



Statewatch

EU Constitutional annotation no1

Part I, Draft EU Constitution

The following text includes most of the provisions of the final text Part I of the proposed EU constitution, with annotations indicating briefly how the proposed Constitution compares to the current Treaties, practice and case law, and also how it relates to Part III of the Constitution.

It is important to compare the text to existing practice to see what would change, particularly in light of the widespread misunderstanding in the press as to how the Constitution would differ from the current position. For example, it is often reported that a legal personality for the European Union would be a radical change from the current position. But as the annotation of Article 6 points out, the European Union has already party to a number of treaties, therefore exercising a legal personality, and the European Community, which would be merged with the Union by the draft Constitution, already has an express legal personality.

It is also important to connect the text of Part I of the Constitution to the more detailed Part III, since the detailed rules in Part III will supplement the basic rules in Part I. Part I makes express reference to Part III in several places, but a full cross-reference is necessary to understand the full effect of the draft Constitution. The annotation therefore makes reference to specific Articles of Part III whenever they are relevant to Articles in Part I.

It should be remembered that since the draft Constitution will merge the EU and the EC Treaties, a number of provisions which apply only to the 'first pillar' (the EC Treaty) would apply to all three pillars (the second pillar constitutes the Common Foreign and Security Policy and the third pillar constitutes police and criminal law cooperation). The annotation to specific Articles points out what the practical effect of this merger would be.

Annotation prepared by
Professor Steve Peers, University of Essex

PREAMBLE

Χρόμεθα γάρ πολιτεία ... καί όνομα μέν διά τό μή ές ολίγους άλλ' ές πλείονας οικεῖν δημοκρατία κέκληται ...

Our Constitution is called a democracy because power is in the hands not of a minority but of the whole people.] Thucydides II, 37

Conscious that Europe is a continent that has brought forth civilisation; that its inhabitants, arriving in successive waves since the first ages of mankind, have gradually developed the values underlying humanism: equality of persons, freedom, respect for reason,

Drawing inspiration from the cultural, religious and humanist inheritance of Europe, whose values are always present in its heritage, and which has embedded within the life of society its perception of the central role of the human person and his inviolable and inalienable rights, and of respect for law,

Believing that reunited Europe intends to continue along this path of civilisation, progress and prosperity, for the good of all its inhabitants, including the weakest and most deprived; that it wishes to remain a continent open to culture, learning, and social progress; and that it wishes to deepen the democratic and transparent nature of its public life, and to strive for peace, justice and solidarity throughout the world,

Convinced that, while remaining proud of their own national identities and history, the peoples of Europe are determined to transcend their ancient divisions, and, united ever more closely, to forge a common destiny,

Convinced that, thus "united in its diversity", Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope,

Grateful to the members of the European Convention for having prepared this Constitution on behalf of the citizens and States of Europe,

[Who, having exchanged their full powers, found in good and due form, have agreed as follows:]

TITLE I: DEFINITION AND OBJECTIVES OF THE UNION

Article 1: Establishment of the Union¹

1. Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common. The Union shall coordinate the policies by which the Member States aim to achieve these objectives, and shall exercise in the Community way the competences they confer on it.

¹ Replaces Art. 1 EU and Art. 1 EC.

2. The Union shall be open to all European States which respect its values and are committed to promoting them together.

Article 2: The Union's values²

The Union is founded on the values of respect for human dignity, liberty, democracy, equality, the rule of law and respect for human rights. These values are common to the Member States in a society of pluralism, tolerance, justice, equality, solidarity and non-discrimination.

Article 3: The Union's objectives³

1. The Union's aim is to promote peace, its values and the well-being of its peoples.
2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.
3. The Union shall work for a Europe of sustainable development based on balanced economic growth, with a social market economy aiming at full employment and social progress.

It shall aim at a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

It shall combat social exclusion and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution

Article 4: Fundamental freedoms and non-discrimination⁴

1. Free movement of persons, goods, services and capital, and freedom of establishment shall be guaranteed within and by the Union, in accordance with the provisions of this Constitution

² Replaces Art. 6(1) EU. See the proposed Art. 58 for the implications of this Article (possible suspension of Member States).

³ Replaces Arts. 2 and 3 EC and Art. 2 EU.

⁴ Para. 1 reflects Art. 14 EC; para. 2 is Art. 12, para. 1 EC, applied to all three pillars. On para. 1, see also Art. III-14; on para. 2, see also Art. III-7.

2. In the field of application of this Constitution, and without prejudice to any of its specific provisions, any discrimination on grounds of nationality shall be prohibited.

Article 5: Relations between the Union and the Member States⁵

1. The Union shall respect the national identities of its Member States, inherent in their fundamental structures, political and constitutional, including for regional and local self government. It shall respect their essential State functions, including for ensuring the territorial integrity of the State, and for maintaining law and order and safeguarding internal security.

2. Following the principle of loyal cooperation, the Union and the Member States shall, in full mutual respect, assist each other to carry out tasks which flow from the Constitution.

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the objectives set out in the Constitution.

Article 6: Legal personality⁶

The Union shall have legal personality.

