency policy - With the agreement of the Commission in the area of the “Community acquis” - Extension to Defence, CFSP 	<ul style="list-style-type: none"> - Approval by the Parliament in all areas where introduced - Threshold : 1/3 of the Member States (9 with 27 States and 10 with 30 States) - Forbidden in the area of the exclusive competences of the Union, which includes currency policy - With the agreement of the Commission in the area of the “Community acquis” - Extension to Defence, CFSP
<i>Introduced in 1997 (Treaty of Amsterdam), enhanced cooperation has never been used. Its interest is limited because the rules governing it show that it is relevant only to an exclusively Federalist path of development.</i>			

	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
The competences of the Union			
- Commercial policy :	<ul style="list-style-type: none"> - Shared competence for many areas of the Commercial policy: approval by the Council with unanimity as regards international agreements negotiated by the Commission 	<ul style="list-style-type: none"> - Exclusive competence of the Union - QMV for negotiation and conclusion of international agreements (rare exceptions) 	<ul style="list-style-type: none"> - Exclusive competence of the Union - QMV for negotiation and conclusion of international agreements (rare exceptions)

- <i>Euro and budget deficits</i> :	- The Commission sends a recommendation to the Council if there is a risk of a major budget deficit in a Member State. The Council decides on eventual sanctions.	- The Commission will directly send an opinion to a Member State if it faces a risk of a major budget deficit. The Council could veto this by unanimity.	- The Commission will directly send an opinion to a Member State if it faces a risk of a major budget deficit. The Council could veto this by unanimity.
- <i>Energy</i> :	- No competence for the EU, which intervenes on the basis of the “internal market” flexibility clause (art. 308 TEC) - Unanimity	- Shared competence. - QMV, except for fiscal provisions.	- Shared competence. - QMV, except for fiscal provisions. - Solidarity in energy matters between Member States.
<i>Employment</i> :	- Cooperation between national policies for employment; agreement on “common guidelines”	- Coordination of the definition of global targets for employment in the Union. - Shared competence - Creation of a committee for employment with the representatives of trade unions.	- Coordination of the definition of global targets for employment in the Union. - Shared competence - Creation of a committee for employment with representatives of trade unions.
- <i>Justice and Home Affairs</i> :	- 3rd pillar (intergovernmental) : decisions by unanimity	- Merging of the pillars and the end of unanimity. QMV in particular for : - All the policies in the Area of freedom, security and justice - Visas policy, controls at external borders, suppression of internal borders, integrated system of management of internal borders - Common system of asylum, protection of refugees - Conditions for entry and stay of the nationals of third countries, definition of their rights, illegal immigration,	- Merging of the pillars and the end of unanimity. QMV in particular for : - All the policies in the Area of freedom, security and justice - Visas policy, controls at external borders, suppression of internal borders, integrated system of management of internal borders - Common system of asylum, protection of refugees - Conditions for entry and stay of the nationals of third countries, definition of their rights, illegal immigration,

		readmission agreements - European external border policy and European Public Prosecutor. - Police and judicial cooperation in criminal matters	readmission agreements - European external border policy and European Public Prosecutor. - Police and judicial cooperation in criminal matters - Opt out for the United Kingdom and Ireland
- <i>Research, Space, Cooperation in development and humanitarian aid:</i>	- Shared competences. - Space policy integrated with the Research policy.	- Real shared competences: the intervention of the EU does not prevent Member States having their own policies. - New specific Treaty Article on Space policy.	- Real shared competences: the intervention of the EU does not prevent Member States having their own policies. - New specific Treaty Article on Space policy.
- <i>Free movement of workers</i>	Unanimity	QMV	QMV
- <i>Intellectual property</i>	Unanimity	QMV (except for linguistic affairs)	QMV (except for linguistic affairs)
- <i>Structural funds</i>	Unanimity	QMV	QMV
- <i>Culture</i>	Unanimity	QMV	QMV
- <i>Operation</i>	Unanimity	QMV	QMV

of services of general economic interest		A protocol concerning services of general economic interest is annexed, indicating “the essential role of the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of users”.
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	Current EC/EU Treaties	Rejected Constitutional Treaty	Mandate for the « Reform Treaty »
Fundamental Rights	Competence of national Courts mainly, with a role for the Court of Human Rights in Strasbourg	- Charter of Fundamental rights included in the Constitution, Part II, which gives competence over human and various other rights to the European Court of Justice in Luxembourg.	- Charter included by an Article. It becomes legally binding for States in all areas of EU law, with primacy over national codes of human rights and fundamental freedoms (e.g. religion, family law, property, labour and social law, criminal procedures) Opt-out for the United Kingdom and Poland.

Additional points relating to the “Renamed EU Constitutional Treaty”

- Free trade and competition: A Protocol “on internal market and competition” will be annexed to the Treaties, recalling that Article 3 of TEU includes a “system ensuring that competition is not distorted.”

- In the Title on Environment, amendments will refer to measures “combating climate change”

- Unanimity remains the rule for the following policy areas: Foreign policy with important exceptions, Taxation, Social policy with exceptions, Financial resources for the EU, as well as amendment of the Treaties and the admission of new members to the Union.

Christophe Beaudouin, a French lawyer, works for the IND/DEM Group as Staff Coordinator for the EP Committee on Constitutional Affairs

What the so-called “Reform Treaty”- the Renamed EU Constitutional Treaty - would do

By Anthony Coughlan

The so-called "Reform Treaty" - which is the EU Constitutional Treaty under another name - would do **six important things**. It would do them by amending the two existing European Treaties, which would be called henceforth the "*Treaty on European Union*" and the "*Treaty on the Functioning of the Union*". These two amended treaties would together become the Constitution of the new Federal European Union they would establish.

“The German Ministry of Justice has compared the legal acts adopted by the Federal Republic of Germany between 1998 and 2004 with those adopted by the European Union in the same period. Results: 84 percent come from Brussels, with only 16 percent coming originally from Berlin ... Against the fundamental principle of the separation of powers, the essential European legislative functions lie with the members of the executive ... The figures stated by the German Ministry of Justice make it quite clear. By far the large majority of legislation valid in Germany is adopted by the German Government in the Council of Ministers, and not by the German Parliament ... And so the question arises whether Germany can still be referred to unconditionally as a parliamentary democracy at all, because the separation of powers as a fundamental constituting principle of the constitutional order in Germany has been cancelled out for large sections of the legislation applying to this country ...”

Roman Herzog, former German President and former Member and President of the German Federal Constitutional Court, Welt Am Sonntag, 14 January 2007

1. Giving the European Union the power to make laws binding on us in over 40 more policy areas:

The new Treaty would add to the powers of the Brussels institutions, which already make the majority of our laws, in over 40 new policy areas - including civil and criminal law, public services, energy, transport, tourism, space, sport, civil protection, public health and the EU budget. This would greatly increase the personal power of the 27 politicians on the EU Council of Ministers by enabling them to make further laws for 500 million Europeans, while taking power away from the citizens and national Parliaments that elect those politicians and that have made these laws for their own countries up to now. It would also increase the power of the non-elected Brussels Commission, which has the monopoly of making proposals for European laws to the Council of Ministers, by giving it many new policy areas to propose laws for.

2, Giving more voting power to the Big EU States:

In making European laws in the Council of Ministers the new Treaty would increase the voting weight of the bigger EU States, in particular Germany, and reduce the relative weight of middle-sized and smaller EU States.

3. Removing the right of each Member State to have a permanent EU Commissioner:

The new Treaty would deprive Member States of the right to have a representative at all times on the Brussels Commission, the body which proposes European laws. Big States as well as small ones would lose a permanent Commissioner, but the economic and political weight of the former makes them inherently better able to defend their interests without such representation.

4. Making this into a self-amending Treaty:

The new Treaty would contain a mechanism to enable majority voting for European law-making to be extended to new policy areas by agreement among Member State governments, without need for new treaties or treaty ratification.

5. Giving the EU final power to decide our rights:

The new treaty would make the EU Charter of Fundamental Rights legally binding on the EU Member States and their citizens in all areas of European law, which now makes up the majority of new laws we must obey each year. This would give the 27 judges of the European Court of Justice in Luxembourg the final decision on the wide range of human rights issues covered by the Charter, as against national Constitutions and Supreme Courts or the European Court of Human Rights in Strasbourg. This would greatly extend the power of the Court of Justice, which one of its judges once characterised as "*a court with a mission*" - that mission being to extend the powers of the EU as widely as possible by means of the case law of a Court that has become notorious for "competency creep".

The Charter would apply in all areas of EU law-making, whether by the Brussels institutions or by Member States when implementing European laws. It would open the possibility of uniform standards being imposed over time across the new Union as regards sensitive human rights areas where there are significant national differences at present: for example, rules of evidence in court, trial by jury, censorship law, the legalisation of hard drugs and prostitution, rights attaching to State churches, conscientious objection to military service, euthanasia, the right to life, succession, rights to property, family law, the rights of children and the elderly etc. It could lead to jurisdictional disputes between the EU Court of Justice in Luxembourg and the Court of Human Rights in Strasbourg, for the EU court would have supremacy in any case of conflict between the two as to what their respective powers are.

Some trade unions have supported the Fundamental Rights Charter in the belief that it would strengthen their rights to collective bargaining and strike action, thinking that European law would override national law in such areas to their advantage. This is an illusion. The new treaty would provide that the Charter of Fundamental Rights is to be interpreted in the light of the *Explanations* set out in an accompanying Declaration (No.12 in the 2004 Constitutional Treaty). These *Explanations* state that "*the modalities and limits for the exercise of collective*

action, including strike action, come under national law and practices”.

Moreover the new treaty would provide that the exercise of the rights and freedoms recognised by the Charter of Fundamental Rights may be limited *"to meet objectives of general interest recognised by the Union"*. This means that the rights set out in the Charter would not be so fundamental after all. Giving the EU Court of Justice final competence to decide our rights over the large area of public policy covered by the EU is more about power than rights. Human rights standards in the EU Member States are not so defective that they require a supranational EU Court to lay down a superior norm or impose a common standard across the EU States and their Constitutions.

