



## Statewatch Report

### Consolidated agreed text of the EU Constitution

## Judicial Provisions

### Introduction

*The following sets out the full agreed text of the EU Constitution concerning the courts of the European Union, following agreement on the Constitution at the EU summit on 8 June, 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. In several cases, the legal experts also made substantive amendments to the draft (in particular as regards jurisdiction over acts of the European Council and over foreign policy); these changes have also been noted in italics.*

*It should be recalled that the proposed Constitution would abolish the distinct regimes for the jurisdiction of the EU courts presently contained in Article 68 EC (concerning immigration, asylum, visas, borders and civil law) and Article 35 EU (concerning policing and criminal law), including the opt-out from the Court's preliminary rulings jurisdiction in Article 35 EU (applied by the UK, Ireland and Denmark, although the Protocols to the Treaties concerning the opt-outs for these countries from Justice and Home Affairs Law would still be attached to the draft Constitution, with amendments widening the scope of those opt-outs).*

*The only remaining distinct provision on the EU courts concerning the area of Justice and Home Affairs law is Article III-283.*

*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 provisions on the Court of Justice will ultimately be numbered differently (particularly as five of the Articles on the Court have been merged into two Articles by the legal experts). Statewatch has not attempted to consolidate the numbers, but has bracketed the Article numbers in the text to indicate that these numbers are*

*only provisional.*

*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).*

*Prepared by Steve Peers, Professor of Law, University of Essex, 26 June, 2004*

## Subsection 5

### The Court of Justice

#### Article III-258

The Court of Justice shall sit in chambers, as a Grand Chamber or as a full Court, in accordance with the Statute of the Court of Justice of the European Union.

#### Article III-259

The Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council may, acting unanimously, adopt a European decision to increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require his or her involvement.

#### Article III-260

The Judges and Advocates-General of the Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consultation of the panel provided for in Article [III-262].

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice of the European Union.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He or she may be re-elected.

The Court of Justice shall adopt its Rules of Procedure. Those Rules shall require the approval of the Council.

#### Article III-261

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice of the European Union. The Statute may provide for the High Court to be assisted by Advocates-General.

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high judicial office. They shall be appointed by common accord of the governments of the Member States after consultation of the panel provided for in Article [III-262].

The membership of the High Court shall be partially renewed every three years.

The Judges shall elect the President of the High Court from among their number for a term of three years. He or she may be re-elected.

The High Court shall establish its Rules of Procedure in agreement with the Court of Justice. The Rules shall be subject to the approval of the Council.

Unless the Statute of the Court of Justice of the European Union provides otherwise, the provisions of the Constitution relating to the Court of Justice shall apply to the High Court.

#### Article III-262

A panel shall be set up in order to give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the High Court before the governments of the Member States make the appointments referred to in Articles [III-260] and [III-261].

The panel shall comprise seven persons chosen from among former members of the Court of Justice and the High Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament. The Council shall adopt a European decision establishing the panel's operating rules and a European decision appointing its members. It shall act on the initiative of the President of the Court of Justice.

#### Article III-263

1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles [III-270], [III-272], [III-275], [III-277] and [III-279], with the exception of those assigned to a specialised court and those reserved in the Statute for the Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute of the Court of Justice of the European Union.

2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the specialised courts set up under Article [III-264].

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute of the Court of Justice of the European Union, where there is a serious risk of the unity or consistency of Union law being affected.

3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article [III-274], in specific areas laid down by the Statute of the Court of Justice of the European Union.

Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the Court of Justice, under the conditions and within the limits laid down by the Statute of the Court of Justice of the European Union, where there is a serious risk of the unity or consistency of Union law being affected.

#### Article III-264

1. European laws may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall be adopted either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.

2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.

3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.

4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.

5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. Those Rules shall require the approval of the Council.

6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice of the European Union and the provisions of the Statute of the Court of Justice of the European Union shall apply to the specialised courts. Title I of the Statute and Article 64 thereof shall in any case apply to the specialised courts.

#### Article III-265

If the Commission considers that a Member State has failed to fulfil an obligation under the Constitution, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice of the European Union.

### Article III-266

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice of the European Union.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court.

### Article III-267 (*IGC amended paragraph 3*)

1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Constitution, the State shall be required to take the necessary measures to comply with the judgment of the Court.

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court of Justice of the European Union, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article [III-266].

3. When the Commission brings a case before the Court of Justice of the European Union pursuant to Article [III-265] on the grounds that the State concerned has failed to fulfil its obligation to notify measures transposing a European framework law, it may, when it deems appropriate, specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court finds that there is an infringement it may impose a lump sum or penalty payment on the Member State concerned not exceeding the amount specified by the Commission. The payment obligation shall take effect on the date set by the Court in its judgment.

### Article III-268

European laws and regulations of the Council may give the Court of Justice of the European Union unlimited jurisdiction with regard to the penalties provided for in them.

#### Article III-269

Without prejudice to the other provisions of the Constitution, a European law may confer on the Court of Justice of the European Union, to the extent that it shall determine, jurisdiction in disputes relating to the application of acts adopted on the basis of the Constitution which create European intellectual property rights.