TITLE II: FUNDAMENTAL RIGHTS AND CITIZENSHIP OF THE UNION

Article 7: Fundamental rights⁷

1. The Union shall recognise the rights, freedoms and principles set out in the Charter of Fundamental Rights which constitutes Part II of the Constitution.

2. The Union shall seek accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Accession to that Convention shall not affect the Union's competences as defined in the Constitution.

3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.

Article 8: Citizenship of the Union⁸

1. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship; it shall not replace it.

⁵ Combination of Art. 6(3) EU and Art. 10 EC, with amendments (for example, defining national identity).

⁶ Art. 281 EC gives legal personality to EC; there is no such clause for EU but a number of treaties signed by the Council on behalf of the EU with non-EU states and bodies since 2001 shows evidence of implied legal personality. See also Art. 282 EC, to be amended by Art. III-332.

⁷ Para. 1 enhances the status of the Charter, currently a non-binding Declaration agreed in 2000 (OJ 2000 C 364). Para. 2 would overturn the result of the ECJ judgment in *Opinion 2/94* [1996] ECR I-1759, which stated that the EC lacks such competence; notice that the accession would bind the entire Union (all three pillars). Para. 3 is Art. 6(2) EU (unchanged).

⁸ Combines Art. 17 EC and the list of rights set out in Arts. 18-21 EC; no change from current position. See also Arts. III-9 to III-13.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in this Constitution. They shall have:

- the right to move and reside freely within the territory of the Member States;
- the right to vote and to stand as a candidate in elections to the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State;
- the right to enjoy, in the territory of a third country in which the Member State of which they are a national is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;
- the right to petition the European Parliament, to apply to the Ombudsman, and to write to the institutions and advisory bodies of the Union in any of the Union's languages and to obtain a reply in the same language.

3. These rights shall be exercised in accordance with the conditions and limits defined by this Constitution and by the measures adopted to give it effect.

TITLE III: THE UNION'S COMPETENCES

Article 9: Fundamental principles⁹

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union within the Constitution remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale and effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

⁹ Amended text of Art. 5 EC; would apply to all three pillars.

Article 10: Union law¹⁰

1. The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

2. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the Union Institutions' acts.

Article 11: Categories of competence¹¹

1. When the Constitution confers on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts adopted by the Union.

2. When the Constitution confers on the Union a competence shared with the Member States in a specific area, the Union and the Member States shall have the power to legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence.

3. The Union shall have competence to coordinate the economic and employment policies of the Member States.

4. The Union shall have competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.

5. In certain areas and in the conditions laid down in the Constitution, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.

6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions specific to each area in Part III.

Article 12: Exclusive competence¹²

1. The Union shall have exclusive competence to establish the competition rules necessary for the functioning of the internal market, and in the following areas:

- monetary policy, for the Member States which have adopted the euro,
- common commercial policy,
- customs union,
- the conservation of marine biological resources under the common fisheries policy.

2. The Union shall have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

¹⁰ Para. 1 based on ECJ case law concerning the first pillar. Para. 2 is first part of Art. 10 EC, which applies to the first pillar.

¹¹ New clause, but arguably implements principles in current practice and case law.

¹² New clause, but reflects the case law on the CCP, fisheries and first pillar international agreements.

Article 13: Areas of shared competence¹³

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles 12 and 16.

2. Shared competence applies in the following principal areas:

- internal market,
- area of freedom, security and justice,
- agriculture and fisheries, excluding the conservation of marine biological resources,
- transport and trans-European networks,
- energy,
- social policy, for aspects defined in Part Three,
- economic and social cohesion,
- environment,
- consumer protection,
- common safety concerns in public health matters.

3. In the areas of research, technological development and space, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

Article 14: The coordination of economic and employment policies¹⁴

1. The Union shall adopt measures to ensure coordination of the economic policies of the Member States, in particular by adopting broad guidelines for these policies. The Member States shall coordinate their economic policies within the Union.

2. Specific provisions shall apply to those Member States which have adopted the euro.

3. The Union shall adopt measures to ensure coordination of the employment policies of the Member States, in particular by adopting guidelines for these policies.

4. The Union may adopt initiatives to ensure coordination of Member States' social policies.

¹³ New clause, but arguably reflects practice and case law; para. 4 in particular reflects case law on development policy.

¹⁴ On para. 1, see Arts. III-72 and 76. On para. 2, see III-88 and 89. On para. 3, see Arts. III-97 to III-102. On para. 4, see Art. III-107.

Article 15: The common foreign and security policy¹⁵

1. The Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy and all questions relating to the Union's security, including the progressive framing of a common defence policy, which might lead to a common defence.
2. Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area. They shall refrain from action contrary to the Union's interests or likely to impair its effectiveness.

Article 16: Areas of supporting, coordinating or complementary action

1. The Union may take supporting, coordinating or complementary action.
2. The areas for supporting, coordinating or complementary action shall be, at European level:
 - industry
 - protection and improvement of human health
 - education, vocational training, youth and sport
 - culture
 - civil protection.
3. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part III cannot entail harmonisation of Member States' laws or regulations.