6. Giving the EU the Constitution of a supranational European Federal State, of which we would all be made real citizens for the first time, legally bound to give that Federation our prime allegiance:

Constitutionally and politically, the most important thing which the new treaty would do would be to give the legally new European Union which it would establish the constitutional form of a supranational European Federation for the first time - in effect a State. Instead of the EU being coterminous with its 27 Member States as at present, the treaty would establish a legally new Union that would be constitutionally separate from and superior to its Member States as is normal in any Federation. This new Union would have its own government, legislature, executive and judiciary, its own political President, Foreign Minister, diplomatic corps, Public Prosecutor and right to sign international treaties with other States, its own citizenry and citizenship, its own human rights code, its own currency and economic policy, and indeed its own flag, anthem and annual official holiday, although the latter three symbols of statehood are to be dropped from the new treaty, while they will continue in use without a legal base, as they have done for decades.

The relation between the new `Union which the “Reform Treaty” would bring and the 27 Member States would be like that between the Federal USA and California or Massachusetts, or like Federal Germany in relation to Bavaria, Saxony and the other German Länder. We would then all be made real citizens of this new EU Federation rather than notional or honorary “European citizens” as at present; for one can only be a citizen of a State.

This would be the most important step to affect the various EU States since they first came into being as members of the international community, for it would be a formal end to their national independence and democracy and their character as sovereign States. It would announce to the world that henceforth they would form part of another State, a Federal European Union. They would have become part of a new country called "Europe".

It is these provisions which give the so-called "Reform Treaty" the character of an EU Constitutional Treaty which, by amending and renaming the two existing European treaties, would constitute or establish a legally quite new European Union and give it a Constitution. This constitutional revolution in both the EU and its Member States would be accomplished by (a) giving the EU legal personality and its own corporate existence for the first time and making it separate from and superior to its Member States; (b) merging the supranational and “intergovernmental” areas to give the new Union a unified constitutional structure that would be capable of exercising all powers of government either actually or potentially; and (c) transforming national citizens into real EU citizens with the normal citizen’s duty of giving obedience to

the laws of the new Union and loyalty to its authority and institutions as having primacy over their national Constitutions and laws like in any Federation. (For more details on this point see the article, "Giving the EU a Federal State Constitution", by the same author in this issue of EUWatch)

LET THE PEOPLE DECIDE

"Of course there will be transfers of sovereignty. But would it be intelligent to draw the attention of public opinion to this fact?"

Jean Claude Juncker, Prime Minister of Luxembourg, Daily Telegraph, 3 July 2007

"Referendums make the process of approval of European treaties much more complicated and less predictable ... I was in favour of a referendum as a prime minister, but it does make our lives with 27 Member States in the EU much more difficult. If a referendum had to be held on the creation of the European Community or the introduction of the euro, do you think these would have passed?"

Commission President Jose M. Barroso, EUobserver, 6 February 2007

It is no small thing to attempt to turn the citizens of the 27 Member States of the EU into real and not just notional citizens of a supranational "United States of Europe" which is separate from and superior to their own national States and Constitutions. It can only be done by deception and bullying - and above all by avoiding referendums that would enable Europe's peoples to decide themselves whether they wish for such a fundamental constitutional change.

Those pushing the new treaty hope that we will thereby have real citizens' obligations of obedience, solidarity and loyalty to the new European Union imposed upon us without our knowing or realising that this is happening. By such sleight of hand - doubtless long concerted by the international European Movement and its allies - are we to be made real citizens of a real supranational European Federation that has primacy over our own national States. Simultaneously the latter would be reduced to the status of provinces or regions of the new Union, similar to the local states of the USA or Federal Germany's Länder. If the deception succeeds, Europe's peoples will have had their national democracy and national independence filched from them without their scarcely noticing.

"People say 'We cannot vote again.' What is this joke? We have to vote again until the French see what the stakes are."
Valéry Giscard d'Estaing, former French President and Chairman of the Convention which drew up the EU Constitution, Agence Presse, 12 June 2006

If the European and national elites who are pushing this treaty should succeed, one can confidently predict that the popular reaction will be all

the more explosive when people across Europe realise what has been done.

But they must not succeed. The monstrous deception must and can be exposed. The EU elites must not get away with their plan to pretend that they are not giving the EU the Constitution of a Federal State because they no longer call it that, when it patently is such. They must not succeed in their plan to get around the rejection of the Constitution by the peoples of France and the Netherlands by attempting to ratify a treaty which has essentially the same effect, by calling it something else and avoiding holding referendums on it.

Europe's peoples alone have the right to decide whether they should be made citizens of an EU State or not ... Whether they should agree to abandoning their own national democracy and national independence ... Whether they should hand over massive new powers to the non-elected Brussels Commission and to the 27 politicians on the EU Council of Ministers who now make most of our laws. Democracy requires that there be a referendum on this Renamed EU Constitutional Treaty in every EU country.

"At every stage of this craze, from 1996 until 2005, a more reasonable choice could have been made, a calmer rhythm could have been adopted, that would not have deepened the gap between the elites and the population, that would have better consolidated the real Europe and spared us the present crisis. But in saying this, I underestimate the religious fervour that has seized the European project. For all those who believed in the various ideologies of the second half of the 20th century, but survived their ruin, the rush into European integration became a substitute ideology."

Hubert Védrine, former French Foreign Minister, Irish Times, 8 August 2005

Comparison of the 2007 Reform Treaty[†] with the earlier EU Constitution

By Klaus Heeger

NEW COMPETENCES OF THE UNION ACCORDING TO THE “TREATY ESTABLISHING A CONSTITUTION FOR EUROPE” AND THE “DRAFT REFORM TREATY” AS OF JULY 2007

Including

- New Union legislative and non-legislative competences;
- New Union tasks and objectives;
- New Union institutions, bodies, offices and agencies;
- New legal status or new formal competences of Union institutions, bodies, offices or agencies;
- Changes from unanimity to qualified majority voting

“The proposed draft Constitution does not contain the possibility of restoring individual competencies to the national level as a centralisation brake. Instead, it counts on the same one-way street as before, heading towards ever greater centralisation ... Most people have a fundamentally positive attitude to European integration. But at the same time, they have an ever increasing feeling that something is going wrong, that an untransparent, complex, intricate, mammoth institution has evolved, divorced from the factual problems and national traditions, grabbing ever greater competencies and areas of power; that the democratic control mechanisms are failing: in brief, that it cannot go on like this.”

Roman Herzog, former German President and former President of the German Federal Constitutional Court, Welt Am Sonntag, 14 January 2007

[†] The *Draft Reform Treaty* in its version dated 23 July 2007 is compared with the changes already proposed by the *Treaty Establishing a Constitution for Europe*

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Explanatory notes

The provisions in **BLACK** are the provisions proposed by the EU Constitution which will be **MAINTAINED**.

The provisions in **BLUE** are the provisions proposed by the EU Constitution which will be **SCRAPPED/AMENDED**.

The provisions in **RED** are the provisions proposed by the EU Constitution to which further competences/provisions are **ADDED in the Reform Treaty**.

A. Tables of comparison

"One must act 'as if' in Europe: as if one wanted only very few things, in order to obtain a great deal. As if nations were to remain sovereign, in order to convince them to surrender their sovereignty. The Commission in Brussels, for example, must act as if it were a technical organism, in order to operate like a government ... and so on, camouflaging and toning down. The sovereignty lost at national level does not pass to any new subject. It is entrusted to a faceless entity: NATO, the UN and eventually the EU. The Union is the vanguard of this changing world: it indicates a future of Princes without sovereignty. The new entity is faceless and those who are in command can neither be pinned down nor elected ... That is the way Europe was made too: by creating communitarian organisms without giving the organisms presided over by national governments the impression that they were being subjected to a higher power. That is how the Court of Justice as a supra-national organ was born. It was a sort of unseen atom bomb, which Schuman and Monnet slipped into the negotiations on the Coal and Steel Community. That was what the 'CSC' itself was: a random, mixture of national egotisms which became communitarian. I don't think it is a good idea to replace this slow and effective method - which keeps national States free from anxiety while they are being stripped of power - with great institutional leaps... Therefore I prefer to go slowly, to crumble pieces of sovereignty up little by little, avoiding brusque transitions from national to federal power. That is the way I think we will have to build Europe's common policies..."

Italian Prime Minister Giuliano Amato, before he became Vice-President of the EU Constitutional Convention, interview with Barbara Spinelli, La Stampa, 13 July 2000

NEW UNION COMPETENCES

CONSTITUTION

2007 TREATY

<i>Legislative competences (B.I)</i>	<i>Other competences (B.II-B.IV)</i>	<i>Total: (B.I-IV)</i>	<i>Legislative competences (B.I)</i>	<i>Other competences (B.II-IV)</i>	<i>Total: (B.I-IV)</i>
31	74	<u>105</u>	32 [‡]	73 [§]	<u>105</u>

NEW DECISION-MAKING BY QMV

CONSTITUTION

2007 TREATY

<i>Existing legal bases - from unanimity to QMV (B.V.I)</i>	<i>New legal bases - from no legal base to QMV (B.V.2)</i>	<i>Total: (B.V)</i>	<i>Existing legal bases - from unanimity to QMV (B.V.I)</i>	<i>New legal bases - from no legal base to QMV (B.V.II)</i>	<i>Total: (B.V)</i>

[‡] Compared to the Constitution, the new competence of “combating climate change” in the area of environment is added (B.I.10)

[§] Compared to the Constitution, the symbols (B.III.2a) and the flexibility clause applicable to CFSP (B.III.3a) are deleted, whereas energy in the field of economic policy (B.III.17) is added

20

41

61

19**

43††

62

NEW “PASSERELLES”

CONSTITUTION

2007 TREATY

8

8 (-I^{‡‡})

** Regarding the Court's competence in intellectual property rights protection, the Council shall continue to act by unanimity according to the 2007 Treaty (B.V.1.16a). Furthermore, compared to the Constitution, Member States will dispose of a stronger “emergency brake” regarding the use of QMV in the field of social security of migrant workers (see B.V.1.3)

†† The new QMV legal bases are “energy” in the field of economic policy (B.V.2.12) and “combating climate change” in the area of environment (B.V.2.15)

‡‡ Judicial cooperation in civil matters relating to family law (already now in articles 65, 67 TEC): The 2007 Treaty proposes that the use of this passerelle can be vetoed by a national parliament (B.VI.2a)

B. Comparison between the proposed Constitution and the 2007 Reform Treaty

"The substance of what was agreed in 2004 has been retained. What is gone is the term 'constitution'."

