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New name - Same content

The Lisbon Treaty – is it also an EU Constitution?

A review and analysis of the proposal for the new Lisbon Treaty as adopted at the EU summit in Brussels June 21-23 2007 ("the negotiation mandate"). This includes 273 pages with amendments put forward by the Portuguese presidency at the Intergovernmental Conference (IGC) on July 23 2007. It was changed to 288 pages with amendments from the IGC's negotiations, published on Friday October 5. These are divided into 152 pages of treaty changes, 76 pages of protocols, 25 pages of statements and one preamble. At the Lisbon summit on 18-19 October the Prime Ministers added 5 declarations and a protocol, so we are now with 294 pages of amendments to be inserted in 17 treaties representing 2,800 pages of primary EU law.

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Jens-Peter Bonde is the author of 55 books on the EU. He has also published a reader-friendly Constitution containing more than 3000 alphabetically listed words. The book can be downloaded for free along with a practical guide and a commented review on the web pages: www.bonde.com and www.euabc.com

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The Lisbon Treaty – is it also an EU Constitution?

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Other books on The EU Constitution by Jens-Peter Bonde

"The proposed EU Constitution
- The Reader-Friendly edition"

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entries containing most terms
appearing in the Lisbon Treaty

FORTHCOMING

Guide to the
Lisbon Treaty
with index

The Lisbon Treaty:
A Reader-Friendly
edition of the Lisbon
Treaty from 2007
(the revised EU Constitution)

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Introduction

The rejected EU Constitution has been revised. An *intergovernmental conference* to compile the texts started on Monday 23 July 2007 and finished on the night of 19 October 2007 in the Portuguese capital, Lisbon. The treaty will also be signed in Lisbon on 13 December 2007. Therefore its name will be the Lisbon Treaty.

It is now a total of 294 pages, carefully prepared by the secretariat of the Council of Ministers: as amendments and supplements to texts that one cannot see at the same time and therefore cannot understand, unless one knows where the texts should go.

The negotiations took place in secret. Neither the national parliaments nor the European Parliament could see the texts, which were negotiated on the spot.

All in all, there are 105 new competences for the EU in the revised version. There are also 105 in the rejected Constitution, including 32 legislative ones and 73 are other competences.

There are 68 new areas with majority decision in the revised text, compared with 68 in the rejected Constitution.

The new Constitution comes to more than 3000 pages, whilst the rejected one has 560. The larger one is identical to the 'mini Treaty' of the French President, Nicolas Sarkozy!

The new supplements could have been printed in **bold** type in the existing Treaties and the text to be deleted could have been in *italics*. Interested parties would thus have been able to see and read the amendments. This is what we did when we published a user-friendly version of the Treaty of Nice. In this way, all the amendments can be seen and evaluated in relation to the Treaty of Amsterdam currently in force.

They have managed to make the new text as difficult and inaccessible as humanly possible. The amendments can only be read by a few initiated specialists who are generally in favour. Unfortunately, a conscious effort has been made to minimise public interest and avoid referendums.

It is not nice. But there are still some of us critics who are trying to have the texts compiled as user-friendly versions and summaries, so that anyone with an *interest* can read and understand what is happening now.

This little book is a critical review to stimulate debate. The book also sets out the proposed amendments that we want to have discussed before the process is finally closed.

We are also preparing a politically neutral, user-friendly version of the new texts in the same way as we published a user-friendly version of the rejected Constitution and the Treaty of Nice. It will have the same 3000 keywords as well as a couple of new ones, so that anyone can find the way to the subject in which they are particularly interested.

The Council of Ministers still takes the liberty of publishing Treaties *without* an index or list of keywords. They do not *want* to be understood. They *want* to keep citizens out of the decision-making process. They will not hand over the negotiation documents to the national parliaments and the European Parliament.

This whole process was neither democratic nor transparent.

Not genuine negotiations

The negotiations on the next EU Treaty are now over. Negotiations were taking place on many levels at the same time, but the Portuguese Presidency did not allow new ideas to be *negotiated*.

Portugal's Foreign Minister, *Luís Amado*, said that he only wanted *technical* discussions on the structure of what the Prime Ministers *had already* agreed.

The successor to the rejected Constitution is planned to come into effect from 1 January 2009, before the next elections to the European Parliament in June 2009. That is the road map. Will it work?

The Prime Ministers started the negotiations and will sign the new Treaty at a *summit* in Lisbon on December 13. The treaty was prepared by an *intergovernmental conference*, since it dealt with amendments to the Treaties. This is based on Article 48 of the EU Treaty, under which *all* countries must agree. Every country has the right to put forward a proposal.

Representatives of the Prime Ministers' Offices and Foreign Ministries, known as *sherpas*, prepared the Foreign Ministers' discussions and solved the many smaller problems. Two legal experts from each country met for special work meetings to fine-tune all the Treaty articles. The first two-day meeting was on 24 and 25 July 2007.

After the adoption of the text at the special summit in Lisbon on October 18 – 19 2007 the texts went to a special work-group of legal language people known as *lawyer linguists*. They will try to make the texts officially identical in the different languages.

Political translations

These negotiations will also be used to agree different possible interpretations and presentations in the different language versions.

Some of these translations are of the kind known as *constructive ambiguity*. Poland will get an interpretation of the Charter of Fundamental Rights for its own use. The United Kingdom will get a protocol saying that it is not bound by the Charter. There is a great need for this kind of ambiguity when the countries have to reach agreement.

After the signatures by the Prime Ministers on 13 December 2007 in Lisbon the new Treaties have to be *approved* in the Member States. This is called *ratification*. This approval can only be given under the relevant rules of the various national constitutions.

Finally, the Heads of State will hand over the *ratification document* to the Italian Government. Italy has stored all the EU Treaties since the *Treaty of Rome* in 1957.

The Treaties can only enter into force when *all 27* Member States have approved them. Unanimity is the rule of the game under the Treaty of Nice. In *form* the Lisbon Treaty is therefore an international agreement between independent states. In *content* it is may be something more.

The question is whether the new Treaty is at all different from the rejected *Constitution*. Which rules could have been adopted under the rejected Constitution that cannot also be adopted under the new texts?

The European Parliament's Committee on Constitutional Affairs has a Finnish specialist who has participated in three intergovernmental conferences on behalf of the Finnish Government. He is *Alexander Stubb*. Stubb is now joint co-ordinator of the Committee on Constitutional Affairs for the largest political group in the European Parliament, the Christian Democrats and Conservatives, EPP-ED.

Stubb said he was happy that 99% of the Constitution had been kept in the new texts. I asked him about the remaining percent. Stubb had to admit that there was no major difference at all between the two texts with regard to which laws may be adopted on the basis of the two different draft Treaties (sets of texts).

At the next session of the Committee, I asked the chairman of the Convention on the Constitution, former French President *Valéry Giscard d'Estaing*. He was also unable to find any difference in impact. Nor could I, and that is why, after reading the 273 pages of amendments carefully, I offered a reward to anyone who could give me some good examples of laws that could be adopted under the rejected Constitution but which could not be adopted under the revised version.

Where is the difference in impact?

If there is no difference, it is difficult to justify cancelling referendums that have already been announced or promised on the original EU Constitution.

At the time of writing, there is an unanswered question: How many countries will have a referendum on the texts?

Ireland *has* announced a referendum for summer 2008. Who will be next?

New format, same content

The former chairman of the Convention on the Constitution, former French President *Valéry Giscard d'Estaing*, hailed the result at a session of the European Parliament on 17 July 2007.

He said that the content of the new Treaty was the same as in the rejected Constitution, but the format had changed from a legible Constitution to two sets of incomprehensible Treaty amendments.

Giscard said that he agreed with his Chairman-Elect at the Convention, former Italian Prime Minister and current Internal Affairs Minister *Giuliano Amato*. Amato said, according to euobserver.com on 16 July 2007, that the Constitution had *deliberately* been made *illegible* for citizens, precisely in order to avoid referendums.

QUOTES:

Giuliano Amato:

'They [EU leaders] decided that the document should be unreadable. If it is unreadable, it is not constitutional, that was the sort of perception. Should you succeed in understanding it at first sight there might be some reason for a referendum, because it would mean that there is something new.'

- Speech at the Centre for European Reform in London on 12 July 2007. Source: euobserver.com (16 July 2007)

Valéry Giscard d'Estaing:

'In fact, the content is the same. Legally, it is a matter of treaties, and they can be ratified as such by the national parliaments. But the substance is still the Constitutional Treaty.'

- Speech to members of the Committee on Constitutional Affairs, European Parliament, 17 July 2007.

Born at a secret meeting in Berlin

The Union train has picked up speed again. The German Chancellor, *Angela Merkel*, re-started the negotiations during the German Presidency of the EU. With the *Berlin Declaration* of 25 March 2007 it was decided to hold a new intergovernmental conference.