Article 17: Flexibility clause¹⁶

1. If action by the Union should prove necessary within the framework of the policies defined in Part III to attain one of the objectives set by the Constitution, and the Constitution has not provided the necessary powers, the Council of Ministers, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall take the appropriate measures.
2. Using the procedure for monitoring the subsidiarity principle referred to in Article 9(3), the Commission shall draw Member States' national Parliaments' attention to proposals based on this Article.
3. Provisions adopted on the basis of this Article may not entail harmonisation of Member States' laws or regulations in cases where the Constitution excludes such harmonisation.

¹⁵ Para. 1 is based on Art. 17(1) EU and para. 2 is based on Art. 11(2) EU. See further Arts. 39 and 40 of this Part and Arts. III-193 to III-215 (annotated separately).

¹⁶Amended version of Art. 308 EC; note application to all three pillars.

TITLE IV: THE UNION'S INSTITUTIONS

Article 18: The Union's Institutions¹⁷

1. The Union shall be served by a single institutional framework which shall aim to:

- advance the objectives of the Union,
- promote the values of the Union,
- serve the interests of the Union, its citizens and its Member States,

and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives.

2. This institutional framework comprises:

- The European Parliament,
- The European Council,
- The Council of Ministers,
- The European Commission,
- The Court of Justice.

3. Each institution shall act within the limits of the powers conferred on it in the Constitution, and in conformity with the procedures and conditions set out in it. The institutions shall practice full mutual cooperation.

Article 19: The European Parliament¹⁸

1. The European Parliament shall, jointly with the Council of Ministers, enact legislation, and exercise the budgetary function, as well as functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.

2. The European Parliament shall be directly elected by universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred and thirty-six in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter, for further elections, the European Council shall adopt, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out above.

3. The European Parliament shall elect its President and its officers from among its members.

Article 20: The European Council¹⁹

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative functions.

¹⁷ Combines Art. 3, para. 1 EU and Art. 7 EC, with amendments.

¹⁸ Combines and amends Arts. 189 and 192 EC plus includes elements of Art. 190 EC and the Protocol on enlargement. There are further rules on the EP in Arts. III-232 to III-243.

¹⁹ Art. 4 EU with amendments. There are further rules on the European Council in Art. III-244.

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.

3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene an additional meeting of the European Council.

4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

Article 21: The European Council Chair²⁰

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his or her mandate according to the same procedure.

2. The President of the European Council:

- shall chair it and drive forward its work,
- shall ensure proper preparation and continuity, in cooperation with the President of the Commission, and on the basis of the work of the General Affairs Council,
- shall endeavour to facilitate cohesion and consensus within the European Council,
- shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall at his or her level and in that capacity ensure the external representation of the Union on issues concerning its Common Foreign and Security Policy without prejudice to the responsibilities of the Union Minister of Foreign Affairs.

3. The President of the European Council may not hold a national mandate.

Article 22: The Council of Ministers²¹

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, exercise the budgetary function and carry out policy-making and coordinating functions, as laid down in the Constitution.

2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.

3. Except where the Constitution provides otherwise, decisions of the Council of Ministers shall be taken by qualified majority.

²⁰ New; the European Council is currently chaired by the Member State holding the Council Presidency.

²¹ Combines Arts. 202 and 203 (para. 1) EC, with amendments. Para. 2 replaces Art. 205(1) EC, which provides that the normal rule is simple majority; but in practice the normal rule is qualified majority. There are further rules on the Council in Arts. III-245 to III-249.

Article 23: Formations of the Council of Ministers²²

1. The General Affairs Council and Legislative Council shall ensure consistency in the work of the Council of Ministers.

When it acts in its General Affairs function, it shall, in liaison with the Commission, prepare and ensure follow-up to, meetings of the European Council.

When it acts in its legislative function, it shall consider and, jointly with the European Parliament, enact European laws and European framework laws, in accordance with the provisions of the Constitution. In this function, each Member State's representation shall include one or two representatives at ministerial level with relevant expertise, reflecting the business on the agenda of the Council of Ministers.

2. The Foreign Affairs Council shall, on the basis of strategic guidelines laid down by the European Council, flesh out the Union's external policies, and ensure that its actions are consistent. It shall be chaired by the Union Minister for Foreign Affairs.

3. The European Council shall adopt a European decision establishing further formations in which the Council of Ministers may meet.

4. The Presidency of a Council formation, other than that of Foreign Affairs, shall be held by Member State representatives within the Council of Ministers on the basis of equal rotation, for periods of at least a year. The European Council shall adopt a European decision establishing the rules of such rotation, taking into account European political and geographical balance and the diversity of all Member States.

Article 24: Qualified majority²³

1. When the European Council or the Council of Ministers takes decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.

2. When the constitution does not require the European Council or the Council of Ministers to act on the basis of a proposal of the Commission, or when the European Council or the Council of Ministers does not act on the initiative of the Union Minister for Foreign Affairs, the required qualified majority shall consist of two-thirds of the Member State, representing at least three fifths of the population of the Union.

3. The provisions of paragraphs 1 and 2 will take effect on 1 November 2009, after the European Parliament elections have taken place, according to the provisions of Article 19.

²² New; the issue of Council formations is presently addressed in the Council rules of procedure, which do not provide for a 'Legislative Council' at present. This clause also amends Art. 203 (para. 2) EC, on the Council Presidency. Note the abolition of the Presidency in the context of external relations.