Dermot Ahern, Irish Foreign Minister, Daily Mail Ireland, 25 June 2007

B.I) New or extended legal bases for adoption of legislative acts (~~laws regulations or framework laws directives~~)

	New legal basis in the Constitution	Subject	Remarks	Decision-making	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-47(4)	Citizens' initiative	At least one million citizens may "invite" the Commission to submit proposals for a legal act. Legislative acts lay down detailed rules	QMV	To be inserted into new Article 8B(4) TEU
2	Article I-54(4)	Own resources system	Legislative act shall lay down implementing measures of the Union's own resources system	QMV	To be inserted into Article 269, last subparagraphs TFU (TEC)
3	Article I-55(2)	Multiannual financial framework	Legislative act shall lay down the multiannual financial framework	Unanimity Note: Passerelle gives possibility of moving to QMV	To be inserted into Article 272bis(2) TFU (TEC)
4	Article III-122	Services of general economic interest	Legislative acts establish principles and conditions under which services of general economic interest shall operate	QMV	To be inserted into Article 14 TFU (TEC) and into a special protocol

5	Article III-125(2)	Free movement of EU citizens	Legislative acts for the free movement of citizens concerning passports, identity cards, residence permits, social security or protection Note: Article 18(3) excludes decision-making on passports, identity cards, residence permits or to social security or social protection	Unanimity	To be inserted into Article 18 TFEU (TEC)
6	Article III-127	Diplomatic and consular protection	Legislative act may establish measures necessary to facilitate such protection	QMV	To be inserted into Article 17(ter) TFEU (TEC)
7	Article III-160	Fight against terrorism (by financial means)	Legislative acts define administrative measures for capital movements and payments, such as the freezing of funds, financial assets or economic gains of natural or legal persons, groups or non-State entities	QMV	To be inserted into Article 67bis TFEU (TEC)
8	Article III-176	Intellectual property	Legislative acts to create European intellectual property rights to provide uniform intellectual property rights protection Legislative act to establish language arrangements	QMV Unanimity	To be inserted into Article 97b TFEU (TEC)
9	Article III-191	Use of the Euro	Legislative acts open the general possibility of laying down measures for the use of the Euro Note: Article 123(4) TEC only refers to legislative acts “necessary for the rapid introduction of the ECU”	QMV	To be inserted into Article 111 TFEU (TEC)
10	Article III-233(1d)	Environment Climate change	New competence proposed by the 2007 Treaty in the area of environment : Replacement of III-233(1d) by adding “..., and in particular combating <u>climate change</u> .”	QMV Note: Unanimity for measures affecting choice between different energy sources and energy supply - but passerelle gives possibility of moving to QMV	To be inserted into Article 174 TFEU (TEC)

11	Article III-251(4)	European research area	Legislative acts shall establish measures for the implementation of the European research area	QMV	To be inserted into Article 166(5) TFU (TEC)
12	Article III-254(2)	European Space Policy	Legislative acts shall establish a European space programme	QMV	To be inserted into Article 172b(2) TFU (TEC)
13	Article III-256(2-3)	Energy policy	Legislative acts to ensure an energy market and energy supply; to promote efficiency, saving and new and renewable forms of energy	QMV Note: Unanimity when measures are of fiscal nature	To be inserted into Article 176A(2) TFU (TEC)
14	Article III-265(1d)	Border controls	Legislative acts to establish a general integrated management system for external borders	QMV	To be inserted into Article 69(2d) TFU (TEC)*
15	Article III-267(4)	Immigration: Integration of immigrants	Legislative acts to promote the integration of third country nationals (no harmonisation of laws)	QMV	To be inserted into Article 69B(4) TFU (TEC)*
16	Article III-269(1-2)	Judicial co-operation in civil matters	Legislative acts for <i>approximation</i> of procedural and substantive laws of the Member States (paragraph 1) Legislative acts for access to justice, alternative methods for dispute settlement, training of the judiciary and judicial staff (paragraph 2) Note: Articles 65, 67(5) TEC foresee QMV, but III-269 widens Union competence by explicitly mentioning the approximation of laws (paragraph 1) and by enlarging the list of paragraph 2	QMV Note: Unanimity when legislative acts concern family law- but a passerelle gives the possibility of moving to QMV	To be inserted into Article 69D(1-2) TFU(TEC)*
17	Article III-270(2)	Judicial co-operation in criminal matters	Harmonisation of <i>procedural</i> criminal law Note: Article 31(1e) TEU allows approximation of substantive criminal law and penalties; Article III-270(2) refers to procedural criminal law	QMV Note: But emergency brake gives Member States possibility of veto	To be inserted into Article 69E(2) TFU (TEC)*

* *The protocols on the position of the United Kingdom and Ireland and on the position of Denmark are amended but remain in force*

				Note: Passerelle in paragraph 2d can add further aspects of criminal procedure to the list	
18	Article III-271(1)	Judicial co-operation in criminal matters	<p>Definition of crimes and sentences: Legislative acts to lay down minimum rules concerning the definition of criminal offences and sanctions</p> <p>Note: The scope of Article 31(1e) TEU is herewith enlarged. Furthermore, III-272(2) (flexibility clause) allows general approximation if needed</p>	<p>QMV</p> <p>Note: But emergency brake in paragraph 3 gives Member States the possibility of veto</p>	To be inserted into Article 69F(1) TFU (TEC) *
19	Article III-272	Judicial co-operation in criminal matters	<p>Crime prevention: Legislative acts to support crime prevention (no harmonisation of laws)</p>	QMV	To be inserted into Article 69G TFU (TEC) *
20	Article III-273(1, 2 nd subpar.)	Judicial co-operation in criminal matters	<p>Eurojust: Legislative acts to determine arrangements for evaluation of Eurojust's activities</p>	QMV	To be inserted into Article 69H(1) TFU (TEC) *
21	Article III-274(1)	Judicial co-operation in criminal matters	<p>European Public Prosecutor: Legislative act to establish a European Public Prosecutor's Office responsible for investigating, prosecuting and bringing to judgment criminals</p> <p>Note: Passerelle in paragraph 4 can extend the Prosecutor's powers</p>	QMV	To be inserted into Article 69I(1) TFU (TEC) *

* *The protocols on the position of the United Kingdom and Ireland and on the position of Denmark are amended but remain in force*

22	Article III-276(2)	Judicial cooperation in criminal matters	Europol: Legislative acts determine arrangements for scrutiny of Europol's activities	QMV	To be inserted into Article 69J(2) TFU (TEC) *
23	Article III-278(4c,d)	Health	Legislative acts shall set high standards for medical products and measures for monitoring, early warning and combating of serious cross-border threats to health	QMV	To be inserted into Article 176E(4) TFU (TEC)
24	Article III-278(5)	Health	Legislative acts to establish incentive measures to protect human health, to combat major health scourges, to protect public health regarding tobacco and alcohol abuse	QMV	To be inserted into Article 176E(5) TFU (TEC)
25	Article III-281(2)	Tourism	Legislative acts to complement Member States actions to promote competitiveness of Union tourism undertakings (no harmonisation of laws)	QMV	To be inserted into Article 176G(2) TFU (TEC)
26	Article III-282(3a)	Sport	Legislative acts to establish incentive measures for the promotion of sports (no harmonisation of laws)	QMV	To be inserted into Article 176B(1-2,4) TFU (TEC)
27	Article 284(2)	Civil protection	Legislative acts to encourage cooperation to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters (no harmonisation of laws)	QMV	To be inserted into Article 176H(2) TFU (TEC)
28	Article III-285(2)	Administrative cooperation	Legislative acts to support the efforts of Member States to improve their administrative capacity to implement Union law (no harmonisation of laws)	QMV	To be inserted into Article 176I(2) TFU (TEC)
29	Article III-315(2)	Common commercial policy	Legislative acts to define the framework for implementing the common commercial policy	QMV	To be inserted into Article 188 C(2) TFU (TEC)

30	Article III-321(3)	Humanitarian aid	Legislative acts to define the framework within which the Union's humanitarian aid operations shall be implemented	QMV	To be inserted into Article 188J(3) TFU (TEC)
31	Article III-321(5)	Humanitarian aid: European Volunteer Corps	Legislative acts to define the rules and procedures for the operation of the Volunteer Corps	QMV	To be inserted into Article 188J(5) TFU (TEC)
32	Article III-398	European Union Administration	Legislative acts to establish provisions for an open, efficient and independent European administration Note: Hitherto staff regulations are laid down by Council regulation on the basis of Article 283 TEC (III-427). III-398 goes beyond this and constitutes a legal base for adopting legislative acts	QMV	To be inserted into Article 254bis(2)TFU (TEC)

B.II) New institutions, bodies, offices, agencies and corps of the Union

“The proposed draft Constitution does not contain the possibility of restoring individual competencies to the national level as a centralisation brake. Instead, it counts on the same one-way street as before, heading towards ever greater centralisation ... Most people have a fundamentally positive attitude to European integration. But at the same time, they have an ever increasing feeling that something is going wrong, that an untransparent, complex, intricate, mammoth institution has evolved, divorced from the factual problems and national traditions, grabbing ever greater competencies and areas of power; that the democratic control mechanisms are failing: in brief, that it cannot go on like this.”

