



Statewatch Report

Consolidated agreed text of the EU Constitution Justice and Home Affairs

Introduction

The following sets out the full agreed text of the EU Constitution concerning Justice and Home Affairs, following agreement on the Constitution at the EU summit on June 18, 2004. This agreement concluded the Intergovernmental Conference (IGC) which had been convened in October 2003. The IGC followed the proceedings of the EU's constitutional Convention, meeting from February 2002 to July 2003, which originally drew up a draft of the EU Constitution. Ultimately the IGC decided to make a number of substantive changes to the draft Constitution.

The text is consolidated on the basis of the legal experts' revised text of the Constitution drawn up initially by the constitutional Convention (doc. IGC 50/03), including the relevant corrections to that document made later (doc. IGC 50/03 cor 7), plus the substantive amendments to that text agreed by the EU leaders in the IGC (docs. (IGC 81/04 and 85/04).

Statewatch has not made any further amendments to the IGC documents, except to point out in italics where the IGC has made substantive amendments to the draft Constitution: Articles III-158, III-170, III-171, III-172, III-174 and III-175.

The numbering of the Articles of the Constitution, following the legal experts' revisions and the substantive changes made at the IGC, has not yet been consolidated. It seems highly likely that due to changes in numbering of the rest of Part III, the JHA provisions will ultimately be numbered differently. Statewatch has not attempted to consolidate the numbers.

It should be recalled that there will likely be further technical amendments to the Treaty establishing the Constitution, certainly including a consolidated numbering of its Articles, before its official signature, which is planned to take place before the end of 2004 according to the conclusions of the June 2004 EU summit meeting (European Council).

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CHAPTER IV

AREA OF FREEDOM, SECURITY AND JUSTICE

SECTION 1

GENERAL PROVISIONS

Article III-158 *(IGC amendment to paragraph 1)*

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal traditions and systems of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this chapter, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security by measures to prevent and combat crime, racism and xenophobia, and measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as by the mutual recognition of judgments in criminal matters and, if necessary, the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular by the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

Article III-159

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Article III-160

Member States' national Parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4 and 5 of this Chapter comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

Article III-161

Without prejudice to Articles III-265 to III-267, the Council of Ministers may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and Member States' national Parliaments shall be informed of the content and results of the evaluation.

Article III-162

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article III-247, it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and Member States' national parliaments shall be kept informed of the proceedings.

Article III-163

This Chapter shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article III-164

The Council shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to Article III-165, and after consulting the European Parliament.

Article III-165

The acts referred to in Sections 4 and 5 of this Chapter, together with the European regulations referred to in Article III-164 which ensure administrative cooperation in the areas covered by these Sections, shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

SECTION 2

POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION

Article III-166

1. The Union shall develop a policy with a view to:
 - (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;
 - (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
 - (c) the gradual introduction of an integrated management system for external borders.
2. For this purpose, European laws or framework laws shall establish measures concerning:
 - (a) the common policy on visas and other short-stay residence permits;
 - (b) the controls to which persons crossing external borders are subject;
 - (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
 - (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
 - (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.
3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

Article III-167

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of *non-refoulement*. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties.

2. For this purpose, European laws or framework laws shall lay down measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt European regulations or decisions comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

Article III-168

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. To this end, European laws or framework laws shall establish measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;

- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission of third-country nationals who do not or no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. European laws or framework laws may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

Article III-169

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the acts of the Union adopted pursuant to this Section shall contain appropriate measures to give effect to this principle.

SECTION 3

JUDICIAL COOPERATION IN CIVIL MATTERS

Article III-170 *(IGC amended paragraph 2)*

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.
2. To this end, European laws or framework laws shall lay down measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:
 - (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
 - (b) the cross-border service of judicial and extrajudicial documents;
 - (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
 - (d) cooperation in the taking of evidence;
 - (e) effective access to justice;
 - (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
 - (g) the development of alternative methods of dispute settlement;
 - (h) support for the training of the judiciary and judicial staff.

3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be laid down in a European law or framework law of the Council. The Council shall act unanimously after consulting the European Parliament.

The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.

SECTION 4

JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article III-171 *(IGC amended paragraph 2 and added paras. 3 and 4)*

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article III-172.

European laws or framework laws shall establish measures to:

- (a) establish rules and procedures to ensure the recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) encourage the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, European framework laws may establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a European decision; for the adoption of this decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

3. Where a member of the Council considers that a draft European framework law as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law be referred to the European Council. In this case, the procedure referred to in Article III-302 shall be suspended. After discussion, the European Council shall, within 4 months of this suspension, either:

- (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302, or
- (b) request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.

4. If, by the end of the period referred to in paragraph 3, no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-43(2) and III-325(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article III-172
(*IGC added paras. 3 and 4*)

1. European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with cross-border dimensions resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a European decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal legislation proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, European framework laws may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such framework laws shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article III-165.

3. Where a member of the Council considers that a draft European framework law as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law be referred to the European Council. In this case, where the procedure referred to in Article III-302 is applicable, it shall be suspended. After discussion, the European Council shall, within 4 months of this suspension, either:

- (a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-302 where it is applicable, or

- (b) request the Commission or the group of Member States from which the draft framework law emanates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.

4. If, by the end of the period referred to in paragraph 3, no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.

In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-43(2) and III-325(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

Article III-173

European laws or framework laws may establish measures to promote and support the action of Member States in the field of crime prevention. Such measures shall not include the approximation of Member States' legislative and regulatory provisions.

Article III-174 *(IGC amended paragraph 2)*

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

2. In this context, European laws shall determine Eurojust's structure, operation, field of action and tasks. Those tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions, conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

European laws shall also determine arrangements for involving the European Parliament and Member States' national Parliaments in the evaluation of Eurojust's activities.

3. In the prosecutions referred to in this Article, and without prejudice to Article III-175, formal acts of judicial procedure shall be carried out by the competent national officials.

Article III-175
(IGC amended para. 1 and added para. 4)

1. In order to combat crimes affecting the financial interests of the Union, a European law of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.
2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the European law provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.
3. The European law referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.
4. The European Council may, at the same time or subsequently, adopt a European decision amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

SECTION 5
POLICE COOPERATION

Article III-176

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.
2. To this end, European laws or framework laws may establish measures concerning:
 - (a) the collection, storage, processing, analysis and exchange of relevant information;
 - (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
 - (c) common investigative techniques in relation to the detection of serious forms of organised crime.
3. A European law or framework law of the Council may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

Article III-177

1. Europol's mission is to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.
2. European laws shall determine Europol's structure, operation, field of action and tasks. These tasks may include:
 - (a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;
 - (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

European laws shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with Member States' national parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

Article III-178

A European law or framework law of the Council shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in Articles III-171 and III-176 may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.