²³ Para. 1 replaces the voting rules in Art. 205(2) EC, to be amended with effect from 1 Nov. 2004 by the Protocol on enlargement and the Accession Treaty. Para. 2 replaces the special rules in Arts. 23 and 34 EU. Para. 4 is new. Para. 5 alters the current position, as the Commission President is currently a 'voting' member of the European Council.

4. Where the Constitution provides in Part III for laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of six months, a decision allowing for the adoption of such laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the national parliaments.

Where the Constitution provides in Part III for the Council of Ministers to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a European decision allowing the Council of Ministers to act by qualified majority in that area. Any initiative taken by the European Council under this article shall be sent to national Parliaments no less than four months before any decision is taken on it.

5. Within the European Council, its President and the President of the Commission do not vote.

Article 25: The European Commission²⁴

1. The European Commission shall promote the general European interest and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions, as laid down in the Constitution. With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and pluriannual programming with a view to achieving interinstitutional agreements.

2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.

3. The Commission shall consist of a College comprising its President, the Union Minister of Foreign Affairs/Vice-President, and thirteen European Commissioners selected on the basis of a system of equal rotation between the Member States. This system shall be established by a decision of the European Council on the basis of the following principles:

a) Member States shall be treated on a strictly equal footing as regard determination of the sequence of, and the time spent by, their nationals as Members of the Commission; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one.

b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all Member States of the Union.

The Commission President shall appoint non-voting Commissioners, chosen according to the same criteria as apply for members of the College and coming from all other Member States.

These arrangements will take effect on 1 November 2009.

²⁴ Combines Arts. 211, 213 and part of 214 EC with part of the Protocol on enlargement, with major amendments. There are further rules on the Commission in Arts. III-250 to III-257.

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties the European Commissioners and Commissioners shall neither seek nor take instructions from any government or other body.

5. The Commission, as a College, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, it may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign. The Commission shall continue to handle everyday business until a new college is nominated.

Article 26: The President of the European Commission²⁵

1. Taking into account the elections to the European Parliament, and after appropriate consultations, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.

2. Each Member State shall submit a list of three persons, in which both genders shall be represented, whom it considers qualified to be a European Commissioner. By choosing one person from each of the proposed lists, the President-elect shall select the thirteen European Commissioners for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the College, including the future Union Minister for Foreign Affairs, as well as the persons nominated as non-voting Commissioners, shall be submitted as a body to a vote of approval by the European Parliament. The Commission's term of office shall be five years.

3. President of the Commission shall:

- lay down guidelines within which the Commission is to work;
- decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis;
- appoint vice-presidents from among the members of the College.

A European Commissioner or Commissioner shall resign if the President so requests.

Article 27: The Union Minister for Foreign Affairs²⁶

1. The European Council, deciding by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Affairs. He or she shall conduct the Union's common foreign and security policy. The European Council may end his or her tenure by the same procedure.

²⁵ Combines parts of Art. 213 and 214 EC with Art. 219 EC, with amendments.

²⁶ New; the post replaces the CFSP High Representative (Arts. 18 and 26 EU), appointed by QMV in Council (Art. 207(2) EC).

2. The Union Minister for Foreign Affairs shall contribute by his or her proposals to the development of the common foreign policy, which he or she shall carry out as mandated by the Council. The same shall apply to the common security and defence policy.

3. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He or she shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, the Union Minister for Foreign Affairs shall be bound by Commission procedures.

Article 28: The Court of Justice²⁷

1. The Court of Justice shall include the European Court of Justice, the High Court and specialised courts. It shall ensure respect for the law in the interpretation and application of the Constitution.

The Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

2. The European Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges and the Advocates-General of the Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out in Article III-260 and III-261, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

3. The Court of Justice shall:

- rule on actions brought by a Member State, an institution or a natural or legal person in accordance with the provisions of Part III;
- give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;
- rule on the other cases provided for in the Constitution.

Chapter II: Other Institutions and Bodies [omitted]²⁸

Article 29: The European Central Bank; Article 30: The Court of Auditors; Article 31: The Union's Advisory Bodies

²⁷ This clause incorporates Art. 220 EC and elements of Arts. 221-224 EC, and mentions the jurisdiction set out in Arts. 230 and 234 EC. There are further rules on the Courts in Arts. III-258 to III-289 (annotated separately).

²⁸ There are further rules on the Central Bank in the monetary chapter (Arts. III-69 to III-96) and on the other bodies in Arts. III-290 to III-298. The Constitution would not change these rules significantly, although the Central Bank would be designated an 'institution' for the first time.

TITLE V: EXERCISE OF UNION COMPETENCE

Chapter I: Common provisions

Article 32: The legal acts of the Union²⁹

1. In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part Three, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act binding, as to the result to be achieved, on the Member States, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as regards the result to be achieved, on all Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions adopted by the institutions shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by this Article in the area in question.

Article 33: Legislative acts³⁰

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council of Ministers under the ordinary legislative procedure as set out in Article III-302. If the two institutions cannot reach agreement on an act, it shall not be adopted.

In the cases specifically provided for in Article III-165 of Part III, laws and framework laws may be adopted at the initiative of a group of Member States in accordance with Article III-302.