Roman Herzog, former German President and former Member and President of the German Federal Constitutional Court, Welt Am Sonntag, 14 January 2007

	New legal basis in the Constitution	Subject	Remarks	Decision-making	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-22	European Council President (see B.IV.1 for the European Council becoming an official institution)	European Council elects its President for a term of two and a half years, renewable once	QMV	To be inserted into Article 9B(5) TEU
2	Article I-28	Foreign Affairs Minister (FAM) To be renamed: High Representative of the Union for Foreign Affairs and Security Policy	European Council, with the agreement of the President of the Commission, appoints the Union Minister for Foreign Affairs	QMV	To be inserted into Article 9E TEU
3	Article III-296(3)	European Foreign Service (European	Council decides on establishment of EFS, organisation and functioning	Unanimity	To be inserted into Article 13b(3) TEU

		External Action Service)			
4	Article III-321(5)	European Volunteers Corps (for humanitarian aid)	Legislative acts to define the rules and procedures for the operation of the Corps (for its establishment see above B.I.31)	QMV	To be inserted into Article 188J(5) TFU (TEC)
5	Article III-357	Judicial appointment panels to give opinion on judges	Council establishes the panel's operating rules and appoints its members	QMV	To be inserted into Article 224(bis) TFU(TEC)
6	Article I-41(3), III-311	European Defence Agency	The Council decides on the Agency's statute, seat and operational rules Note: A European Defence Agency has already been established by Council decision on 16.06.2004	QMV	To be inserted into Article 27(3) TEU
7	Article III-195, III-198(2.2), Protocol No. 12	Euro-Council	The Ministers of the Eurozone Member States shall meet informally Note: The informal Euro-Council is now officially mentioned in the Constitution		To be inserted into Article 115 TFU (TEC) and into Protocol No 3
8	Protocol No. 12	President of the Eurozone countries	The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years Note: Luxemburg Prime Minister Jean-Claude Juncker has already been appointed Eurozone-Council President	Simple majority of the Eurozone Member States	To be inserted into Article 115 TFU (TEC) and into Protocol No 3, Article 2
9	Article III-274(1)	European Public Prosecutor	Legislative act establishes a European Public Prosecutor's Office in order to combat crimes affecting the financial interests of the Union	Unanimity	To be inserted into Article 69 I TFU (TEC)

			The European Council may decide to extend the powers of the European Public Prosecutor's Office	Unanimity	
10	Article III-328	Delegations of the Union	<p>Delegations of the Union in third countries and at international organisations shall represent the Union</p> <p>They shall be placed under the authority of the FAM/High Representative</p> <p>Note: Now officially mentioned in the Constitution - so far only a reference to <i>Commission</i> delegations in Article 20 TEU)</p>		To be inserted into Article 188Q TFEU (TEC)

B.III) Other new competences of the Union

"We decide on something. We leave it lying around and wait and see what happens. If no one kicks up a fuss, because most people don't know what has been decided, we continue step by step until there is no turning back."

Luxembourg Prime Minister Jean-Claude Juncker, The Economist, 24 September 2004

	New legal basis in the Constitution	Subject	Remarks	Decision-making	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-3	Many new objectives of the Union	Adding objectives means adding competence, even without an explicit legal basis in the treaties (e.g. with the help of the flexibility clause – I-18)		To be inserted into Article 3 TEU
2	Article I-7	General legal personality of the Union	So far, only the Community (281 TEC), not the European Union, has legal personality. The new Article 32 TEU will state that the entire “Union” shall have legal personality (see general remarks at A.3)		To be inserted into Article 32 TEU
2a	Article I-8	Symbols of the Union	Deleted		
3	Article I-9 (III-325(6))	Accession to the ECHR	By acceding to the ECHR, the Union is expected to gain more legislative and judicial responsibilities and thus competences	QMV (according to III-325(6))	To be inserted into Article 6(2) TEU
3a	Article I-18	Flexibility clause also applicable to CFSP	Deleted		To be inserted into Article 308(4) TFU (TEC)
4	Article I-32(5)	Committee of the Regions	New clause: Regular revision of CoR and ECOSOC rules by Council decision	QMV	To be inserted into Article 256bis(1) TFU

		Economic and Social Committee			(TEC)
5	Article I-36	Delegated regulation as a new legal act	A new category of legal acts: the Commission can be empowered by a legislative act to adopt delegated European regulations to supplement or to amend certain non-essential elements of a law or framework law Note: It is not defined what has to be considered as “essential”	QMV	To be inserted into Article 249B TFU (TEC)
6	Article I-40(7), III-300(3)	Passerelle for CFSP	Decision of the European Council authorising the Council to act by a qualified majority in the area of CFSP Note: This does not apply to decisions having military or defence implications	Unanimity	To be inserted into Article 17(3) TEU
7	Article I-41(3)	CSDP: Capabilities of the Member States	Member States shall make capabilities available to the Union		To be inserted into Article 27(3) TEU
8	Article I-41(7)	CSDP: Mutual assistance clause	In cases of armed aggression against a Member State, the other Member States have an obligation of aid and assistance		To be inserted into Article 27(7) TEU
9	Article I-43	Solidarity clause	In cases of terrorist attacks or natural or man-made disasters, the Union and Member States act jointly in a spirit of solidarity. The Union shall mobilise all instruments at its disposal, including the military resources made available by the Member States (see I-41(3))		To be inserted into Article 188R TFU (TEC)
10	Article I-51	Protection of	Legislative acts lay down rules relating to the		To be inserted into

		personal data	protection of individuals Note: Although I-51 corresponds to 286 TEC, its scope of application will be widened since it will also apply to those areas of JHA which will be effectively moved from the 3rd to the 1st pillar (cooperation in criminal matters).		Article 24 TEU and into a special declaration
11	Article I-52(3)	Dialogue with Churches	New commitment which will create new competences		To be inserted into Article 15(3) TFEU (TEC)
12	Article I-57	Dialogue with neighbouring states	New commitment which will create new competences		To be inserted into Article 7bis TEU
13	Article I-60(2)	Agreement on the withdrawal from the Union of a Member State	The Union shall negotiate and conclude an agreement with a Member States that wishes to withdraw	QMV (among the remaining states)	To be inserted into Article 35(2) TEU
14	Entire PART II	Charter of Fundamental Rights	By creating binding fundamental rights and freedoms, the Union will gain more legislative and judicial responsibilities and thus competences (to guarantee their protection and to meet respective entitlements) which will have a profound impact on national legislatures and judiciaries		The statement that the Charter shall be legally binding will be inserted into Article 6(1) TEU By means of a Declaration(No 51) and Protocol on UK(No 7), the Charter shall not be wholly binding for Poland and the UK
15	Article III-152	Customs cooperation	Legislative acts shall establish measures to strengthen customs cooperation between Member States and between them and the Commission Note: The scope of application has been widened because 135	QMV	To be inserted into Article 27bis TFEU (TEC)

			TEC shall not concern national criminal law or the national administration of justice. This exclusion will be deleted		
16	Article III-167(1c)	State aid: Repeal of East German exemptions	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision according to which state aid granted to East Germany is compatible with the internal market	QMV	To be inserted into Article 87(2c) TFU(TEC)
17	Article III-180	Economic policy: Energy	New competence proposed by the 2007 Treaty in the area of economic policy : Measures in case of severe difficulties in the supply of certain products: A reference to the spirit of solidarity between Member States and to the particular case of energy will be inserted (Council decision)	QMV	To be inserted into Article 100(1) TFU (TEC)
18	Article III-243	Transport: Repeal of East German exemptions	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision allowing measures compensating for the economic disadvantages caused by the division of Germany	QMV	To be inserted into Article 78 TFU (TEC)
19	Article III-194(1a-b)	Eurozone members: Strengthened budgetary and economic coordination	Council decides measures for Eurozone Member States to strengthen the coordination and surveillance of their budgetary discipline and to set out economic policy guidelines for them	QMV Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 114(1a-b) TFU (TEC)
20	Article III-196(1-2)	Eurozone members: Common representation in international organisations	Council decides on common positions on matters of particular interest for economic and monetary union within international financial institutions such as the IMF, World Bank, etc. and at international conferences	QMV Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 115bis(1-2) TFU (TEC)
21	Article III-213	Social policy: Guidelines, indicators, best	Commission establishes guidelines, indicators, exchange of best practice	Majority of Commission members	To be inserted into Article 140 (subpar. 2) TFU (TEC)

		practice	Note: Strengthened Role of the Commission; so far Article 140 TEC does not explicitly foresee these measures		
22	Article III-260	JHA: Evaluation of policies	Council may adopt regulations or decisions to conduct the evaluation of the implementation of policies relating to the area of freedom, security and justice, and in particular to the principle of mutual recognition	QMV	To be inserted into Article 64 TFU (TEC)*
23	Article III-267(3)	Immigration: Readmission agreements	Council may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals	QMV (according to III-325)	To be inserted into Article 69B(3) TFU (TEC)*
24	Article III-268	Asylum, border controls, immigration: Principle of solidarity	Union takes appropriate measures to give effect to the principles of solidarity and fair sharing of responsibility regarding asylum and immigration	QMV (according to articles III-265-268)	To be inserted into Article 69C TFU (TEC)*
25	Article III-270 (1)	Judicial cooperation in criminal matters: Principle of mutual recognition	Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition and shall include the approximation of laws Note: Although this principle was already mooted by the Tampere Summit in 1999, it is now explicitly mentioned in the Constitution and will give further impetus to the approximation of both substantive and procedural criminal laws		To be inserted into Article 69E(1) TFU (TEC)*
26	Article III-300(2b)	CFSP: Initiatives of the FAM /High Representative	The Council can act by QMV in the field of CFSP on a proposal from the Union Minister for Foreign Affairs (following a specific request to him or her from the European Council)	QMV	To be inserted into Article 17(2, 2 nd indent) TEU

* *The protocols on the position of the United Kingdom and Ireland and on the position of Denmark are amended but remain in force*

27	Article III-305(2)	CFSP: Coherent actions in international organisations	Member States of the UN Security Council shall request that the FAM/High Representative presents the Union position		To be inserted into Article 19(2.3) TEU
28	Article III-309	CSDP: Additional tasks	Additional tasks of the Union: -joint disarmament operations - military advice and assistance -conflict prevention - post-conflict stabilisation -fight against terrorism	Unanimity (Decision of the Council to define objectives and scope for implementation of these tasks)	To be inserted into Article 28(1) TEU
29	Article III-310	CSDP: Implementation by a group of Member States	The Council may decide to entrust the implementation of a task to a group of Member States that are willing and have the necessary capability Note: In addition to that, Member States may launch structured (B.III.31) or enhanced (B.III.37) cooperation in the field of CSDP	Unanimity	To be inserted into Article 27(5) TEU
30	Article III-311(2)	CSDP: European Defence Agency (statute, seat and operational rules)	Council decides on the Agency's statute, seat and operational rules Note: For its creation see B.II.6	QMV	To be inserted into Article 30(2) TEU
31	Article III-312 (2-4)	CSDP: Permanent structured cooperation	Council decides to establish permanent structured cooperation and determine the list of participating Member States Note: The Constitution also allows enhanced cooperation in CSDP (B-III-37)	QMV Note: For decision <i>within</i> the frame of structured cooperation: QMV or unanimity among the participating states	To be inserted into Article 31(2-4) TEU
32	Article III-313(3)	CSDP: Start-up fund	Council decides on establishment, administration and financial control of fund (on a proposal from the FAM/High Representative)	QMV	To be inserted into Article 26(3) TEU
33	Article III-	Common	The scope of the Common Commercial Policy has been	Unanimity	To be inserted into