On 25 March the Prime Ministers of the EU countries celebrated 50 years of the Treaty of Rome, which is also called *the constitution of the common market*. Now it is the constitution for the enlarged and developed EU that is on the agenda.

The content and format were agreed at Chancellor Merkel's closing summit in Brussels on 23 June 2007.

One month later, on 23 July, the Portuguese Presidency of the EU published the proposal for the new Lisbon Treaty amendments. Formal changes were made to the Articles. The new Regulations and different paragraphs of the Constitution are spread out over the two earlier Treaties. At the same time, they adopted the new name, Treaty on the Functioning of the Union, for the former Treaty Establishing the European Community and they keep the name Treaty on European Union for the other Treaty.

The word 'Community' will disappear completely and will be replaced with 'Union'. 'The Union will replace and succeed the European Community,' it says now in Art. 1 of the Lisbon Treaty. So the EU is founded again. In reality a constitutionally new European Union comes into being, which is distinct and different from and legally superior to its Member States for the first time. This newly formed reformed EU will, with Art. 32 TEU, become a *legal person* that can enter into agreements with other countries. This ability is only reserved for sovereign states. The reformed EU will be much more than a general international cooperation. It will be at an advanced stage of making the EU into a new State?

Comparison with normal state functions

We will start with a bird's-eye view and assess the overall effect of all the relevant paragraphs.

All states have constitutions. For example, Germany has a *federal state constitution*. The distribution of legislative, executive and judicial power may differ, but the basic functions are the same for all the *Länder*.

We shall see that the new text includes the same functions that states usually have.

Legislative authority. There is a common legislative authority. The *Commission* and the *Council of Ministers* share legislative power. There is also greater influence for the European Parliament in the Lisbon Treaty with more so-called co-decision. The Council will decide by majority decisions in 68 new areas.

Executive authority. There is a common executive authority – *the Commission* - which will get an increase in its power to implement its own decisions.

Judicial authority. There is a common judicial authority, a common supreme court with new specialised tribunals under it. New courts may be set up by majority decision. Judgments from the *European Court of Justice* in Luxembourg will take precedence over all the national laws in the light of the principle of EU law conformity.

Accordingly, the new Union will have a legislative, executive and judicial authority, just as in a national constitution. But there is no clear distinction between legislative, executive and judicial power in the Lisbon EU Treaty.

Montesquieu's classical concept of the separation of governmental powers in a democracy has been abandoned. Is this a European democracy of the sort with which we are familiar in all the Member States?

Common President. We will get a common EU *president* who will head the work of the European Council, but he will not be elected as in the United States or France.

The President will be the permanent Chairman of *the European Council*. Here, the Prime Ministers of the EU countries will now meet as an official EU institution that can also make binding majority decisions.

The President will represent the Union in talks with, for example, the American or Russian or Chinese Presidents. The post of President of the European Council may later be amalgamated with the post of President of the Commission, so the EU might get a fully presidential leadership.

Common Foreign Ministry. We will also get a common Foreign Minister who can accompany the President on trips abroad. He will head a common Foreign Ministry, but will get a new title in the Lisbon treaty (the revised Constitution).

He will now be called '*the Union's High Representative for Foreign and Security Policy*'. With such a long, difficult title, the Franco-German machine ensured that in practice the media will call him the EU Foreign Minister. He will also represent the Union in cooperation with the *Foreign Ministers* of the Member countries.

In fact, he is already appointed as the *EU Foreign Minister*, even if his formal official title is *High Representative*. The Union's 'Foreign Minister' is *Javier Solana*. He has a history as Foreign Minister of Spain and has been Secretary-General of the Western European Union and of NATO.

In future, EU foreign policy may be laid down by majority decision, after a proposal by the EU Foreign Minister. Solana will also have another hat as Vice-President of the Commission.

With these two hats, foreign and internal policy can be integrated with the EU's other work. Binding laws on foreign policy cannot, however, be adopted on the basis of foreign policy decisions. The Court of Justice does not have full control over foreign and security policy either.

The nation states still have some leeway in this area.

The common Foreign Ministry can be extended by the use of normal majority decisions on the budget to establish a large common diplomatic corps. Common EU embassies can be established worldwide that could gradually replace national embassies.

The third public face is the President of the Commission. Accordingly, the Union can be represented vis-a-vis other states in the same way as other states are represented.

By a President, a Prime Minister and a Foreign Minister. Seen from the outside, the EU will thus be seen as resembling a state.

Common international agreements. The Union will for the first time become a *legal person and have its own distinct corporate existence as an international actor*. This is a difficult concept, but a very important one. Today, it is only the European Economic Community that is a legal person that can negotiate, for example, trade agreements with other countries.

Now, the *division of pillars* between intergovernmental and supranational cooperation that we have had up to now will disappear, and the Union as such will become a legal person.

The Union can thus enter into agreements with other states and international organisations on everything from trade to foreign and defence policy. The United States and China will not negotiate with the Member States of the EU any more. The Union will negotiate for the whole territory of the EU.

The President of the Commission, *José Barroso*, has called the new EU an *empire*. He is right. The Union is the world's largest trading power and is on the way to becoming a political *superpower*. The Lisbon Treaty will introduce specially *structured military cooperation* for selected EU countries, built on French and British nuclear weapons.

QUOTE:

José Barroso:

'Europe is an empire. A non-imperial one, it must be said. But still, an empire.'

At a press conference in Strasbourg on 10 July 2007, the President of the European Commission, Barroso, was asked what the EU will be once the new Treaty has been negotiated and adopted.

Source: EUX.TV, 10 July 2007. You can see the clip on YouTube using the link:

<http://www.youtube.com/watch?v=-I8MIT-GgRU>

As a general rule under the Treaty of Lisbon international agreements can be concluded by majority decisions where the internal rules can be decided by majority votes. The agreements will be binding on a Member State, even if its representatives voted against the contents of an agreement.

International agreements entered into by the new EU will also take precedence over the Member States' own laws and agreements.

Common external borders. The Union has and will have *common external borders*. They can be controlled with everything from common border troops to common rules, decided by majority, on immigration and asylum. The European Union will decide, by majority decision, who may enter and settle in our countries.

Common armed forces. In addition to the provisions for specially structured military cooperation, the Union will get a common defence policy for all EU countries. A common weapons market will be established, supported by a common military agency which was set up in June 2004. In 2005 the EU got a military planning unit and military battle groups, supplemented by a military operations centre from 2007 onwards.

Altogether, this will lead to the gradual development of common armed forces.

A common intelligence service (Sirene) is being set up. A number of military committees are meeting at the Council building in Brussels. The beginnings of a common Defence Ministry, a military planning unit, have already been set up in Avenue de Cortenbergh in Brussels.

The reshaped Constitution, the Lisbon treaty, will also give the Union a basis for waging war *without* the approval of the UN. There will be no Treaty requirement for it to wait for UN mandates.

Accordingly, the Union will get common external capacities and powers like other states. The right to enter into agreements with other states and to wage war is perhaps the most important function states have in comparison with businesses and individuals. The newly established Union will have the same powers as other states and will thus come to resemble a state in this way too.

Common penal code. As something new, the Union will also get the opportunity to punish its citizens for breaches of its law

Specifically, there is now is an explicit basis for adopting a common penal code and the opportunity to lay down sentences for breaches of all laws.

This is how it is in all states. The national parliaments adopt laws, with penalties for infringements. Now, EU citizens may be punished for infringing EU laws. There are no common EU prisons though. The common penal provisions will be implemented in and by the Member States.

The Union will thus get real powers over its citizens.

The Member States may be fined if they do not implement and act in accordance with the Union's laws.

Common fundamental rights. Under the Lisbon Treaty the Union will also get a code of common *fundamental rights* on its own just as with other states.

The supreme interpreter of fundamental rights will be the European Court of Justice, just as most Member States have a Supreme Court.

The Union will accede *jointly* to the European Convention on Human Rights. If there is conflict between common European human rights standards as laid down in the Convention and the interpretation by the EU Court of Justice, we will have to adapt ourselves to the EU again.

The revised Constitution expressly forbids Member States of the EU from lodging complaints against other countries or the EU itself other than through the European Court of Justice.

We therefore risk having two kinds of human rights in Europe: those that apply to all the European countries that have acceded to the Convention on Human Rights, and to its court in Strasbourg. And those that only apply in the EU and its Court in Luxembourg.

We also face the risk of the European Court of Justice limiting our freedoms. For example in Sweden, civil servants have a *freedom of delivering information*, which generally makes it illegal for the Swedish authorities to enquire into leaks to the press.

It is uncertain whether the Union's court will allow citizens and national authorities to have rights of this kind.

Common citizenship of the Union. The Union is not only a group of *states*. The Union also unites *the citizens*.

There is a common citizenship as a common superstructure for national citizenships. If there is conflict between Union citizenship and national citizenship, it is the Union's rules that apply. Citizenship of the EU means that we have a duty of obedience to the EU's laws and loyalty to the EU's institutions and authority.