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the European Parliament with the participation of the Council of Ministers, or by the Council of Ministers with the participation of the European Parliament, in accordance with special legislative procedures.

²⁹ Based on current Art. 249 EC, with amendments. The special second pillar instruments set out in Arts. 13-15 EU and the special third pillar instruments set out in Art. 34 EU would be abolished.

³⁰ Art. III-302 is essentially unchanged from the current Art. 251 EC (co-decision procedure). See the separate list of legislative and executive procedures in the Constitution.

Article 34: Non-legislative acts³¹

1. The Council of Ministers and the Commission shall adopt European regulations or European decisions in the cases referred to in Articles I-35 and I-36 and in cases specifically laid down in the Constitution. The European Central Bank shall adopt European regulations and European decisions when authorised to do so by the Constitution.

2. The Council of Ministers and the Commission, and the European Central Bank when so authorised in the Constitution, adopt recommendations.

Article I-35: Delegated regulations³²

1. European laws and European framework laws may delegate to the Commission the power to enact delegated regulations to supplement or amend certain non-essential elements of the law or framework law.

The objectives, content, scope and duration of the delegation shall be explicitly defined in the laws and framework laws. A delegation may not cover the essential elements of an area. These shall be reserved for the law or framework law.

2. The conditions of application to which the delegation is subject shall be explicitly determined in the laws and framework laws; they may consist of the following possibilities:

- the European Parliament or the Council of Ministers may decide to revoke the delegation;
- the delegated regulation may enter into force only if no objection has been expressed by the European Parliament or the Council of Ministers within a period set by the law or framework law.

For the purposes of the preceding paragraph, the European Parliament shall act by a majority of its members, and the Council by a qualified majority.

Article 36: Implementing acts³³

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing binding Union acts are needed, those acts may confer implementing powers on the Commission, or, in specific cases, and in the cases provided for in Article 39, on the Council of Ministers.

3. The law shall lay down in advance rules and general principles for the mechanisms for control by Member States over implementing acts of the Union.

4. Implementing acts of the Union shall take the form of European implementing regulations or European implementing decisions.

³¹ New clause, but could be considered an updated description of current practice.

³² Entirely new clause; ‘delegated regulations’ are not provided for at present.

³³ Paras. 2 and 3 are based on parts of Art. 202 EC, amended to apply to all three pillars and to provide for a different decision-making procedure for adoption of the general rules. But note that some measures currently subject to implementing powers could be subject to delegated regulations in future.

Article 37: Principles common to the Union's legal acts³⁴

1. Unless the Constitution contains a specific stipulation, the Institutions shall decide, in compliance with the procedures applicable, the type of act to be adopted in each case, in accordance with the principle of proportionality set out in Article 9.

2. European laws, European framework laws, European regulations and European decisions shall state the reasons on which they are based and shall refer to any proposals or opinions required by this Constitution.

Article I-38: Publication and entry into force³⁵

1. European laws and European framework laws adopted under the ordinary legislative procedure shall be signed by the President of the European Parliament and by the President of the Council of Ministers. In other cases they shall be signed by the President of the Council of Ministers or by the President of the European Parliament. Laws and framework laws shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.

2. European regulations and European decisions which do not specify those to whom they are addressed or which are addressed to all Member States shall be signed by the President of the Institution which adopts them, shall be published in the Official Journal of the European Union and shall enter into force on the date specified in them or, in the absence of such a stated date, on the twentieth day following their publication.

3. Other decisions shall be notified to those to whom they are addressed and shall take effect upon such notification.

Chapter II: Specific provisions

Article 39: Specific provisions for implementing common foreign and security policy³⁶

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with the arrangements in Part III.

3. The European Council and the Council of Ministers shall adopt the necessary European decisions.

³⁴ Para. 1 is a new clause which reflects current practice. Para. 2 is an updated and expanded Art. 253 EC, applicable to all three pillars.

³⁵ Updated and expanded Art. 254 EC, applicable to all three pillars.

³⁶ See further the detailed rules in Arts. III-193 to III-215, annotated separately. The advance consultation obligation in para. 5 is new and is not mentioned there.

4. The common foreign and security policy shall be put into effect by the Union's Minister for Foreign Affairs and by the Member States, using national and Union resources.

5. Member States shall consult one another within the European Council and the Council of Ministers on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State shall consult the others within the European Council or the Council of Ministers. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

6. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves.

7. Decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part III. The European Council and the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support. European laws and framework laws are excluded.

8. The European Council may unanimously decide that the Council should act by qualified majority in cases other than those referred to in Part III.

Article 40: Specific provisions for implementing common security and defence policy³⁷

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capability drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation (NATO), under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.

³⁷ Further rules appear in the external relations chapter (annotated separately), particularly Arts. III-210 to III-214. Compare to Art. 17 EU.

Member States shall undertake progressively to improve their military capabilities. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to put forward measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council in evaluating the improvement of military capabilities.

4. European decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council of Ministers acting unanimously on a proposal from the Union Minister for Foreign Affairs or from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council of Ministers may entrust the execution of a task, within the Union framework, to a group of Member States in order to maintain the Union's values and serve its interests. The execution of such a task shall be governed by Article III-211.