	315(1)	Commercial Policy: International agreement on foreign direct investment	enlarged: By decision(s) of the Council, agreements on foreign direct investment can be concluded Note: The Treaty of Nice had already added intellectual property rights to the scope of Article 133 TEC	(where agreements include provisions for which unanimity is required for the adoption of internal rules)	Article 188C(1) TFU (TEC)
34	Article III-320	Urgent financial aid	Council decides on urgent financial aid, when the situation in a third country requires urgent financial assistance from the Union	QMV	To be inserted into Article 188I TFU (TEC)
35	Article III-322(2)	Economic sanctions against persons or non-state groups	Council decides on restrictive measures against natural or legal persons and groups or non-State entities	QMV Note: Hitherto, measures were taken on the basis of articles 301 and 308 TEC-flexibility clause by unanimity	To be inserted into Article 188K(2) TFU (TEC)
36	Article III-415	Combating financial fraud	Legislative acts shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests Note: The scope of application has been widened because 280 TEC does not concern national criminal law or national administration of justice. This exclusion will be deleted.	QMV	To be inserted into Article 280(4) TFU (TEC)
37	Article III-419(2)	CSDP: Enhanced cooperation in Defence	Council decides on the establishment of enhanced cooperation among members within the framework of the common foreign and security policy Note: Because - CFSP covers CSDP (I-41(1)), - III-422(3) explicitly refers to that case, - the exclusion of 27b TEU has been dropped, enhanced cooperation is also possible in CSDP Note: Furthermore, structured cooperation is possible in CSDP (see B.III.31)	Unanimity	To be inserted into Article 10 TEU
38	Article III-	Enhanced	- The Council can decide to act by QMV instead of	Unanimity	To be inserted into

	422(1)	cooperation: Use of the passerelle	<p>unanimity in the frame of enhanced cooperation</p> <p>- The Council can decide that the ordinary legislative procedure shall apply (instead of a special procedure)</p> <p>Note: This applies also to enhanced cooperation in CFSP (but not to decisions having military or defence implications)</p>		Article 280H TFU (TEC)
39	Article IV-444	Simplified Treaty Revision - General passerelle	<p>- The European Council can authorise the Council to decide by QMV instead of unanimity</p> <p>Note: This applies also to CFSP (see also I-40(7)), but not to CSDP</p> <p>- The European Council may decide that the ordinary legislative procedure applies (instead of a special procedure)</p> <p>Note: This does not apply to CFSP and CSDP, because legislative acts cannot be adopted in these areas (I-40(6))</p>	Unanimity Note: National parliaments have a right of veto	To be inserted into Article 33(3) TEU
40	Article IV-445	Simplified Treaty Revision	<p>European Council may decide to amend the Treaty</p> <p>Notes:</p> <ul style="list-style-type: none"> - No IGC needed - Ratification by the Member States - Applies only to internal policies 	Unanimity	To be inserted into Article 33(2) TEU

"Once the European Union acquires legal personality under the new Constitutional Treaty, this will dispel any remaining tendency to see it as just another international organisation and will free it from a constraint that has hitherto frustrated its ability to act on the world stage. As a fully-fledged political entity, the Union will be able to establish a foreign policy that is consistent with its specific values and principles, a policy seeking a more stable, more equitable international order, and it will be able to combine the internal policies of the Member States in a common area of freedom, security and justice ...The Constitution will be the constituent act of the Europe of the future, the new,

enlarged Europe. Europe, and, a fortiori, each individual Member State, can only become influential if they are united, and not divided."

Carlo Ciampi, President of Italy, address to Conference of European Parliament group presidents, 30 September 2003

B.IV) New legal status or formal competences of institutions

"The Convention (which drafted the EU Constitution) brought together a self-selected group of the European political elite, many of whom have their eyes on a career at a European level, which is dependent on more and more integration and who see national governments and parliaments as an obstacle. Not once in the sixteen months I spent on the Convention did representatives question whether deeper integration is what the people of Europe want, whether it serves their best interests or whether it provides the best basis for a sustainable structure for an expanding Union. The debates focused solely on where we could do more at European Union level. None of the existing policies were questioned."

Gisela Stuart MP, *The Making of Europe's Constitution*, Fabian Society, London, 2003

	New basis in the Constitution	Subject	Remarks	Decision-making	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Articles I-19, I-21	European Council now officially an EU institution (See B.II.1 for the creation of the post of the European Council President)	The European Council shall define the general political directions and priorities and shall not exercise legislative functions Note: The summit meetings have already been called the European Council since 1974. It was first mentioned in primary law in the TEU (Maastricht). From now on, it will be an official EU institution. Its acts or its "failing to act" will therefore be subject to review by the Court of Justice (Articles 230 ff. TFU)		To be inserted into Article 9 TEU
2	Article I-20(2.2)	Composition of the European Parliament	New competence for the European Council Note: At present decisions on the composition of the EP require Treaty amendments	Unanimity	To be inserted into Article 9A(2.2) TEU
3	Article I-24(4)	Establishment of list of Council configurations	New competence for the European Council Note: At present the list of configurations is drawn up by the General Affairs Council	QMV	To be inserted into Articles 9C(6) TEU and 201ter TFU (TEC)

4	Article I-26(1)	Promotion of the "general interest of the Union"	<p>Strengthening the role of the Commission</p> <p>Note: So far, Article 211 TEC defines the role of the Commission as "the guardian of the treaties" and as the Union's executive – in addition to its right of legislative initiative</p>		To be inserted into Articles 9D(1) TEU
5	Article I-26(6)	Composition of the Commission: Altering the number of Commissioners	<p>New competence for the European Council</p> <p>The first Commission appointed under provisions of Constitution shall consist of one national per Member State. After that the Commission shall consist of members from two-thirds of the Member States, <i>unless the European Council</i> decides otherwise</p> <p>Note: According to present Art 213, as amended by the Act on Romania's and Bulgaria's accession to the EU, the number of Members of the Commission may be altered by the <i>Council</i>, acting unanimously</p>	Unanimity	To be inserted into Article 9D(5) TEU
6	Article I-27 (1-2)	Election of Commission and Commission President	<p>Strengthening the role of the European Parliament</p> <p>European Council proposes to the EP a candidate for President of the Commission.</p> <p>This candidate is <i>elected</i> by the European Parliament by a majority of its component members.</p> <p>The Commission as a body must be approved by a vote of assent of the European Parliament</p> <p>Note: The difference basically only lies in the terminology (so far "approval" of EP is concerned), since the EP can only decide on candidates proposed by the European Council or Council</p>	<p>Absolute majority in the EP</p> <p>Simple majority in the EP</p>	To be inserted into Article 9D(8) TEU
7	Article I-27(3)	Commission President: Appointment of vice-presidents	<p>A member of the Commission shall resign if the President so requests</p> <p>The President appoints the vice-presidents of the</p>		To be inserted into Article 9D(7) TEU

		and dismissal of members	Commission Note: Up to now the President needs the approval of the college of Commissioners – Art. 217(3-4) TEC		
8	Articles I-28(2), III-300(2b)	Foreign Affairs Minister High Representative of the Union for Foreign Affairs and Security Policy: Right of initiative	The FAM/High Representative conducts the CFSP and makes proposals for its development Note: Hitherto the initiative lies with the European Council, the Council, the Commission and the Member States Note: The Council can act by QMV in the field of CFSP on a proposal from the Union Minister for Foreign Affairs (following a specific request to him or her from the European Council)		To be inserted into Article 10B(2) TEU
9	Article I-28(3-4)	Foreign Affairs Minister High Representative of the Union for Foreign Affairs and Security Policy: Double-Hat function	The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission and preside over the Foreign Affairs Council Note: The FAM/High Representative will become one of the key figures of the Union. This will have considerable impact on the development of CFSP. Due to his right of proposal and his double-hat function, the Commission will indirectly be given the right of initiative in this area too.		To be inserted into Article 9E(3-4) TEU
10	Article I-30(3)	European Central Bank	The ECB becomes formally an institution of the Union Note: That clarification is missing in Articles 8, 107 TEC		To be inserted into Article 9 TEU
11	Article I-32(1)	CoR and ECOSOC	In addition to the Council and the Commission, the EP is now specially mentioned as being assisted by the CoR and the ECOSOC Note: Article 7(1) TEC only mentions the Council and Commission		To be inserted into Article 256bis(1) TFU (TEC)
12	Article I-35(1)	European Council: Adoption of	The European Council adopts decisions in the cases provided for in the Constitution		To be inserted – among other places- into Articles 9 TEU and

		decisions	Note: Article 4 TEU and Article 249 TEC do not foresee that possibility. Decisions of the European Council will thus also become <i>legally</i> binding		249(1) TFU (TEC)
13	Article III-165(3)	Commission: Competition; Rules applying to undertakings: Power to adopt regulations	Commission may adopt its own regulations on the basis of regulations of the Council (relating to agreements/concerted practices between undertakings which are compatible with the internal market) Note : Not foreseen in Article 85 TEC	Majority of Commission members	To be inserted into Article 85(3) TFU (TEC)
14	Article III-168(4)	Commission: State aid; power to adopt regulations	Commission may adopt European regulations relating to the categories of state aid that the Council has Declared as compatible with the internal market Note : Not foreseen in Article 88 TEC	Majority of Commission members	To be inserted into Article 88(4) TFU (TEC)
15	Article III-184(5-6)	Commission: Excessive deficit procedure	(5) Commission addresses an opinion <i>directly</i> to the Member State concerned Note: Article 104(5) TEC only foresees an opinion to the Council (6) Council decides upon <i>proposal</i> of the Commission Note: According to Article 104(6) TEC Council decides on a recommendation from the Commission. Proposal requires unanimity to amend it (250 TEC)	Majority of Commission members	To be inserted into Article 104(5) TFU (TEC) To be inserted into Article 104(6) TFU (TCE)
16	Article III-198(2.2)	Euro-Council	Recommendation to the Council to accept new Member States in the Eurozone	QMV (among Eurozone members)	To be inserted into Article 117(2.2) TFU (TCE)
17	Articles I-29(1), III-257-277; III-377	Court of Justice	Since all areas of JHA will be moved to the 1st pillar (also cooperation in criminal matters) and since legislative acts can be adopted (III-365(1)), the competences of the Court of Justice will embrace the		To be inserted into Articles 9F TEU, 220-245 TFU (TEC)*