One can only be citizen of a state. One consequence of this change is that in future members of the European Parliament will no longer be representatives of the "peoples of the Member States", but of the "citizens of the Union".

Common symbols of state. A common flag, currency, motto, national anthem and annual national day have been removed from the text of the Lisbon Treaty. But it is also written in the negotiation mandate that this will change nothing. The symbols of the Union will remain in force as hitherto, without any formal legal basis in the Treaties.

Official state symbols for the EU will no longer be provided for as they were in the Constitution. The father of the Constitution, *Giscard d'Estaing*, and the European Parliament are very annoyed at this. The Parliament voted by a large majority to reinforce the use of the common symbols of state for the EU even if they are not mentioned in the new Treaty.

Is it a constitution?

The word *Constitution* has now been removed from the published text, while the state functions and *primacy* of the Union's laws and judgments are confirmed explicitly in declaration No. 27. Instead of inserting the latter point clearly, reference is made to various judgments by the European Court of Justice that citizens themselves can look up.

In Opinion 1/91 of the European Court of Justice, the European treaties are expressly described as '*the constitutional charter of a Community based on the rule of law.*'

In the Lisbon treaty the name 'Constitution' goes out through the front door. References to the effect that there is already a Constitution are coming in through the back door.

So there *is* a *Constitution*, an EU constitution that we will soon have to adhere to if the Lisbon Treaty is ratified.

There are *no* functions of Member States that cannot now be found or developed at EU level. Even missing powers such as the possibility to tax citizens or bring them to war can be decided by unanimous decision without asking the peoples of Europe directly. The new Constitution will thus mean that each country will from now on have *two constitutions*, the national one and the EU one. Bavaria will even have three constitutions. If there is conflict between them, the EU one will apply. Not the national one, the European Court of Justice *has* decided.

Distribution policy. There is, however, one important normal state function missing also from the new Union. There is not yet a common budget for distributing resources from the rich to the poor.

In most countries taxes are levied on citizens by the government, which are then used to finance public services, for example, for supporting the unemployed and funding health services pensions, schools, etc.

The Constitution provides the *basis* for developing a distribution function of this kind. Majority decisions may be implemented unanimously on the composition of the budget. The current ceiling of Brussels funds, amounting to 1.24% of the aggregate GNP of the EU's 27 Member States' GNP, may be exceeded without voters having to be asked.

There is also talk of introducing common EU taxes. This may also be decided unanimously among the countries, without first asking the voters.

The EU's income today is a good 1 percent of the countries' aggregate GNP. In the United States, for example, the federal budget is 20% of GNP. The EU has some way to go here.

There is a common currency, a central bank and a common monetary policy. There is not yet a common fiscal or tax policy, income policy or social service policy.

In the socio-economic field there is still meaningful control by the governments and peoples of the Member States. We can have national elections and still decide the size of pensions at national level..

But the *framework* for our economy is increasingly settled by majority decision at the Union's Council of Ministers. For example, Member States are directly forbidden to pursue an active policy of employment if there is a danger that this will create too big a deficit in the state's accounts. Respect for price stability must always take precedence over concern for employment in the policy of the European Central Bank

This is already in the EU's existing Treaties. Now the EU will have more opportunities to coordinate economic policy, especially for countries that have adopted the common EU currency, the Euro.

Most legislation *has already been* exported to the EU.

Former German President *Roman Herzog* wrote recently that 84% of German laws now come from the EU, which led him to ask whether it was valid to regard Germany as a parliamentary democracy any longer.

47 paragraphs are enough

The critics in the Convention on the Constitution prepared constructive alternatives for building European cooperation.

We put forward a complete vision based on the values of openness, closeness to the people and democracy, as well as greater freedom for member countries through adopting minimum common *rules* instead of alignment or harmonization of complete rules, so-called *total harmonisation*.

I set out this vision in a brief proposal for a European *Cooperation Agreement*. With only 47 paragraphs, it takes up only one page of a broad sheet newspaper and can be understood by everyone.

It does not need more words than this to describe how European society should be properly managed. The content of laws should not appear in a constitution, as they do in the EU Constitution and the Treaty of Lisbon. They should be decided on the basis of the constitution or a European cooperation agreement.

It does not need 3000 pages of Constitutional Treaties which only experts can understand. A proper basis for the enlarged EU can be made that is much shorter, more democratic and easier to understand by citizens. Even if they want to have a full EU Constitution.

Three crucial proposed amendments

The SOS Democracy Inter-group in the European Parliament has also set out some very specific proposed amendments to the Lisbon Treaty text.

Every country still has the right to table a proposal under Article 48 of the EU Treaty. This right cannot be abolished or signed away.

The position of the Danish 'June Movement' ('JuniBevægelsen') on the final Treaty text will particularly depend on whether it contains these three important proposed amendments:

1. We do not want a 'double majority' with votes in the Council of Ministers according to population size. The Lisbon Treaty will halve Danish influence in EU law-making and double German influence. Instead, we want one vote for each country in the Council of Ministers. If unanimity cannot be reached, we want all laws to be adopted by decision of 75% of the countries and a general majority in the European Parliament.
2. We want to keep a Commissioner from each Member State and make her/him responsible to the national parliament for the way she/he votes in the Commission.
3. We want the requirement to have *total harmonisation* of laws changed to a requirement to have common *minimum rules*, so that countries that wish to have the opportunity to go further in protecting health and the

environment, security and employment, consumer protection, animal welfare and cultural diversity.

First and foremost, we want to ask *voters* about the most comprehensive measures to date in EU cooperation.

Together with supporters and opponents of the Constitution in the rest of Europe, we have therefore taken the initiative to collect *signatures* for referendums in the whole EU.

Ideally, we want a new *convention* to be elected in order to prepare one or two different proposals that can then be sent for referendums in all EU countries at the same time.

You can support the wish for a referendum on the Lisbon Treaty and get involved with spreading the word about the Inter-group website: www.x09.eu

The French and Dutch ‘No’

On 29 May 2005 55% of French citizens voted ‘No’ to a proposal to give the EU the basis for a *Constitution*, whereas 90% of French politicians had recommended a ‘Yes’ vote.

On 1 June 2005 the Dutch followed suit, but with a 62% ‘No’, even though there were exhortations to vote ‘Yes’ from 80% of Dutch politicians.

Voters in two of the EU’s original core countries had clearly said No to the Constitution.

Nonetheless, an EU summit decided to proceed with the ratifications as if nothing had happened. The Prime Minister of Luxembourg, *Jean-Claude Juncker*, offered to push the constitution through by way of a referendum.

Even then, 43.48% of Luxembourg voters voted No. To avoid a ‘No’ majority, the popular Prime Minister even threatened to hand over his post to an unpopular politician!

They tried to explain that it was not the Constitution, but something completely different from what people had voted on in France and the Netherlands.

Opinion polls showed, however, that a good 40% of the population of France had looked at the Constitution and 10% had read the whole text. The then French President, *Jacques Chirac*, who took part in its adoption, was – significantly – not among them.

Chirac would not discuss the Constitution with people who had a different opinion. Instead, he booked time on French TV to explain himself without any opponents, and invited 80 young people to ask questions, so that he could sparkle with pre-prepared positive statements on the Constitution people were going to vote on.

The young people did not stick to their role. They sat there with the text of the Constitution and little yellow stickers, and asked about its contents. In response to a question about health, Chirac replied that there was nothing about that in the Constitution.

I have published a user-friendly edition of the proposed Constitution with an alphabetical index of 3000 words in many languages. It can be referred to, free of charge, at www.euabc.dk. The index contains a whole page of references to provisions on health!

Constitution without democracy

A constitution usually protects citizens from politicians. It sets limits to what the elected may decide on between elections. The EU Constitution and the Lisbon treaty is different. It protects politicians from the influence of voters.

The EU Constitution contains everything a state needs in its paragraphs, and not much else. But the most fundamental thing in any democratic constitution is missing: *the voters*, democracy.

Where am I? How can I have an impact on laws in society? This is precisely where the process started. For a summit in the Brussels suburb, Laeken, on 14 and 15 December 2001 the Belgian Prime Minister, *Guy Verhofstadt*, single-handedly wrote the draft of the Laeken Declaration. He wanted to get rid of bureaucracy and mincing words and connect voters to the EU.

This ideal goal was forgotten along the way. I wrote a little guide in which I could show the power shift from voters to Brussels in 113 points. There was and is not a single instance of power going the other way.

As a Member of the European Parliament, I should be happy about the Constitution and now the Lisbon treaty. I will have a much greater say in making EU laws. Many more areas where I can have some influence. In the European Parliament, this is called *democratisation*.

But the cornerstone of democracy does *not* lie with the Members of the European Parliament, but with *voters*.