6. Those Member States whose military capabilities meet higher criteria and which have made more binding commitments to one another in this area with a view to more demanding missions shall establish structured cooperation within the Union framework. Such cooperation shall be governed by the provisions of Article III-213.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.

Article 41: Specific provisions for implementing the area of freedom, security and Justice³⁸

1. The Union shall constitute an area of freedom, security and justice:

- by adopting European laws and European framework laws intended, where necessary, to approximate national laws in the areas listed in Part III;
- by promoting mutual confidence between the competent authorities of the Member States, in particular on the basis of mutual recognition of judicial and extrajudicial decisions;
- by operational cooperation between the competent authorities of the Member States, including the police, customs and other services specialising in the prevention and detection of criminal offences.

³⁸ Sets out the main objectives of the policy, the enhanced position of national parliaments, and the right of a group of Member States to submit legislative proposals. See Arts. III-158 to III-178 (annotated separately).

2. Within the area of freedom, security and justice, national Parliaments may participate in the evaluation mechanisms foreseen in Article III-161, and shall be involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles III-177 and III-174.

3. In the field of police and judicial cooperation in criminal matters, Member States shall have a right of initiative in accordance with Article III-160 of the Constitution.

Article 42: Solidarity clause³⁹

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

- (a) - prevent the terrorist threat in the territory of the Member States;
- protect democratic institutions and the civilian population from any terrorist attack;
- assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;
- (b) - assist a Member State in its territory at the request of its political authorities in the event of a disaster.

2. The detailed arrangements for implementing this provision are at Article III-231.

Chapter III: Enhanced cooperation

Article 43: enhanced cooperation⁴⁰

1. Member States which wish to establish enhanced cooperation between themselves within the framework of the Union's non-exclusive competences may make use of its institutions and exercise those competences by applying the relevant provisions of the Constitution, subject to the limits and in accordance with the procedures laid down in this Article and in Articles III-322 to III-329.

Enhanced cooperation shall aim to further the objectives of the Union, protect its interests and reinforce its integration process. Such cooperation shall be open to all Member States when it is being established and at any time, in accordance with Article III-324.

2. Authorisation to proceed with enhanced cooperation shall be granted by the Council of Ministers as a last resort, when it has been established within the Council of Ministers that the objectives of such cooperation cannot be attained within a reasonable period by the Union as a whole, and provided that it brings together at least one third of the Member States. The Council of Ministers shall act in accordance with the procedure laid down in Article III-325.

³⁹ Entirely new Article.

⁴⁰ This Article and Arts. III-322 to III-329 amend the current general rules in Arts. 43 to 45 EU and the specific rules in Arts. 11 and 11a EC, 27a to 27e EU and 40 to 40b EU. Among other changes, third pillar flexibility would be covered by the first pillar rules, the EP's right of assent would apply to all except foreign policy flexibility and foreign policy flexibility would no longer be limited to implementation measures or exclude defence.

3. Only representatives of the Member States participating in enhanced cooperation shall take part in the adoption of acts adopted within the Council of Ministers. All Member States may, however, take part in the deliberations of the Council of Ministers.

Unanimity shall be constituted by the participating States only. A qualified majority shall be defined as a majority of the votes of the participating Member States, representing at least three fifths of the population of those States. Where the Constitution does not require the Council of Ministers to act on the basis of a Commission proposal, or where the Council of Ministers does not act on the initiative of the Union Minister for Foreign Affairs, the required qualified majority shall consist of two-thirds of the participating States, representing at least three fifths of the population of those States.

4. Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as an *acquis* which has to be accepted by candidates for accession to the Union.

TITLE VI: THE DEMOCRATIC LIFE OF THE UNION⁴¹

Article 44: The principle of democratic equality

In all its activities, the Union shall observe the principle of the equality of citizens. All shall receive equal attention from the Union's Institutions.

Article 45: The principle of representative democracy

1. The working of the Union shall be founded on the principle of representative democracy.
2. Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council and in the Council of Ministers by their governments, themselves accountable to national Parliaments, elected by their citizens.
3. Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly as possible and as closely as possible to the citizen.
4. Political parties at European level contribute to forming European political awareness and to expressing the will of Union citizens.

Article I-46: The principle of participatory democracy

1. The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action.
2. The Union Institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

⁴¹ Arts. 44 to 47 are new, although Art. 45(3) is based on part of Art. 1 EU. Art 48 summarises Art. 195 EC, which appears fully in Art. III-237 (no substantive changes).

3. The Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. No less than one million citizens coming from a significant number of Member States may invite the Commission to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution. A European law shall determine the provisions regarding the specific procedures and conditions required for such a citizens' initiative.

Article 47: The social partners and autonomous social dialogue

The European Union recognises and promotes the role of the social partners at Union level, taking into account the diversity of national systems; it shall facilitate dialogue between the social partners, respecting their autonomy.

Article 48: The European Ombudsman

A European Ombudsman appointed by the European Parliament shall receive, investigate and report on complaints about maladministration within the Union's Institutions, bodies or agencies. The European Ombudsman shall be completely independent in the performance of his duties.

Article 49: Transparency of the proceedings of the Union's institutions⁴²

1. In order to promote good governance and ensure the participation of civil society, the Union's Institutions, bodies and agencies shall conduct their work as openly as possible.