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			<p>entire area of JHA</p> <p>Note: A declaration of a Member State to accept its jurisdiction (35(2) TEC) will not be needed anymore</p> <p>Note: The restrictions of Article 68 TEC continue to apply</p>		
18	Article III-362(3)	Commission: Specifying a lump sum as penalty when bringing a case before the Court of Justice	<p>When the Commission brings a case before the Court of Justice it may already then specify the amount of the lump sum or penalty payment to be paid</p> <p>Note: Up to now 228(2) TEC only foresees that competence when a Member State has not complied with a previous judgment</p>	Majority of Commission members	To be inserted into Article 228(3) TFEU (TEC)*
19	Article III-376	Court of Justice	<p>Extension of its jurisdiction to restrictive measures against individuals in CFSP</p> <p>Note: The Court has also jurisdiction on restrictive measures taken according to Title V, Chapter V (taken in the frame of the Union's external action outside the CFSP, e.g. Common Commercial Policy)</p>		To be inserted into Article 11(1) TEU and 240bis TFEU (TEC)
20	Articles III-386 and III-390	ECOSOC and CoR	Prolongation of the Members' mandate from 4 to 5 years		To be inserted into Articles 259(1) and 263(subpar.3) TFEU (TEC)
21	Article III-404	EP: Full budgetary powers	<p>EP obtains full rights for the adoption of the annual budget</p> <p>Note: The current distinction of 272 TEC between non-obligatory (EP has the last word) and obligatory expenditures (Council has the final say) will be given up. This would be an important strengthening of the EP's powers</p>		To be inserted into Articles 271 and 272 TFEU (TEC)
22	Article III-404(5)	Conciliation Committee in	If the EP amends the Council's position on the draft budget, a conciliation committee is convened		To be inserted into Article 271(5) TFEU

		budget procedure			(TEC)
23	Parts I, III, IV	EP Powers	The European Parliament would be attributed more participative powers in about 36 cases (in addition to the new legal bases providing for the ordinary legislative procedure) - See Annex 1		To be inserted into TEU and TFU (TEC)

B.V) Areas which are moved from unanimity to Qualified Majority Decision-making in the European Council and the Council of Ministers

B.V.1) Changes from unanimity or decision by common accord to Qualified Majority Decision-Making in existing legal bases

	New basis in the Constitution	Subject	Remarks	Decision by European Council or Council	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-24(7) Article 203 TEC	Presidency of Council configurations	Presidency of Council configurations shall be held on the basis of equal rotation, in accordance with the conditions established by a European decision of the European Council Note: Currently the order of Presidency is decided by the Council	European Council	To be inserted into Article 9C(9) TEU and 201 TFU(TEC)
2	Article I-37(3) Article 202 TEC	Implementing acts: Rules for control mechanisms	Legislative acts lay down in advance the rules and general principles governing mechanisms for control of the Commission's implementing powers	Council	To be inserted into Article 249C(3) TFU (TEC)
3	Article III-136 Article 42 TEC	Social security of migrant workers	In the field of social security, legislative acts shall establish measures necessary for the freedom of movement for workers relating to secure insurance periods and social security benefits for employed and self-employed migrant workers and their dependants In the Reform Treaty an addition will be made stressing that the procedure is halted in the brake system if the European Council does not take any action within 4 months	Council	To be inserted into Article 42(1) TFU (TEC) To be inserted into Article 42(last subpar.) TFU (TEC)

4	Article III-141 Article 47(2)TEC	Freedom of establishment of the self-employed	Legislative acts shall facilitate activities as self-employed persons through the mutual recognition of their qualifications and the coordination of State provisions concerning the taking-up and pursuit of these For legislative acts which require amendment of the existing principles in at least one of the Member States, Article 47(2) requires unanimity	Council	To be inserted into Article 47(2) TFU (TEC)
5	Article III-187(3) Article 107(5) TEC	Modification of the Statute of the European System of Central Banks	Legislative acts can amend some of the provisions of the Statute of the European System of Central Banks and of the European Central Bank	Council	To be inserted into Article 107(3) TFU (TEC)
6	Article III-236(3) Article 71(2) TEC	Derogations in the area of transport	Legislative acts to implement a common transport policy Note: Article 71(2) TEC requires unanimity when legislation might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities	Council	To be inserted into Article 71(2) TFU (TEC)
7	Article III-267(2) Articles 63(3a,4) TEC	Legal immigration	Legislative acts determine conditions of entry and residence, rules for long-term visas and residence permits, and the rights of third-country nationals residing legally in a Member State Note: Since 1.1.2005 Articles 63(3a) and 63(4) TEC are the only ones which have not been moved yet to QMV (according to the passerelle Article 67 TEC)	Council	To be inserted into Article 69B(2a-b) TFU (TEC) *
8	Article III-	Judicial and	Legislative acts shall establish measures to safeguard the	Council	To be inserted into

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	270(1-2) Article 31(1a-d) TEU	police cooperation in criminal matters	principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws Note: Emergency brake foreseen in paragraph 3 Note: For the widened scope of application of III-270 compared to 31(1a-d) TEU see below B.V.2.23		Article 69E(1-2) TFU (TEC)*
9	Article III-271(1) Article 31(1e) TEU	Judicial cooperation in criminal matters	Definition of crimes and sentences: Legislative acts to lay down minimum rules concerning the definition of criminal offences and sanctions Note: An emergency brake in paragraph 3 gives Member States the possibility of veto Note: For the enlarged scope of Article III-271 compared to 31(1e) TEU see below B.V.2.24	Council	To be inserted into Article 69F(1) TFU (TEC) *
10	Article III-273(1, 1 st subpar.) Article 31(2) TEU	Eurojust	European laws shall determine Eurojust's structure, operation, field of action and tasks Note: For the enlarged scope of Article III-273 compared to 31(2) TEU, see below B.V.2.26	Council	To be inserted into Part three, Article 69H(1, 1 st subpar.) TFU (TEC) *
11	Article III-275(2) Article 30(1) TEU	Police cooperation (non-operational)	Legislative acts establish measures for non-operational police cooperation	Council	To be inserted into Part three, Article 69J(2) TFU (TEC) *
12	Article III-276(2) Article 30(2) TEU	Europol	European laws shall determine Europol's structure, operation, field of action and tasks Note: For the enlarged scope of Article III-276 compared to 30(2) TEU, see below B.V.2.28	Council	To be inserted into Article 69K(2) TFU (TEC) *

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13	Article III-280(5) Article 151(5, 2 nd indent) TEC	Culture	Legislative acts shall establish incentive measures, excluding any harmonisation of laws	Council	To be inserted into Article 176D(5) TFU (TEC)
14	Article III-315(4) Article 133(5-6) TEC	Commercial agreements on cultural and audiovisual services	For the negotiation and conclusion of agreements the Council shall act by a qualified majority (currently unanimity) Note: Unanimity remains only for agreements in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity	Council	To be inserted into Article 188C (4a) TFU (TEC)
15	Article III-315(4) Article 133(5-6) TEC	Commercial agreements on educational services and social and human health services	For the negotiation and conclusion of agreements the Council shall act by a qualified majority Note: Unanimity remains only for agreements in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them	Council	To be inserted into Article 188C (4b) TFU (TEC)
16	Article III-359(1) Article 225a TEC	Specialised courts	Legislative acts may establish specialised courts	Council	To be inserted into Article 225A(1 st subpar.) TEU
^{16a}	Article III-364	Intellectual property: Giving the	Legislative acts may confer on the Court of Justice jurisdiction in disputes relating to acts which create European intellectual property rights	Council	According to the new proposed 229A TFU(TEC), the Council

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	Article 229a TEC	Court jurisdiction			shall continue to act by unanimity
17	Article III- 381 Article 245 TEC	Statute of the Court of Justice: Modification	Legislative act may modify the Statute of the European Court of Justice	Council	To be inserted into Article 245 (2 nd subpar.) TFU (TEC)
18	Article III- 382(2) Article 112 TEC	ECB- Appointment of the Directory	Nomination of the members of the ECB directory	European Council Note: Hitherto by common accord among the Heads of State or Government	To be inserted into Article 245ter(2) TFU (TEC)
19	Article III- 412(2) Article 279(2) TEC	Financial rules: Establishment, methods and procedures	European Regulation laying down the methods and procedure whereby the budget revenue shall be made available to the Commission Note: Unanimity was foreseen until 31 December 2006	Council	To be inserted into Article 279(1) TFU (TEC)

B.V.2) Decisions by qualified majority voting in new or extended legal bases

"They decided that the document should be unreadable. If it is unreadable, it is not constitutional, that was the sort of perception. Where they got this perception from is a mystery to me. In order to make our citizens happy, to produce a document that they will never understand! But, there is some truth [in it]. Because if this is the kind of document that the IGC will produce, any Prime Minister - imagine the UK Prime Minister - can go to the Commons and say 'Look, you see, it's absolutely unreadable, it's the typical Brussels treaty, nothing new, no need for a referendum.' Should you succeed in understanding it at first sight there might be some reason for a referendum, because it would mean that there is something new."