#### Article III-270 (*legal experts' substantive amendment*)

1. The Court of Justice of the European Union shall review the legality of European laws and framework laws, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.
2. For this purposes of paragraph 1, the Court shall have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.
3. The Court shall have jurisdiction under the conditions referred to in paragraphs 1 and 2 in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. Any natural or legal person may, under the conditions referred to in paragraphs 1 and 2, institute proceedings against an act addressed to that person or which is of direct and individual concern to him or her, and against a regulatory act which is of direct concern to him or her and does not entail implementing measures.
5. Acts setting up bodies, offices and agencies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.
6. The proceedings provided for in this Article shall be instituted within two months of the publication of the act, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

#### Article III-271

If the action is well founded the Court of Justice of the European Union shall declare the act concerned to be void.

However, the Court of Justice shall, if it considers this necessary, state which of the effects of the act which it has declared void shall be considered as definitive.

### Article III-272 (*legal experts' substantive amendment*)

Should the European Parliament, the European Council, the Council, the Commission or the European Central Bank, in infringement of the Constitution, fail to act, the Member States and the other Institutions of the Union may bring an action before the Court of Justice of the European Union to have the infringement established. This provision shall apply, under the same conditions, to bodies, offices and agencies of the Union which fail to act.

The action shall be admissible only if the Institution, body, office or agency concerned has first been called upon to act. If, within two months of being so called upon, the Institution, body, office or agency concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court Justice that an Institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.

### Article III-273

The Institution, body, office or agency whose act has been declared void, or whose failure to act has been declared contrary to the Constitution, shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article [III-337].

### Article III-274

The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;
- (b) the validity and interpretation of acts of the Institutions, bodies, office and agencies of the Union.

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court shall act with the minimum of delay.

### Article III-275

The Court of Justice of the European Union shall have jurisdiction in disputes relating to compensation for damage provided for in the second and third paragraphs of Article [III-337.]

#### Article III-276

The Court of Justice shall have jurisdiction to decide on the legality of an act adopted by the European Council or the Council pursuant to Article [I-58] solely at the request of the Member State concerned by a determination of the European Council or the Council and in respect solely of the procedural stipulations contained in that Article.

Such a request must be made within one month from the date of such determination. The Court shall rule within one month from the date of the request.

#### Article III-277

The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations of Officials and the Conditions of Employment of other servants of the Union.

#### Article III-278

The Court of Justice of the European Union shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- (a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article [III-265];
- (b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article [III-270];
- (c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article [III-270], and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;
- (d) the fulfilment by national central banks of obligations under the Constitution and the Statute of the European System of Central Banks and the European Central Bank. In this connection, the powers of the Governing Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article [III-265]. If the Court of Justice of the European Union finds that a national central bank has failed to fulfil an obligation under the Constitution, that bank shall be required to take the necessary measures to comply with the judgment of the Court.

#### Article III-279

The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.

#### Article III-281/284/280

1. Save where jurisdiction is conferred on the Court of Justice of the European Union by the Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.
2. Member States undertake not to submit a dispute concerning the interpretation or application of the Constitution to any method of settlement other than those provided for therein.
3. The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Constitution if the dispute is submitted to it under a special agreement between the parties.

#### Article III-282

*(first paragraph amended by IGC)  
(substantive amendment to second paragraph by legal experts)*

The Court of Justice of the European Union shall not have jurisdiction with respect to Articles [I-39] and [I-40], the provisions of Chapter II of Title V concerning the common foreign and security policy and Article [III-194] in so far as it concerns the common foreign and security policy.

However, the Court shall have jurisdiction to monitor compliance with Article [III-209] and to rule on proceedings, brought in accordance with the conditions laid down in Article [III-270(4)], reviewing the legality of European decisions providing for restrictive measures against natural or legal persons, adopted by the Council on the basis of Chapter II of Title V.

#### Article III-283 *(amended by IGC)*

In exercising its powers regarding the provisions of Sections 4 and 5 of Chapter IV of Title III concerning the area of freedom, security and justice, the Court of Justice of the European Union shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

#### Article III-285

Notwithstanding the expiry of the period laid down in Article [III-270(6)], any party may, in proceedings in which a measure of general application adopted by an Institution, body, office or agency of the Union is at issue, plead the grounds specified in Article [III-270(2)] in order to invoke before the Court of Justice of the European Union the inapplicability of that act.

#### Article III-286/287

1. Actions brought before the Court of Justice of the European Union shall not have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.
2. The Court of Justice of the European Union may in any cases before it prescribe any necessary interim measures.

#### Article III-288

The judgments of the Court of Justice of the European Union shall be enforceable under the conditions laid down in Article [III-307].

#### Article III-289

The Statute of the Court of Justice of the European Union shall be laid down in a Protocol.

A European law may amend the provisions of the Statute, with the exception of Title I and Article 64. It shall be adopted either at the request of the Court of Justice and after consultation of the Commission, or on a proposal from the Commission and after consultation of the Court of Justice.