2. The European Parliament shall meet in public, as shall the Council of Ministers when examining and adopting a legislative proposal.

3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's Institutions, bodies and agencies in whatever form they are produced, in accordance with the conditions laid down in Part III.

4. A European law shall lay down the general principles and limits which, on grounds of public or private interest, govern the right of access to such documents.

5. Each institution, body or agency referred to in paragraph 3 shall determine in its own rules of procedure specific provisions regarding access to its documents, in accordance with the European law referred to in paragraph 4.

Article 50: Protection of personal data⁴³

1. Everyone has the right to the protection of personal data concerning him or her.

⁴² Updated and amended text of Art. 255 EC, in particular extending the right of access to documents to other institutions, agencies and bodies besides the Council, Commission and EP. See also Art. III-305. The obligation to act 'as openly as possible' is in Article 1 EU.

⁴³ Updated and amended text of Art. 286 EC, extending to all three pillars and to Member States' activities within the scope of EU law.

2. A European law shall lay down the rules relating to the protection of individuals with regard to the processing of personal data by the Union's Institutions, bodies and agencies, and by the Member States when carrying out activities which come under the scope of Union law, and the rules relating to the free movement of such data. Compliance with these rules shall be subject to the control of an independent authority.

Article 51: Status of churches and non-confessional organisations⁴⁴

1. The Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States.

2. The Union equally respects the status of philosophical and non-confessional organisations.

3. Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations.

TITLE VII: UNION FINANCES *[omitted]*⁴⁵

TITLE VIII: THE UNION AND ITS IMMEDIATE ENVIRONMENT

Article 56: The Union and its immediate environment⁴⁶

1. The Union shall develop a special relationship with neighbouring States, aiming to establish an area of prosperity and good neighbourliness, founded on the values of the Union and characterised by close and peaceful relations based on cooperation.

2. For this purpose, the Union may conclude and implement specific agreements with the countries concerned in accordance with Article III-227. These agreements may contain reciprocal rights and obligations as well as the possibility of undertaking activities jointly. Their implementation shall be the subject of periodic consultation.

TITLE IX: UNION MEMBERSHIP

Article 57: Conditions and procedure for applying for Union membership⁴⁷

1. The Union shall be open to all the European States which respect the values referred to in Article 2, and are committed to promoting them together.

⁴⁴ This Article would enshrine a Declaration to the Treaty of Amsterdam as part of the Constitution.

⁴⁵ This Title and the detailed rules in Arts. III-308 to III-321 would make major changes to the financial and budget rules (currently Arts. 268–280 EC).

⁴⁶ New clause; added to existing clause on association agreements (Art. 310 EC, to become Art. III-226).

⁴⁷ Art. 49 EU with minor amendments.

2. Any European State which wishes to become a member of the Union may address its application to the Council of Ministers. The European Parliament and the Member States' national Parliaments shall be notified of this application. The Council of Ministers shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament. The conditions and arrangements for admission shall be the subject of an agreement between the Member States and the candidate State. That agreement shall be subject to ratification by each contracting State, in accordance with its respective constitutional requirements.

Article 58: Suspension of Union membership rights⁴⁸

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission, the Council of Ministers, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may adopt a decision determining that there is a clear risk of a serious breach by a Member State of the values mentioned in Article 2. Before making such a determination, the Council of Ministers shall hear the Member State in question and, acting in accordance with the same procedure, may address recommendations to that State.

The Council of Ministers shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may adopt a decision determining the existence of a serious and persistent breach by a Member State of values mentioned in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council of Ministers, acting by a qualified majority, may adopt a decision suspending certain of the rights deriving from the application of this Constitution to the Member State in question, including the voting rights of that Member State in the Council. In doing so, the Council of Ministers shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Constitution shall in any case continue to be binding on that State.

4. The Council of Ministers, acting by a qualified majority, may subsequently adopt a decision varying or revoking measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. For the purposes of this Article, the Council of Ministers shall act without taking into account the vote of the Member State in question. Abstentions by members present in person or represented shall not prevent the adoption of decisions referred to in paragraph 2.

This paragraph shall also apply in the event of voting rights being suspended pursuant to paragraph 3.

⁴⁸ Art. 7 EU with minor amendments, incorporating also Art. 309 EC. ECJ jurisdiction (Art. 46(e)) would move to Art. III-278 (see separate annotation).

6. For the purposes of paragraphs 1 and 2, the European Parliament shall act by a two-thirds majority of the votes cast, representing a majority of its Members.

Article 59: Voluntary withdrawal from the Union⁴⁹

1. Any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention; the European Council shall examine that notification. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be concluded on behalf of the Union by the Council of Ministers, acting by a qualified majority, after obtaining the consent of the European Parliament.

The representative of the withdrawing Member State shall not participate in Council or European Council discussions or decisions concerning it.

3. This Constitution shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, decides to extend this period.

4. If a State which has withdrawn from the Union asks to re-join, that request shall be subject to the procedure referred to in Article 57.

**PROTOCOL ON THE ROLE OF NATIONAL PARLIAMENTS
IN THE EUROPEAN UNION**⁵⁰

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which individual national Parliaments scrutinise their own governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State.