Giuliano Amato, former Italian Prime Minister and Vice-Chairman of the Convention which drew up the EU Constitution, recorded by Open Europe, London Centre for European Reform, 12 July 2007

	New basis in the Constitution	Subject	Remarks	Decision by European Council or Council	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-9 (III-325(6,8))	Accession to the ECHR	Decision of the Council to conclude an agreement for the Union's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms	Council	To be inserted into Article 6(2) TEU
2	Article I-24(4)	Establishment of list of Council configurations	Decision establishing the list of Council configurations, other than those of the General and Foreign Affairs Councils	European Council	To be inserted into Articles 9C(6) TEU and 201ter TFU (TEC)
3	Article I-32(5)	Committee of the Regions Economic and Social Committee	The rules governing the nature of their composition shall be reviewed at regular intervals by to take account of economic, social and demographic developments - Decision of the Council	Council	To be inserted into Article 256bis(1) TFU (TEC)

4	Article I-47(4)	Citizens' initiative	At least one million citizens may “invite” the Commission to submit proposals for a legal act. Legislative acts lay down detailed rules	Council	To be inserted into Article 8B(4) TEU
5	Article I-54(4)	Own resources system	Legislative act shall lay down implementing measures for the Union’s own resources system	Council	To be inserted into Article 269(last subpar.) TFU (TEC)
6	Article I-60(2)	Withdrawal from the Union of a Member State	Agreement to withdraw to be negotiated and concluded in accordance with Article III-325(3-6) by Council decision	Council	To be inserted into Article 35(2) TEU
7	Article III-122	Services of general economic interest	Legislative acts establish principles and conditions under which services of general economic interest shall operate	Council	To be inserted into Article 14 TFU (TEC) and into a special protocol
8	Article III-127	Diplomatic and consular protection	Legislative act may establish measures necessary to facilitate such protection	Council	To be inserted into Article 17(ter) TFU (TEC)
9	Article III-160	Fight against terrorism (by financial means)	Legislative acts define administrative measures for capital movements and payments, such as the freezing of funds, financial assets or economic gains of natural or legal persons, groups or non-State entities	Council	To be inserted into Article 67bis TFU (TEC)
10	Article III-167	State aid: Repeal of East German exemptions	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision according to which state aid granted to East Germany is compatible with the internal market	Council	To be inserted into Article 87(2c) TFU(TEC)

11	Article III-176(par.1)	Intellectual property	Legislative acts to create European intellectual property rights to provide uniform intellectual property rights protection	Council Note: Language arrangements remain under unanimity (par.2)	To be inserted into Article 97b TFU (TEC)
12	Article III-180	Economic policy: Energy	New competence proposed by the 2007 Treaty in the area of economic policy : Measures in case of severe difficulties in the supply of certain products: A reference to the spirit of solidarity between Member States and to the particular case of energy will be inserted – decision of the Council	Council	To be inserted into Article 100(1) TFU (TEC)
13	Article III-194(1a-b)	Eurozone : Strengthened budgetary and economic coordination	Council decides measures for Eurozone Member States to strengthen the coordination and surveillance of their budgetary discipline and to set out economic policy guidelines for them	QMV Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 114(1a-b) TFU (TEC)
14	Article III-196(1-2)	Eurozone members: Common representation in international organisations	Council decides on common positions on matters of particular interest for economic and monetary union within international financial institutions such as the IMF, World Bank, etc. and at international conferences.	Council Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 115bis(1-2) TFU (TEC)
15	Articles III-233(1d), III-234	Environment Climate change	New competence proposed by the 2007 Treaty in the area of environment : Replacement of III-233(1d) by adding “...., and in particular combating climate change.”	Council Note: Unanimity remains for measures affecting the choice between different energy sources and energy supply – but a passerelle gives the possibility of moving to qmv	To be inserted into Article 174, TFU (TEC)
16	Article III-243	Transport: Repeal of East German	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision allowing measures compensating for the economic disadvantages	Council	To be inserted into Article 78 TFU (TEC)

		exemptions	caused by the division of Germany		
17	Article III-254(2)	European Space Policy	Legislative acts shall establish a European space programme	Council	To be inserted into Article 172b(2) TFU (TEC)
18	Article III-256(2-3)	Energy policy	Legislative acts shall ensure energy market, energy supply, promote efficiency, energy saving and new and renewable forms of energy	Council Note: Unanimity remains when measures are of fiscal nature	To be inserted into Article 176A(2) TFU (TEC)
19	Article III-263 Articles 66 TEC	Administrative cooperation in the area of criminal matters	Council regulations to ensure administrative cooperation in the entire area of freedom, security and justice Note: Based on Article 67 TEC, decision-making has moved from unanimity to QMV. However, cooperation in criminal matters has not been subject to the relevant TEC provisions but only to the 3 rd , intergovernmental, pillar, for which unanimity is required	Council	A consequence of the insertion of the area of cooperation in criminal matters into the TFU(TEC)
20	Article III-265(1d)	Border controls	Legislative acts establish a general integrated management system for external EU borders	Council	To be inserted into Article 69(2d) TFU (TEC)*
21	Article III-267(4)	Immigration: Integration of immigrants	Legislative acts to promote the integration of third country nationals (no harmonisation of laws)	Council	To be inserted into Article 69B(4) TFU (TEC)*
22	Article III-269(1-2)	Judicial co-operation in civil matters	Legislative acts for <i>general approximation</i> of procedural and substantive civil laws of the Member States (1) Legislative acts for access to justice, alternative methods of dispute settlement, training of the judiciary and judicial staff (2) Note: Articles 65, 67(5) TEC foresee QMV, but III-269 widens	Council Note: Unanimity remains when legislative acts concern family law – but a passerelle gives the possibility of moving to qmv	To be inserted into Article 69D(1-2) TFU (TEC) *

			Union competence by explicitly mentioning the approximation of laws (1) and by widening the list in paragraph 2		
23	Article III-270(2)	Judicial cooperation in criminal matters	<p>Harmonisation of <i>procedural</i> criminal law</p> <p>Note: Article 31(1e) TEU allows approximation of <i>substantive</i> criminal law and penalties; Article III-270(2) also refers to <i>procedural</i> criminal law</p>	<p>Council</p> <p>Note: Passerelle in paragraph 2d can add further aspects of criminal procedure to the list</p> <p>QMV, but emergency brake in paragraph 3 gives Member States the possibility of veto</p>	To be inserted into Article 69E(2) TFU (TEC) *
24	Article III-271(1)	Judicial cooperation in criminal matters	<p>Definition of crimes and sentences: Legislative acts to lay down minimum rules concerning the definition of criminal offences and sanctions</p> <p>Note: The scope of Article 31(1e) TEU is herewith enlarged. Furthermore, III-272(2) (flexibility clause) allows general approximation if needed</p>	<p>Council</p> <p>QMV, but emergency brake in paragraph 3 gives Member States possibility of veto</p>	To be inserted into Article 69F(1) TFU (TEC) *
25	Article III-272	Judicial cooperation in criminal matters	Legislative acts to support crime prevention (no harmonisation of laws)	Council	To be inserted into Article 69G TFU (TEC)*
26	Article III-273(1)	Judicial cooperation in criminal matters	Eurojust: Legislative acts to determine arrangements for evaluation of Eurojust's activities	Council	To be inserted into Article 69H(1) TFU (TEC) *
27	Article III-274(1)	Judicial cooperation in criminal matters	European Public Prosecutor: Legislative act establishes a European Public Prosecutor's Office responsible for investigating, prosecuting and bringing to judgment criminals	<p>Council</p> <p>Note: The Passerelle in paragraph 4 can extend the Prosecutor's powers</p>	To be inserted into Article 69I(1) TFU (TEC) *

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28	Article III-276(2)	Judicial cooperation in criminal matters	Europol: Legislative acts determine arrangements for scrutiny of Europol's activities	Council	To be inserted into Article 69J(2) TFU (TEC) *
29	Article III-278(4c,d)	Health	Legislative acts shall set high standards for medical products and measures for monitoring, early warning and combating of serious cross-border threats to health	Council	To be inserted into Article 176E(4) TFU (TEC) *
30	Article III-278(5)	Health	Legislative acts establish incentive measures to protect human health, to combat major health scourges, and to protect public health regarding tobacco and alcohol abuse	Council	To be inserted into Article 176E(5) TFU (TEC) *
31	Article III-281(2)	Tourism	Legislative acts to complement Member State actions to promote competitiveness of Union tourism undertakings (no harmonisation of laws)	Council	To be inserted into Article 176G(2) TFU (TEC) *
32	Article III-282(3a)	Sport	Legislative acts shall establish incentive measures for the promotion of sports (no harmonisation of laws)	Council	To be inserted into Article 176B(1-2,4) TFU (TEC) *
33	Article 284(2)	Civil protection	Legislative acts shall encourage cooperation to improve the effectiveness of systems for preventing and protecting against natural or man-made disasters (no harmonisation of laws)	Council	To be inserted into Article 176H(2) TFU (TEC) *
34	Article III-285(2)	Administrative cooperation	Legislative acts shall support the efforts of Member States to improve their administrative capacity to implement Union law (no harmonisation of laws)	Council	To be inserted into Article 176I(2) TFU (TEC) *

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35	Article III-300(2b)	CFSP: QMV following proposals from the FAM/High Representative	The Council can act by QMV in the field of CFSP on a proposal from the Union Minister for Foreign Affairs (following a specific request to him or her from the European Council)	Council	To be inserted into Article 17(2, 2 nd indent) TEU
36	Article I-41(3), III-311	European Defence Agency	Council decides on the Agency's statute, seat and operational rules Note: The European Defence Agency has already been established by Council decision on 16.06.2004	Council	To be inserted into Article 27(3) TEU
37	Article III-312 (2-4)	CSDP: Permanent structured cooperation	Council decides to establish permanent structured cooperation and determine the list of participating Member States Note: The Constitution also allows enhanced cooperation in CSDP (B-III-37)	Council Note: For decision <i>within</i> the frame of structured cooperation: QMV or unanimity among the participating states	To be inserted into Article 31(2-4) TEU
38	Article III-315(2)	Common commercial policy	Legislative acts to define the framework for implementing the common commercial policy	Council	To be inserted into Article 188 C(2) TFU (TEC)
39	Article III-320	CFSP: Urgent financial aid	Council decides on urgent financial aid when the situation in a third country requires urgent financial assistance from the Union	Council	To be inserted into Article 188I TFU (TEC)
40	Article III-321(3)	Humanitarian aid	Legislative acts to define the framework within which the Union's humanitarian aid operations shall be implemented	Council	To be inserted into Article 188J(3) TFU (TEC)
41	Article III-321(5)	Humanitarian aid: European Volunteer Corps	Legislative acts to define the rules and procedures for the operation of the Volunteer Corps	Council	To be inserted into Article 188J(5) TFU (TEC)