The cornerstone of democracy is that we, as *voters*, can have elections, achieve a new majority and then a new law. It is we, *the voters*, who have the last word on all the laws in our country.

The EU consists of 27 parliamentary democracies with this common cornerstone. Of all the values, this is the one to which we are most committed together. This is how we distinguish ourselves from dictatorships and less democratic countries. We can always get rid of an unpopular law and an unpopular government.

We do not need to sell out as regards the market either. We can also take part in sharing social values with our *right to vote*. We can use the secret and general right to vote to say 'Yes' or 'No', so that our leaders can understand what we want – or be kicked out.

It is precisely this democratic cornerstone that is passed over in the Lisbon treaty. It is not removed entirely, but it is made into something that is very far removed. In practice, it is outside the Lisbon treaty's frame of reference. We can still have elections, but we cannot use our vote to change legislation in the many areas where the EU is given power to decide.

It is a very, very long process to change an EU law under the Lisbon treaty. The power to do this *does not* lie with the normal majority of voters.

Sole right to make proposals

It is only the *non-elected* that have the right to propose legislation in the EU. The Commission in Brussels still has the *sole right* to propose legislation, but in many more areas now. The Lisbon treaty contains the prize of direct democracy, which I helped to propose in the special Convention on the Constitution. There is the right for a million voters to sign a petition for the Commission to put forward a proposal.

But the Commission is not obliged to listen. When over a million voters signed the demand for the European Parliament to have one common seat, we could not even get the proposal debated once in the European Parliament itself!

This is the *only* direct nod to voters in the text. It is therefore a poor substitute for the democracy that we are losing in the Member States.

Stated polemically: It is a condition for making a proposal in the EU that one is not elected!

The Commission does not answer to voters. It cannot be kicked out at the next election. With or without one million signatures.

Do you think we will have referendums on the Lisbon treaty in all member states if/when we assemble one million signatures in Europe?

A smaller Commission

The Lisbon Treaty will remove the right to have a permanent Commissioner from each Member State and will continue to make their appointment a matter for the Prime Ministers. They have to meet for a summit every five years and agree on the new President and a smaller Commission.

After 2014 there can only be members from two-thirds of the Member States. In turn the countries themselves do not decide *who* will participate, when it is their turn to have a citizen in the Commission.

The President and Commissioners will be decided by a *super-qualified majority* of 20 of the 27 Prime Ministers. The Prime Ministers' choice will then be placed before the European Parliament, which can vote 'yes' or 'no' firstly on the President and then on the whole Commission.

The elected representatives in the European Parliament *cannot* elect another President or another Commission of their own choice.

It is the supreme executive authority in the EU countries, *the Prime Ministers*, who will appoint the Commission by majority decision. The Commission will be more powerful than ever and will exercise both legislative, executive and judicial authority.

Neither the national parliaments nor the European Parliament really elect what is in effect the *EU government*. We will get a common EU government, but it will not be responsible to the voters.

Indirect influence

The Prime Ministers emerge from national elections. We, as voters, have an indirect influence on who they are. But in the EU we do not have the direct influence on the appointment of a government that we exercise when we vote in elections to our national parliaments.

At national level we really do elect our government. We get something visible for our votes. The old Prime Minister again, or a new one. A new majority in the national parliament can amend the laws.

The European Parliament *can* reject the Prime Ministers' choice of Commissioners. When the Barroso Commission was appointed, a majority in the European Parliament wanted to reject two proposals for Commissioners. The countries concerned had to give up their candidacies..

The majority of the European Parliament did not like the proposed Italian Commissioner, who was appointed by the Italian Government, supported by a majority of the Italian parliament. The Latvian candidate was a former opponent of EU membership and was therefore not accepted, even though she was the choice of the Latvian Government.

There are two models for giving voters power over the Commission. One is the *federalist* model, where the European Parliament elects the President, who then puts his government together and has it approved or rejected by an overall majority in the Parliament. So it is voters' elections for the European Parliament that decide the Commission's colours.

The European parties can then each put forward a candidate for the post of President. The one who achieves a majority in the Parliament is elected. This is classical parliamentary democracy at EU level.

This model is preferred – not universally - by the large majority in the European Parliament. But it is *not* in the Lisbon treaty.

The Constitution's critics have put forward another model, where *voters* in individual countries elect their own representative in the Commission. There would therefore be a Commission that represents voters in every country. That is not in it either.

The revised EU Constitution effectively establishes a common European government, but it does not allow this government to be directly answerable to either national parliaments or the European Parliament.

A Europe of Democracies

Do we want to be represented as a European people, or as the different peoples we still are?

Are we ready for a common, supranational democracy in the EU? Could we possibly combine parliamentary democracy in the Member States with parliamentary democracy in the EU?

I like the vision of a *Europe of Democracies*. An EU Commissioner could be appointed by the national parliament or by direct election, where voters vote directly on who will represent the country in the Commission in Brussels, and thus have some influence on which laws should be proposed.

The Commission is the heart and engine of EU cooperation. The Commissioners do not only have the sole right to propose laws. They also adopt *most* laws on their own. On many other laws they organise agreement in advance amongst the interested parties, particularly the Member State ambassadors and civil servants in 300 secretly working working groups in the Council.. .

The Lisbon treaty – even the most recent version – gives the Commission monstrous new opportunities to legislate through its own decrees.

They are called *delegated European regulations* and *implementing regulations* and *decisions* (Article I-37.4 of the original Constitution, now Article 249B of the Lisbon Treaty.)

The elected representatives and governments may only amend the Commission's decrees if they can achieve a large *qualified majority* in the Council of Ministers or an *absolute majority* in the European Parliament.

Unelected ambassadors and civil servants can therefore vote over the heads of the vast majority of countries. Our democracies can be voted down by unelected civil servants behind closed doors in Brussels.

Their decisions take precedence over Danish laws. Under EU law, even the Danish Constitution is below an implementing regulation adopted by civil servants in a Commission working group where there does not have to be a single Dane present.

Secret legislation

Today, 85% of all EU laws are adopted by civil servants from the Member States and the Commission in 300 secret work groups under the Council of Ministers in Brussels.

The laws are drawn up by 3000 other secret working groups attached to the Commission. Only 15% of EU laws are adopted at meetings of the Council of Ministers where the Ministers themselves may be present. The elected representatives from the national parliaments or the European Parliament are not allowed in here either.

This will not change with the Lisbon treaty even if, according to one of its stated objectives, it is supposed to bring citizens closer to the EU. On the contrary, even more laws in even more areas will be moved from open national Parliaments, elected by the peoples of the Member States, to closed meetings in Brussels.

The European Parliament will, however, have the opportunity to intervene in many more areas than today, through *common decision-making*. This method gives Members the opportunity to reject laws and table *proposals for amendments* for the Commission.

It is the unelected people in the Commission who decide whether proposed amendments should be accepted or not. In the end it is the civil servants, ambassadors and the Ministers in the Council of Ministers, who decide whether amendments proposed by the elected representatives may be adopted. But the ministers can only adopt an amendment from the European Parliament unanimously if the Commission does not support it.

It is *not* the European Parliament that adopts laws in the EU as national parliaments adopt laws in each of the EU's 27 countries. And of course the European Parliament cannot initiate or propose any law - such a right of initiative being the most important function of all real parliaments, In the EU this right of legislative initiative rests solely with the non-elected Commission

Democratic deficit

Members of the European Parliament have growing *influence* on the creation of laws, but they still do not have real legislative power. The problem with the Lisbon treaty is that it moves much more power *away from* voters and the elected representatives in the Member States than it gives *to* us as European voters and to our elected representatives in the European Parliament.

A new *democratic deficit* therefore arises. Voters lose the opportunity to hold elections, achieve a new majority and then amend the laws that bind them.

The compensation is that we can hold elections to the European Parliament every five years and thereby elect some people who can participate in *influencing* EU laws.

This is equivalent to us deciding in the Member States that our elected representatives should not adopt laws any more but instead should send recommendations to the heads of department at the ministries, who should then meet behind closed doors and decide whether the advice of the elected representatives is good or not.

The heads of ministry department are not elected, just as Commissioners are not elected in the EU.

Common decision-making is not common enough. It is the Commission and the Council of Ministers that legislate in the Community. They share the *legislative power*, even though none of them are elected directly to undertake it.

The European Parliament is elected, but actually does not have legislative power. The people we vote for at European elections can influence but cannot really decide. What is decided is not decided by those who are elected.

It is therefore not so bad that the first version of the Constitution was rejected by voters.

Why should French and Dutch voters say 'Yes' to reducing their own influence as voters?

Two models for cooperation

There are also two different models for removing this democratic deficit. The federalist model would move the entire legislative power to the European Parliament, so that laws are adopted in a common European parliamentary democracy. Are we ready for that?

The democratic opposition in the Convention that drew up the original Constitution proposed a combination of parliamentary democracy in the Member States with two different hearings in the EU.