DESIRING, however, to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on legislative proposals as well as on other matters which may be of particular interest to them.

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

⁴⁹ Entirely new clause, although it is widely believed that Member States have the right to withdraw from the Union even in the absence of an express provision.

⁵⁰ Both Protocols are amended substantially as compared to the existing Protocols.

I. Information for Member States' national Parliaments

1. All Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to Member States' national Parliaments upon publication. The Commission shall also send Member States' national Parliaments the annual legislative programme as well as any other instrument of legislative planning or policy strategy that it submits to the European Parliament and to the Council of Ministers, at the same time as to those Institutions.
2. All legislative proposals sent to the European Parliament and to the Council of Ministers shall simultaneously be sent to Member States' national Parliaments.
3. Member States' national Parliaments may send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion on whether a legislative proposal complies with the principle of subsidiarity, according to the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.
4. A six-week period shall elapse between a legislative proposal being made available by the Commission to the European Parliament, the Council of Ministers and the Member States' national Parliaments in the official languages of the European Union and the date when it is placed on an agenda for the Council of Ministers for its adoption or for adoption of a position under a legislative procedure, subject to exceptions on grounds of urgency, the reasons for which shall be stated in the act or position of the Council of Ministers. Save in urgent cases for which due reasons have been given, no agreement may be established on a legislative proposal during those six weeks. A ten-day period must elapse between the placing of a proposal on the agenda of the Council of Ministers and the adoption of a position of the Council of Ministers.
5. The agendas for and the outcome of meetings of the Council of Ministers, including the minutes of meetings where the Council of Ministers is deliberating on legislative proposals, shall be transmitted directly to Member States' national Parliaments, at the same time as to Member States' governments.
6. When the European Council intends to make use of the provision of Article I-24(4), first subparagraph of the Constitution, national parliaments shall be informed in advance.

When the European Council intends to make use of the provision of article I-24(4), second subparagraph of the Constitution, national parliaments shall be informed at least four months before any decision is taken.
7. The Court of Auditors shall send its annual report to Member States' national Parliaments, for information, at the same time as to the European Parliament and to the Council of Ministers.
8. In the case of bicameral national Parliaments, these provisions shall apply to both chambers.

II. Interparliamentary cooperation

9. The European Parliament and the national Parliaments shall together determine how interparliamentary cooperation may be effectively and regularly organised and promoted within the European Union.

10. The Conference of European Affairs Committees may submit any contribution it deems appropriate for the attention of the European Parliament, the Council of Ministers and the Commission. That Conference shall in addition promote the exchange of information and best practice between Member States' Parliaments and the European Parliament, including their special committees. The Conference may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy and of common security and defence policy. Contributions from the Conference shall in no way bind national Parliaments or prejudice their positions.

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as enshrined in Article I-9 of the Constitution, and to establish a system for monitoring the application of those principles by the Institutions,

HAVE AGREED UPON the following provisions, which shall be annexed to the Constitution:

1. Each Institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article I-9 of the Constitution.
2. Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for the decision in its proposal.
3. The Commission shall send all its legislative proposals and its amended proposals to the national Parliaments of the Member States at the same time as to the Union legislator. Upon adoption, legislative resolutions of the European Parliament and positions of the Council of Ministers shall be sent to the national Parliaments of the Member States.
4. The Commission shall justify its proposal with regard to the principles of subsidiarity and proportionality. Any legislative proposal should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a framework law, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level must be substantiated by qualitative and, wherever possible, quantitative indicators. The Commission shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

5. Any national Parliament or any chamber of a national Parliament of a Member State may, within six weeks from the date of transmission of the Commission's legislative proposal, send to the Presidents of the European Parliament, the Council of Ministers and the Commission a reasoned opinion stating why it considers that the proposal in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional Parliaments with legislative powers.

6. The European Parliament, the Council of Ministers and the Commission shall take account of the reasoned opinions issued by Member States' national Parliaments or by a chamber of a national Parliament.

The national Parliaments of Member States with unicameral Parliamentary systems shall have two votes, while each of the chambers of a bicameral Parliamentary system shall have one vote.

Where reasoned opinions on a Commission proposal's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the Member States' national Parliaments and their chambers, the Commission shall review its proposal. This threshold shall be at least a quarter in the case of a Commission proposal or an initiative emanating from a group of Member States under the provisions of Article III-165 of the Constitution on the area of freedom, security and justice.

After such review, the Commission may decide to maintain, amend or withdraw its proposal. The Commission shall give reasons for its decision.

7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article III-270 of the Constitution by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

8. The Commission shall submit each year to the European Council, the European Parliament, the Council of Ministers and the national Parliaments of the Member States a report on the application of Article I-9 of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

Steve Peers e-mail: steve@peers100.fsnet.co.uk

Statewatch was founded in 1991. It is an independent group of researchers, journalists, lawyers, academics and community activists and its contributors are drawn from 12 European countries. Its work covers the state and civil liberties in Europe. Statewatch does not have a corporate view and does not seek to create one. Statewatch's main publications are: the bulletin, now in its thirteenth year and Statewatch News online (www.statewatch.org/news).
Contact: e-mail: office@statewatch.org