42	Article III-329(2)	Solidarity clause	Arrangements for implementation of the solidarity clause shall be decided by the Council acting on a joint proposal by the Commission and the Union Minister for Foreign Affairs	Council Note: Unanimity where decisions have defence implications	To be inserted into Article 188R TFEU (TEC)
43	Article III-398	European Union Administration	Legislative acts to establish provisions for an open, efficient and independent European administration Note: Hitherto staff regulations are laid down by Council regulation on the basis of Article 283 TEC (III-427). Article III-398 goes beyond this and constitutes a legal base for adopting legislative acts	Council	To be inserted into Article 254bis(2) TFEU (TEC)

B.VI) Passerelle clauses

New “Passerelle” clauses^{§§} allow, at a later date,

- for decision-making in the Council to be altered from unanimity to qualified majority, or
- for the legislative procedure to be altered from a special one to the ordinary one with qualified majority voting and co-decision, or
- for the submission of additional policy “areas” to QMV voting or to the ordinary legislative procedure

	New basis in the Constitution	Subject	Remarks	Decision by European Council or Council	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Article I-40(7), III-300(3)	CFSP	Decision of the European Council authorising the Council to act by a qualified majority in the area of CFSP Note: This does not apply to decisions having defence or defence implications	Unanimity in the European Council	To be inserted into Article 17(3) TEU
2	Article I-55(4)	Multiannual financial framework	Legislative act shall lay down the multiannual financial framework European Council may authorise the Council to act by qualified majority	Unanimity in the European Council	To be inserted into Article 270bis(2.2) TFEU (TEC)
2a	Article III-269(3)	Judicial cooperation in civil matters relating to family law	Council acts unanimously to establish measures concerning family law with cross-border implications. But it may decide to submit certain aspects of family law with cross-border implications to the ordinary legislative procedure NEW in the 2007 Treaty: Use of this passerelle can be vetoed by a national parliament	Unanimity in the European Council	To be inserted into Article 69D (4, 2nd subpar.) TFEU (TEC) *

^{§§} The passerelle III-269(3) (number 2a) is not new – v. current Treaty Articles 65, 67 TEC

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3	Article III-270(2d)	Judicial co-operation in criminal matters	<p>Harmonisation of procedural criminal law</p> <p>Council can add further aspects of criminal procedural laws to the list of those laws which can/should be harmonised</p>	Unanimity in the Council	To be inserted into Article 69E(2d) TFU (TEC) *
4	Article III-271(1.3)	Judicial co-operation in criminal matters	<p>Harmonisation of substantive criminal laws (definition of crimes and sanctions)</p> <p>Council may identify other areas of serious crimes with cross-border dimension which should be harmonised</p>	Unanimity in the Council	To be inserted into Article 69F(1, last subpar.) TFU (TEC) *
5	Article III-271(2)	Judicial co-operation in criminal matters	<p>Harmonisation of substantive criminal laws (definition of crimes and sanctions)</p> <p>To ensure the effective implementation of other Union policies, legislative acts may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned</p> <p>Note: This can also be considered as a general “flexibility” clause (see note at B.I.18)</p> <p>Note: This paragraph also reflects the new jurisdiction of the ECJ regarding Community competence in criminal matters</p>	QMV or unanimity in the Council	To be inserted into Article 69F(2) TFU (TEC) *
6	Article III-274(4)	Judicial co-operation in criminal matters	<p>Competences of the European Public Prosecutor</p> <p>The European Council may decide to extend the powers of the European Public Prosecutor's Office</p>	Unanimity in the European Council	To be inserted into Article 69I(4) TFU (TEC) *
7	Article III-422(1)	Enhanced cooperation	- The Council can decide to act by QMV instead of unanimity in the frame of enhanced cooperation	Unanimity in the Council	To be inserted into Article 280H(1-2) TFU

		See also B.III-38	<p>- The Council can decide that the ordinary legislative procedure shall apply (instead of a special procedure)</p> <p>Note: This applies also to enhanced cooperation in CFSP (but not to decisions having military or defence implications)</p>		(TEC) *
8	Article IV-444 (1-2)	Simplified Treaty Revision - General passerelle	<p>- The European Council can authorise the Council to decide by QMV instead of unanimity</p> <p>Note: This applies also to CFSP (see also I-40(7)), but not to CSDP</p> <p>- The European Council may decide that the ordinary legislative procedure applies (instead of a special procedure)</p> <p>Note: This does not apply to CFSP and CSDP, because legislative acts cannot be adopted in these areas (I-40(6))</p>	<p>Unanimity in the European Council</p> <p>Note: veto right of national parliaments</p>	To be inserted into Article 33(3) TEU

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C.) ANNEX - AREAS IN WHICH THE EUROPEAN PARLIAMENT'S PARTICIPATION IN DECISION-MAKING WILL CHANGE

C.I) Changes to co-decision, where the European Parliament can veto a law or propose amendments to it

C.I.1) Areas in which the European Parliament is currently consulted

1. Article I-37(3) Implementing powers of the Commission - 249C(3) TFU
2. Article III-147 Service sectors: Liberalisation of specific sectors – 52(1st subpar.) TFU
3. Article III-176 Intellectual property: Protection of property rights (except the language regime) - 97B (1st subpar.) TFU
4. Article III-231(2-3) Agriculture and Fisheries – 37(2) TFU
5. Article III-236(3) Transport: Measures which affect living and employment standards - 71(1-2) TFU
6. Article III-256(2) Energy (except fiscal measures) – 176 A(2) TFU (currently 308 TEC)
7. Article III-265(2) Border controls – 69(2) TFU
8. Article III-266(2) Asylum – 69A(2) TFU
9. Article III-267(2) Immigration – 69B(2) TFU
10. Article III-270(1) Judicial co-operation in criminal matters – 69E(1, 1st subpar.) TFU
11. Article III-270(2) Mutual recognition of judgements and police and judicial co-operation in criminal matters – 69E(2) TFU (with emergency brake)
12. Article III-271(1) Serious crimes: Definition of criminal offences and sanctions – 69F(1) TFU (with emergency brake)
13. Article III-273(1) Eurojust (structure, operation, field of action, tasks) – 69H(1, 2nd subpar.) TFU
14. Article III-275(2) Police co-operation (non-operational) – 69J(2) TFU
15. Article III-276(2) Europol (structure, operation, field of action, tasks) – 69K(2) TFU
16. Article III-319(2) Economic, financial and technical co-operation with third countries – 188H(2) TFU
17. Article III-359(1) Specialised courts – 225A(1st subpar.) TFU
- 17a. Article III-364 [Jurisdiction of the European Court of Justice: Disputes relating to intellectual property rights – 229A TFU remains with consultation](#)
18. Article III-381 Statute of the European Court of Justice: Modification – 245(2nd subpar.) TFU
19. Article III-412(1) Financial rules (e.g. Financial Regulation) – 279(1) TFU
20. Article III-427 Staff regulations – 283 TFU

C.I.2) Areas in which the European Parliament has currently no say

21. Article III-139 Freedom of establishment: Exclusion of certain activities – 45(2nd subpar.)

- TFU
- 21a. Article III-144 Extension of the freedom to provide services to third country nationals - 49 TFU remains unchanged
 - 22. Article III-157(2) Movement of capital to or from third countries - 57(2) TFU
 - 23. Article III-160 Preventing/ combating terrorism and related activities: Framework for administrative measures with regard to the capital movements and payments – 67b TFU
 - 24. Article III-174 Internal market: Elimination of competition distortions – 96 (2nd subpar.) TFU
 - 25. Article III-191 Use of the Euro – 111 TFU
 - 26. Article III-315(2) Common commercial policy – 188C(2) TFU

C.I.3) Areas currently requiring the European Parliament's assent

- 27. Article III-187(3) Modification of the Statute of the European Central Bank and the European System of Central Banks (certain aspects) - 107(3)TFU
- 28. Article III-223(1.1) Structural Funds – 161(1st subpar.) TFU
- 29. Article III-223(1.2) Cohesion Fund - 161 (2nd subpar.) TFU

C.I.4) Areas which are currently subject to the co-operation procedure

- 30. Article III-179(6) Multilateral surveillance in the area of the common economic policy – 99(6) TFU

C.II) Changes to assent, where the European Parliament must approve a text but cannot propose amendments

- 30a. Article III-129 Citizenship of the Union - Creation of additional rights (22 TFU remains with consultation)

C.III) Changes to consultation, where the European Parliament is formally heard

- 31. Article III-125(2) Free movement of EU citizens: Measures concerning passports, identity cards and residence permits (from no participation at all) – 18(3) TFU
- 31a. Article III-157(3) Liberalisation of capital movement to third countries: Steps backwards - 57(3) TFU remains with no participation at all
- 32. Article III-185(6) Tasks of the ECB: Prudential supervision (from assent) - 105(6) TFU
- 33. Article III-291 Association with OTCs: Rules and procedures (from no participation at all) – 187(last sentence) TFU (when provisions take the form of legislative acts)

C.IV) Changes to information, where the European Parliament is only informed

- 34. Article III-322 Restrictive measures (from no participation at all) – 188K(1) TFU
- 35. Article III-212(2) Collective agreements: Restrictive measures (from no participation at all)-
139(2) TFU
- 36. Article III-278(2) Public Health (from no participation at all) – 176E(2, last sentence) TFU

C.V) Changes from participation to no participation

- 37. Article III-231(3) CAP: Fixing prices, levies, aid and quantitative limitations (from consultation) – 37(2b) TFU

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"I believe that the citizens' doubts and uncertainty, as for example reflected in the two referendums, actually constitute a plea for more Europe, a strong Europe, and not for less Europe..."

Guy Verhofstadt, Belgian Prime Minister, speech at the London School of Economics, 21 March 2006

"Voters have a diffuse feeling that Europe has gone too far and that their national governments have a tendency to accept too much of further European integration."

Philip Manow, Max Planck Institute for the Study of Societies, EUObserver, 5 September 2007