In one chamber, *the Council of Ministers*, each country should have one vote, regardless of size. A law might be adopted if, for example, 75% of the countries agree. Each country's minister should have a mandate from his or her national parliament. An EU decision would therefore express the will of 75% of the national parliaments and thus, indirectly, of most national electorates.

At the same time, the other chamber, *the European Parliament*, could be given a real right of veto over all EU laws by simply seeking that any EU law should also be adopted by an overall majority in the European Parliament.

So a vote in the European Parliament would also have direct influence. So the laws would be brought in, in full view of the public, by the Commission's offices and the 300 secret work groups under the Council of Ministers in Brussels – for good or ill.

The Lisbon Treaty does not adopt either democratic method. It gives much less power to the European Parliament than it takes away from voters. This is the cornerstone of the 68 cases where the member countries lose the *right of veto* in the EU.

As compensation, the European Parliament will have greater influence in 19 of the current policy areas that are currently decided by majority voting in the Council of Ministers, without common decision-making at the European Parliament.

Seen in isolation, this is progress in 19 cases, but not enough to make up for the total loss of democracy in 49 cases. Greater influence for the European Parliament is not particularly good either. That Parliament is well-known for wanting to centralise things unnecessarily.

Especially after the French and Dutch 'No' to the Constitution, we have, however, been able to obtain support in the Parliament for the principle of common *minimum rules* instead of *total harmonisation*.

But making this effective is still a long way off, and so all too often we lose the opportunity to raise national standards in relation to, for example, health and the environment, while we are waiting for action at EU level.

Plan D – for dialogue and democracy

When voters rejected the Constitution in France and the Netherlands, the Commission and the EU countries decided on a “Plan D for dialogue and democracy”.

Nothing much came of it. The Commission pledged money to those who agreed. Nonetheless, the opinion polls did not give a majority in favour of the Constitution in all countries.

Many voters are still sceptical about the Constitution and want, above all, to be consulted as to whether it should come into force.

According to an opinion poll in March 2007 by the British think-tank, *Open Europe*, 75% of European voters want to be asked about the Lisbon Treaty, while only 20% want to pass the decision over to politicians.

(<http://www.openeurope.org.uk/media%2Dcentre/pressrelease.aspx?pressreleaseid=31>)

The popular desire to decide on the text by referendum was not good enough. Instead of amending the text so that it could be made more acceptable to voters, the Prime Ministers decided that it should not go to a referendum at all!

The voters had misused the Prime Ministers’ permission to vote by voting Non and Nee. So now we will never again be asked again to decide on such important matters by referendum.

The German machine

On 1 January 2007 Germany took over the EU Presidency. The new Chancellor, *Angela Merkel*, put herself in charge of breathing life into the rejected Constitution.

In a secret letter to her Prime Minister colleagues in the other EU countries, she asked whether the countries were prepared to give the Constitution a new name and new designations, but to keep the legal content.

The question was worded like this: ‘*How do you assess in that case the proposal made by some Member States to use different terminology without changing the legal substance for example with regard to the title of the treaty, the denomination of EU legal acts and the Union’s Minister for Foreign Affairs?*’ she asked in question 3.

(See Merkel’s 12 questions to the government leaders at www.bonde.com under ‘EU Constitution’.)

Merkel’s colleagues were prepared. On 23 June 2007 the Prime Ministers decided to proceed with the Constitution with different *cosmetically* important amendments. The word *cosmetic* is characteristic of Giscard d’Estaing, chairman of the Convention.

The new French President, *Nicolas Sarkozy*, was elected on the basis of turning the constitution into a small, practical *mini-Treaty*, which could then be implemented without a referendum.

Sarkozy’s small, practical *mini-Treaty* now contains the whole maxi-version. The paragraphs of the Constitution are merely spread over it, and it runs to approximately the current 2,800 pages of Treaty texts that can be found in 17 different Treaties, along with the relevant protocols and declarations.

We will now end up with over 3,000 pages of Treaty text that only specialists can find meaningful. This total Lisbon Treaty basis will make up *the new constitutional basis for the EU*.

The Lisbon Treaty

All in all, the contents of the new Treaty are essentially the same as its predecessor, the EU Constitution. The name is new. The Constitution is now called the *Lisbon Treaty*. It will technically be implemented as two supplements to the current Treaties.

The Union Treaty – ‘The Treaty on European Union’ – will still be abbreviated to *TEU* and will have a number of supplements from the Constitution. The Treaty establishing the European Community is currently abbreviated to *TEC* and will now have its name changed to ‘The Treaty on the Functioning of the European Union’ (TFU).

The two main Treaties, together with other relevant existing Treaties and the old and new protocols, would make up the constitutional legal basis of the Union, the Union’s *constitution*, if the new Lisbon treaty is ratified.

We *really* will have a common EU Constitution with *primacy* over the laws and constitutions of the Member States. But this objective is not clear any more. The exercise is now built on hiding and disguising things and, above all, on avoiding referendums, as frankly admitted by the fathers of the Constitution, Giscard and Amato.

Primacy of EU law

The Prime Ministers will now remove the Constitution’s provision on the *primacy* of EU law set out in Article I-6 of the rejected Constitution.

It is stated in the negotiation Mandate that the Treaties will *not* have a *constitutional nature* (point 3 of the negotiation mandate). This wording is just *not* repeated in the Lisbon treaty itself.

In some countries, politicians can then produce this non-binding quote and say: “Now the text has been changed, it is no longer a Constitution with primacy over the laws and constitutions of the Member States.”

In other countries, they can say: “It is only a change in name, the Constitution is intact. Any national decision is invalid if it conflicts with an adoption by the EU.”

Before one gets to point 4 of the negotiation mandate, there is a piece of wording that is completely incomprehensible for normal people, about keeping the existing legal situation of the primacy of EU over national law, as laid down by the European Court of Justice.

This is followed by a special declaration, No 27, where explicit reference is made to the Court that gives EU law *primacy* over the law of the Member States. The European Court of Justice *has* for a long time established EU law as a consistently constitutional system.

This is expressly acknowledged by this incomprehensible declaration and, at the same time, by the fact that some politicians can refer to the wording by denying it.

The European Council of 21-23 June 2007 in Brussels: Presidency Conclusions, General Observations, point 3, page 16:

'The TEU and the Treaty on the Functioning of the Union will not have a constitutional character. The terminology used throughout the Treaties will reflect this change: the term "Constitution" will not be used, the "Union Minister for Foreign Affairs" will be called High Representative of the Union for Foreign Affairs and Security Policy and the denominations "law" and "framework law" will be abandoned, the existing denominations "regulations", "directives" and "decisions" being retained. Likewise, there will be no article in the amended Treaties mentioning the symbols of the EU such as the flag, the anthem or the motto. Concerning the primacy of EU law, the IGC will adopt a Declaration recalling the existing case law of the EU Court of Justice. Footnote 1: (Whilst the Article on primacy of Union law will not be reproduced in the TEU, the IGC will agree on the following Declaration: "The Conference recalls that, in accordance with well settled case-law of the EU Court of Justice, the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case-law." In addition, the opinion of the Legal Service of the Council (doc. 11197/07) will be annexed to the Final Act of the Conference.)'

Note 11197/07 doc. 580/07 by the EU Legal Service states: 'It results from the case-law of the Court of Justice that primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community. At the time of the first judgment of this established case-law (Costa/ENEL, 15 July 1964, Case 6/64 (footnote)) there was no mention of primacy in the treaty. This is still the case today. The fact that the principle of primacy will not be included in the Lisbon Treaty shall not in any way change the existence of the principle and the existing case-law of the Court of Justice.'

In the footnote, there follows a quote from the Court that established the primacy of EU law: 'It follows ... that the law stemming from the treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.'

In other areas of life this kind of amendment would be called fraud. It is not. They are merely being economical with the truth. Similar qualifications can be found in the purchasing conditions, if one does a little research and looks up all the relevant legal judgments.

The primacy of EU law is now expressly stated for the first time in an EU Treaty. It is introduced in a non-binding declaration, but the declaration refers to the legally binding judgments which the Member States now expressly acknowledge.

To remove the word 'Constitution' does not change the nature of the Constitution either. Because the Court has laid down that EU law makes up '*the constitutional basis for a community governed by the rule of law*', as was expressed in an opinion by the Court in 1991 on EEA cooperation.

The proposed Lisbon treaty is called progress for democracy in the EU. Such a claim does not give voters any more influence.

The main question for any Constitution is whether *I* can decide. What is my role as a voter?

If I can decide together with other voters, it is a democratic Constitution. If not – I vote 'No' ...

The principle of subsidiarity

The Netherlands negotiated for and won the principle of proximity (*subsidiarity* in EU jargon). In future, national parliaments may protest at draft EU laws on the grounds of lack of respect for the

principles of subsidiarity and proportionality when 1/3 of the parliaments agree in the criticism within 8 weeks after reception of the proposal. This is called the “yellow card”. Afterwards the European parliament or 55% of the member state governments can stop a proposal if they think it does not respect the principle of subsidiarity. This is called the orange card.

The governments’ orange or red cards cover reasons of subsidiarity but not the more important principle of proportionality.

On paper, this is progress. But the threshold of 55 % should have been 25%, as the critics proposed at the Convention. That would be a real progress in relation to the 33⅓% figure contained in the rejected Constitution.

55% does not change anything in practice, since the EU cannot adopt a proposed law if 45% of the countries disagree!

In other words, 55% of the countries have to back every law in the Council of Ministers. This ‘prize’ for the Netherlands shows what came out of a negotiation where all the negotiators – even the Dutch – agreed that it was the voters who voted wrongly.

Since September 2006 the Commission *has* sent proposals for new laws directly to all the national parliaments, so that these can say whether the proposals comply with the principles of closeness and relativity (Subsidiarity and proportionality).

In the rejected Constitution, the parliaments had six weeks to react. This will now be amended to eight weeks. The two extra weeks are real progress.

But we now have to get unanimous opposition from 55% of the countries’ governments to *stop* the negotiation of a proposed law. The Commission had previously declared that they would respond to objections if there was opposition from a third of the countries. At a meeting of the national parliaments of the EU countries in Berlin on 13-15 May 2007 the national parliaments discussed whether two or up to five proposals should be controlled for subsidiarity in the Community each year.

The national parliaments do not have the strength to take EU legislation seriously, unfortunately.

We will not achieve a real principle of closeness until the day when the national parliaments are required to make statements on all EU legislation, so that they can be held responsible on election day.

The new rule of closeness is made out to be a strengthening of the national parliaments. Unfortunately, the rule covers the greatest transfer of influence to date from the national parliaments – *and voters* – to executive power in the EU.

In the resurrected Union Constitution, the national parliaments will get the principle of closeness incorporated in a new Article 8c in the EU Treaty.

Votes according to population

The Lisbon treaty drastically changes the existing power relations between the Member States. Power is not only shifted away from voters in *all* countries. Power is also shifted away from the small and medium-sized countries to the largest ones.

The key proposal is that countries will get votes according to their *population size*. Thus Germany gets 82½ million votes, Denmark 5.4 million. This means that Germany, France and two other countries can block any proposed law, even if the 23 other countries are in favour.

The new system, with a *double majority*, gives the larger countries a much stronger bargaining position in making EU laws. In future, the Commission will start by consulting the largest countries when it is preparing proposals for EU laws. It will know that the small ones can always be outvoted if need be.

Today, most proposed laws are adopted by *consensus* on the Council of Ministers. Only a few laws are voted on, even if in practice it is possible to vote them through by a *qualified majority*.

Today there are 345 votes in the Council of Ministers. There have to be 255 for a qualified majority. Germany and the other big countries have 29 votes each, Poland and Spain 27 each, Romania 14, Sweden 10 and Denmark 7.

The Polish alternative

Germany wants to use the ‘double majority’ system proposed in the Treaty of Lisbon and the Constitution to double its influence in relation to many other countries.

Germany will have 15 times the influence of Denmark, and more than twice the influence of Poland with its 38 million citizens. Today, Poland has 27 votes in comparison with 29 for Germany, France and the other big nations.

Poland will have its influence halved by the Lisbon treaty, but was criticised for being difficult in the negotiations on this point, while Germany was praised for her patience.

The Polish alternative to votes according to population size would have introduced a system where the weighting of votes for individual Member States would be calculated by the square root of a country’s population.

This would have meant that that Germany would have 9 votes and Poland 6. Accordingly, Poland started by offering to go from 27 votes to 6, while Germany would only go from 29 to 9.

In fact, this Polish proposal was not originally Polish. The proposal had originally been put forward by Sweden. A similar system is used in the German Bundesrat! There, none of the *Länder* may have fewer than 3 votes, nor more than 6.

Little Saarland, with 1.04 million inhabitants, has 3 members in the Bundesrat, whilst big Rheinland-Westphalia, with 18.03 million inhabitants, has 6 seats, according to the Bundesrat’s website.

The German *Länder* would never accept the system of voting according to total population size which Germany in particular has now superimposed on the whole EU.

The difference between Nice and the Lisbon treaty’s voting rules

During the negotiations in Brussels on the night of 23 June 2007, Poland achieved an extension of the double-majority system. It will not enter into force before 2014. Up to 2017 any country may request a vote in accordance with the rules of the Treaty of Nice.

The background to this is that Spain achieved great influence at the negotiations on the Treaty of Nice in 2000. The President of France, Chirac, insisted on having the same weighting of votes as Germany in the Council of Ministers, even though post-reunification Germany is significantly larger than France.

The four big countries therefore got 29 votes each in the Council of Ministers, while Germany got 99 Members in the European Parliament as compensation for her large size, in comparison with 78 for France. Now Germany will get votes according to population in the Council and will almost keep its very big representation in the European Parliament *at the same time*.

Spain – and thus also Poland, with almost the same population – won 27 votes in the Council of Ministers. Very close to the four big Member States. It was on this basis that Poland originally joined the EU. As soon as she was in she was told: That’s invalid; your influence will be halved henceforth..

So Poland proposed the fairer square root principle, which would give Poland two-thirds of the German voting weight instead of nearly the same.

The proposal to divide mandates according to the square root of the population was first developed by a British mathematician, *Lionel Penrose*. It had already been proposed by Sweden during the negotiations on an earlier Treaty.

The system has the big advantage of abolishing the horse-trading between countries regarding the weighting of votes, and it is much easier to use than population size. Instead of 82½ million votes, Germany would have got 9 votes, Poland 6, Sweden 3 and Denmark 2. This is easy for ordinary people to remember.

The system in the EU Lisbon treaty, based on total population size shall enter into force, together with the smaller Commission, in 2014. The population size is revised each year and published in the EU's Official Journal. It is not that simple.

For example, there are 4 million Romanians who live and work in other EU countries. Where are they to be counted? With their country of origin or country of residence? There are millions of citizens around the EU with dual nationality. Is it only residence that should be counted?

Using the principle of square root of the population, there are fewer meaningless changes to population size. The system could be simplified further, as I have shown in this table giving the most recently published official populations and weightings of votes according to different models.

In the simplified model – based on that used in the German Bundesrat – Germany would get 6 votes, France, Italy and the United Kingdom would get 5 each, Poland and Spain 4, medium-sized countries 3, Denmark and similar countries 2. There would then be a single vote for the smallest countries, such as Luxembourg and Malta.

A simplified system such as this would be easy for ordinary people to remember. Even with the new enlargements of the EU, we could stay below a total of 100 votes. Germany would get more votes than France and have 3 times as many as Denmark.

In the original EC, Germany had 10 votes and Denmark had 3. With the Treaty of Nice, Germany went from 10 to 29 and Denmark from 3 to 7. With the Lisbon Treaty, Germany gets 15 times the Danish influence. The biggest countries are now taking a firm grip on power in the EU

			Constitution and Lisbon Treaty	Distribution of votes in the Council – square root system				Treaty of Nice			
Country	Proportion of population EU27	Population in millions on 1 January 2006	Proportion of blocking minority, %	'Rough' calculation based on the square root system		Simplified version		Votes in the Council, %	Votes in the Council	Proportion of blocking minority based on weighted votes, %	Proportion of blocking minority based on population size, %
				Votes in the Council	Proportion of blocking minority, %	Votes in the Council	Proportion of blocking minority, %				
Germany	16.73	82.438	47.8	9	36.0	6	28.6	8.4	29	31.9	44.0
United Kingdom	12.25	60.393	35.0	8	32.0	5	23.8	8.4	29	31.9	32.2
France	12.76	62.886	36.5	8	32.0	5	23.8	8.4	29	31.9	33.6

Italy	11.92	58.752	34.1	8	32.0	5	23.8	8.4	29	31.9	31.4
Spain	8.88	43.758	25.4	7	28.0	5	23.8	7.8	27	29.7	23.4
Poland	7.74	38.157	22.1	6	24.0	5	23.8	7.8	27	29.7	20.4
Romania	4.38	21.610	12.5	5	20.0	4	19.0	4.1	14	15.4	11.5
Netherlands	3.31	16.334	9.5	4	16.0	4	19.0	3.8	13	14.3	8.7
Greece	2.26	11.125	6.4	3	12.0	3	14.3	3.5	12	13.2	5.9
Czech Republic	2.08	10.251	5.9	3	12.0	3	14.3	3.5	12	13.2	5.5
Belgium	2.13	10.511	6.1	3	12.0	3	14.3	3.5	12	13.2	5.6
Hungary	2.04	10.077	5.8	3	12.0	3	14.3	3.5	12	13.2	5.4
Portugal	2.14	10.570	6.1	3	12.0	3	14.3	3.5	12	13.2	5.6
Sweden	1.84	9.048	5.2	3	12.0	3	14.3	2.9	10	11.0	4.8
Austria	1.68	8.266	4.8	3	12.0	3	14.3	2.9	10	11.0	4.4
Bulgaria	1.57	7.719	4.5	3	12.0	3	14.3	2.9	10	11.0	4.1
Slovakia	1.09	5.389	3.1	2	8.0	2	9.5	2.0	7	7.7	2.9
Denmark	1.10	5.427	3.1	2	8.0	2	9.5	2.0	7	7.7	2.9
Finland	1.07	5.256	3.0	2	8.0	2	9.5	2.0	7	7.7	2.8
Ireland	0.85	4.209	2.4	2	8.0	2	9.5	2.0	7	7.7	2.2
Lithuania	0.62	3.403	2.0	2	8.0	2	9.5	2.0	7	7.7	1.8
Latvia	0.47	2.295	1.3	2	8.0	2	9.5	1.2	4	4.4	1.2
Slovenia	0.41	2.003	1.2	2	8.0	2	9.5	1.2	4	4.4	1.1
Estonia	0.27	1.345	0.8	1	4.0	1	4.8	1.2	4	4.4	0.7
Cyprus	0.16	0.766	0.4	1	4.0	1	4.8	1.2	4	4.4	0.4
Luxembourg	0.09	0.460	0.3	1	4.0	1	4.8	1.2	4	4.4	0.2
Malta	0.08	0.404	0.2	1	4.0	1	4.8	0.9	3	3.3	0.2
EU-27 Total	100.0	492.9		97		81		100.0	345		
Blocking minority			35	25		21			91		38
Qualified majority			65	72		60			255		62

Blocking minority – the Ioannina compromise

Under the Treaty of Lisbon and the EU Constitution in order to adopt an EU law, 55% of the countries have to be in agreement, together representing 65% of the overall EU population. The adoption of a law can thus be impeded by a little more than 45% of the countries, or countries with more than 35% of the population.

This is called a *blocking minority*. In this way, Germany and France, for example – or Turkey in due course – could dominate EU cooperation. There is also, however, a rule that there must be at least 4 countries for a block. Accordingly, the Franco-German machine would only need to have the agreement of 2 other countries, for example Luxembourg and Belgium, to be able to tip the balance in their favour.

When the Treaty of Nice was negotiated, Spain was angry that it got a worse bargaining position than it had under the previous system. Spain therefore achieved a special dispensation, whereby a decision may only be blocked once by a smaller number of votes than is usually needed for a blocking minority.

The agreement was reached at the Greek town of Ioannina and is therefore called the Ioannina compromise. Its content is not very important, because it has only been used once in practice.

On the night of 23 June 2007, Poland achieved a similar victory. It gained a new Ioannina compromise, whereby it is possible for a country to demand postponement of negotiations on a proposed law if its proposal has the support of 75% of the votes needed to make up a blocking minority according to the new rules of the game.

The 75% can be calculated both as regards the number of states and their population sizes. This rule will apply until 31 March 2017. 'As from 1 April 2017, the same mechanism will apply, the relevant percentages being, respectively, at least 55 % of the population or at least 55 % of the number of Member States necessary to constitute a blocking minority resulting from the application of...', it says on page 18 of the negotiation mandate.

Poland may thereby say that it will obtain greater relative bargaining power in negotiations on the next two 7-year EU budgets. The reality will still be that a simple majority of Member States can agree on a vote in accordance with the rules of the Treaty.

So they will vote, and Poland can easily be outvoted.

The countries have argued about the interpretation of this compromise. Should the postponement of a vote be for 2 years or for only 3 months - until the next EU summit?

The summit has put the new compromise in a decision from the European Council. It can only be changed by consensus of the prime ministers according to a new protocol. The compromise is in a non-binding declaration. The non-binding text can only be abolished by consensus according to a new legally binding protocol. That was the compromise which the Polish prime minister decided to call a victory even if there is little real substance to it.

From 1966 to 1986 the *Luxembourg agreement* was used in voting on EU laws. Any country could suggest that a vote had not been taken in accordance with the voting rules of the Treaty. This was called using the *veto*. This right of veto was never officially abolished. It is not, however, used any more in practice.

With the new 'double majority' system in the Lisbon treaty, the Luxembourg compromise will be formally abolished, even if that is not stated explicitly.. The right of veto by Member States contained in the original Luxembourg agreement will be gone.

A Ioannina compromise that is difficult to understand has replaced it. It will not be easier to explain to the public how laws are made in the EU.

Common fundamental rights

In some countries, it can now be claimed that the EU did not adopt common fundamental rights, because these will not be published in the new Treaties. Instead, there is a reference in the Lisbon Treaty to the EU Charter of Fundamental Rights, which makes the provisions of the Charter legally binding.

The contents of the Charter were also published for ‘technical reasons’ in the Official Journal of the European Union.

There is no real difference in publishing the Charter as an independent Part II of the Constitution and leaving it out entirely but making a cross-reference to it in a Treaty Article as is done in the Lisbon Treaty. The Charter’s provisions would be made legally binding in exactly the same way as if they were explicitly set out in the Treaty itself.

It will still be the European Court of Justice in Luxembourg that will decide *how* the now legally binding human rights should be interpreted.

For example, we all have *the right to life*. That sounds good, but does life start at birth or nine months before that? Or at some specific time between those two dates?

We also have *the right to strike*. Thanks for that. Will this new EU right also apply to strikes against foreign companies that want to sell their products inside the EU instead of the European companies that are paralysed by strikes? Can a trade union start a legal sympathy strike? Can civil servants strike? Such questions may now be settled by the European Court of Justice.

Issues such as strikes and a number of other human rights questions have, until now, been outside the competences transferred to the EU.

The devil is not in the rights, but in the interpretation of the detail. Our rights would no longer be decided by national parliaments, national courts and voters.

Because of the legally binding nature of the Charter there is therefore a massive and completely opaque transfer of sovereignty to the EU. Nobody can say what the Court of Justice will achieve for the different rights. How can there be a *certain degree* of transferring powers regarding rights?

We will lose the right to decide on our own basic rights. Even the freedoms of the Constitution have to be interpreted in the light of EU law. In none of the areas covered by the Treaties can we achieve a standard of rights other than that laid down by the Union’s authorities and the Union’s court – unless we leave the EU altogether.

I would not recommend the latter. The Union also decides on important legal areas in Norway and Iceland through the EEA Agreement. *All* Europeans, whether members of the EU or not, need a better EU with democracy and greater freedom through minimum rules.

The best solution would be that the EU satisfies itself with enforcing the common European human rights as the European Court of Justice of Human Rights in Strasbourg interprets them. Then we would have only one set of human rights in Europe. Then adopting a code of human rights cannot be misused to help turn the EU into a state.

PART TWO STARTS HERE

Same content – new name

The chairman of the Convention on the Constitution, former French President Giscard d'Estaing (according to The Sunday Telegraph, 2 July 2007:

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2007/07/01/weu201.xml>) said that the draft Lisbon Treaty is '*hidden and disguised*' and '*very, very near*' his original proposal.

'Although the British, Dutch and French have insisted we eliminate all reference to the word 'Constitution', the new treaty 'still contains all the key elements [of the Constitution].'

'All the earlier proposals will be in the new text, but will be hidden and disguised in some way,' said the father of the Constitution.

Giscard bemoaned the omission of the EU symbols, but added that the new text was '*good in terms of substance as it will be very, very near to the original.*'

Giscard is not alone in his verdict. Here are a number of other statements on the same point by leading politicians:

'We kept the substance of the Constitution.'

Jo Leinen, MEP (PSE), Chairman of the Committee for Constitutional Affairs during a debate at the European Parliament's Committee for Constitutional Affairs on 26 June 2007.

'We have achieved the same, but we have sold out on openness and clarity.'

Enrique Barón Crespo, MEP (PSE) during a debate at the European Parliament's Committee for Constitutional Affairs on 26 June 2007.

'It is unbelievable what they have managed to sweep under the carpet.'

Gérard Onesta, MEP (Greens) during a debate at the European Parliament's Committee for Constitutional Affairs on 26 June 2007.

'It is not formally a constitution, but it is a big step towards a constitution.'

Richard Corbett, MEP (PSE) during a debate at the European Parliament's Committee for Constitutional Affairs on 26 June 2007.

'Our political Union finally has a constitution.'

Johannes Voggenhuber, President-Elect of the Committee for Constitutional Affairs, MEP (Greens) during a debate at the European Parliament's Committee for Constitutional Affairs on 26 June 2007.

'The whole constitution is there. Nothing is missing!'

Jean-Louis Bourlanges, MEP (ALDE) (in the radio broadcast 'Esprit public' on Sunday 24 June 2007 on France Culture).

'[The new Treaty] is essentially the same proposal as the old Constitution.'

Margot Wallström, Commissioner for Communications and Institutional Affairs (The Sunday Telegraph, 2 July 2007)

In the last part of this book, my group's legal expert, Klaus Heeger, has reviewed all the proposed amendments from the Lisbon Treaty and has compared them with the rejected Constitution.

This thorough review leads to the same conclusion: On legal obligations the new text is exactly like the rejected Constitution. It has the same impact as the rejected text. It is binding in the same way as its predecessor.

In the interests of fairness and democracy, there must therefore be a referendum on it in the same way as there should have been on its predecessor.

Small changes in the new text

Most of the changes in the Lisbon Treaty text make it possible, above all, to *present* the Constitution differently in the different Member States, but without changing the content.

Poland, for example, will get a unilateral declaration to the effect that they can legislate themselves on ethical questions such as ‘public morality, family rights and protection of human values and respect for people’s physical and moral integrity’.

The Polish Prime Minister has presented this declaration as a victory in Poland. It satisfies opponent of the Treaty but does not change anything: No Polish law may breach fundamental rights, as they will now be published as legally binding in the EU’s Official Journal.

Even for subjects that are explicitly outside the EU’s competence, the law-making European Court of Justice has laid down that the fundamental rights set out in the EU Charter apply. For example, it has been laid down in a judgment that the Treaty’s basic principle of equality applied to the German armed forces. That judgment was issued before the question of defence was even included in EU cooperation.

Declarations attached to Treaties are *not* legally binding in the way that Protocols and Articles in the Treaties are. One-sided declarations by individual countries usually express defeat in negotiations, for other countries do not join in making them also. Other countries do not want to commit themselves by means of a *common* non-binding declaration, nor a legally binding Protocol or Article.

The United Kingdom and Ireland

These two countries currently have an exemption from cooperation on justice and home affairs. This includes an *opt-in scheme*, whereby the United Kingdom and Ireland can decide for themselves which rules they want to participate in.

This scheme will continue in a tighter version for the United Kingdom, while Ireland has been given the right to decide their status at a later date.

By extension, the United Kingdom has got a provision in a special Protocol to specify certain aspects with regard to the use of the Charter in the legislative and administrative practice of the United Kingdom and the opportunities for its judicial enforcement in the United Kingdom.

Here we need to emphasise the word ‘*specify*’. So it does not change any of the Charter’s contents. The Charter applies in the United Kingdom as in all the other countries when the United Kingdom implements EU legislation.

The European Court of Justice in Luxembourg interprets when the EU rules apply and when they do not. The United Kingdom has not obtained, and cannot obtain, a real exemption from the Charter, because fundamental rights are, in principle, the same throughout the EU.

It is EU *citizens* that have the rights. That includes UK citizens. National discrimination is forbidden. The rights of people and EU citizens are defined as common European human rights from the European Convention on Human Rights and the common constitutional rights from the Member States’ own constitutions - as the European Court of Justice may interpret them at any time.

In principle there is nothing new in the Charter of Fundamental Rights that does not already apply today. If it were formally acknowledged that the Charter contains some newly created content, it would be a matter of transferring new sovereignty from the Member States.

I think there are new rights in the Charter which will be recognised by the Court at a later date. But the Charter itself denies that, also because it would lead to a referendum in Denmark.

The United Kingdom has achieved a protocol exemption without any real content. There is now some conflict over this in the United Kingdom.

The exemption may appear in the United Kingdom as a genuine exemption – until, for example, a British citizen has to go to the European Court of Justice and invoke the rights in the Charter ...

Then the Court will probably show that the Charter applies in the United Kingdom in the same way as in the rest of the EU.

In a response to the undersigned on 6 October 2006 the President of the Commission, José Barroso, declared that the Charter had already been used 117 times to adopt legislation in the EU (<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2006-3544&language=DA>).

The Court already regards it as legally binding and also gives it the green light in the new version of the Constitution.

Climate Change

There are two new subjects that were included in the revised version of the Constitution from the summit in Brussels on 23 June 2007. Respect for the climate is expressly mentioned in the section on the environment. Article 174 of the EC Treaty now includes as one of the EU's objectives '... promoting measures at international level to deal with regional or worldwide environmental problems', *particularly the fight against climate change*.

This little supplement is a Danish initiative. It is a useful political signal. One could claim that the provision itself does not change anything, since climate change will clearly be one of the global environmental problems of the future. It can also be foreseen that this supplementary objective may be used, for example, to introduce common EU taxes on, for example, CO₂ emissions and thus let in provision for EU taxes through the back door.

Since the rejection of the Constitution, environmental legislation has been implemented by the Court with the result that European criminal penalty provisions may be introduced by qualified majority in all areas of EU law. For better or worse.

Energy

Poland negotiated a comment in the Lisbon Treaty on energy solidarity, if countries are exposed to supply difficulties. When the Council decides on, for example, supply difficulties in the area of energy, it must be 'in a spirit of solidarity between the Member States'.

This is also followed by a new provision on promoting links between the different energy networks.

The background to this is an agreement between Germany and Russia on creating a gas supply through the Baltic, excluding Poland. This would enable the Germans to get Russian heat while the Poles freeze.

This has reminded the Poles of when the Russians and Germans divided Poland between them. Now they get some nice words about *solidarity*. This will hardly change the political realities of the real world, but it makes the energy network of the different Member States a new EU competence where the EU, including Germany, can legislate for energy policy by majority decision.

A Czech victory without content

The Czech Republic has a President who is very sceptical about the Union's centralism. *Vaclav Klaus* is a fervent supporter of the market economy and decentralisation.

The Czech Government also wants to transfer powers from the EU back to the Member States. They got a non-binding declaration to the effect that the Council may, at the initiative of one or more Member States (representatives of Member States) and in accordance with Article 208, ask the Commission to table a proposal to repeal a piece of legislation.

Any country can do this in future. So what? The Commission is still not obliged to follow advice. The Commission's sole right to put forward proposals remains unfettered. It requires unanimity among Member States to remove powers from Brussels. This has never happened.

This Czech "victory" still does not have any new legal content.

Social security

The then Prime Minister of the United Kingdom, *Tony Blair*, raised the issue of some 'red lines' in the negotiations, boundaries that had to be respected if he were to approve the text.

The five boundaries were all guaranteed in the existing Constitution text. It was not difficult to have them respected in the new one. They are mostly *spin*. One wonders how this is possible in a society with a free press.

Blair's only substantial demand was that it should not be possible to implement common taxes at EU level. But this is already there under Article 93 of the EC Treaty. It covers *indirect* taxes. Common energy duties may also be levied on the basis of the new Article 176a, but still only unanimously – unless we switch unanimously to settling the matter by majority decisions.

Direct personal taxes are out, even in the rejected Constitution. Tax harmonisation requires unanimity. The budget may also be repealed indefinitely by unanimity.

The Constitution proposed majority decisions for parts of social security for migrant workers in Article III-136 of the Constitution (Article 42 TFU of the Lisbon Treaty and Art. 42 TEC of the Nice Treaty) An emergency brake is thus inserted in Article III-136, under which a country that encounters severe difficulties may have the agreement referred to an EU summit.

In the Lisbon Treaty it is stated clearly that Member States have the right of veto at the summit if a proposal is tabled in accordance with this Article. This was also repealed by the rejected Constitution, but was open to interpretation. It was not clear what would happen after a veto. Now it is stated explicitly that the Council also can decide not to act after the summit so that the proposal will disappear.

The crucial question would be: Is there a qualified majority in the Council to introduce new rules? If Yes, they can always find an appropriate legal base.

The emergency brake applies only to Art. 42. It does not apply if the provision of the Charter of Fundamental Rights in the Constitution Art. II-94.2 is used, which reads: 'Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.'

This wording from the Charter will now become legally binding. The Court can use it as it likes. They can give it direct effect. It is not unreasonable that foreign workers should be guaranteed the same rights as citizens in the relevant Member State.

But this could also raise problems, for example in Denmark, where we have social welfare for citizens paid for from high taxes and a rather special negotiating model relating to agreements on the labour market.

As regards citizens from third countries the rules are to be found in the Lisbon Treaty Art. 69 B 2 b TEC. In the Constitution they were in Art. III-267.

Enlargement to new Member States

After the summit in Brussels on 23 June 2007, it was said that the Copenhagen criteria for enlarging the EU to new Member States should now be written into the Treaties.

On page 27 of the negotiation mandate it merely adds: 'The conditions of eligibility agreed upon by the European Council shall be taken into account.'

This was a nod to the Netherlands, which is sceptical of new enlargements. The EU can only be enlarged also in the future by unanimity between the countries.

France can block Turkish membership all by itself. France has announced that it will raise the question of Europe's borders *after* the new Lisbon treaty is adopted.

The French President provisionally had a new Article 7b of the EU Treaty introduced in the Lisbon treaty on agreements with the Union's close neighbours. On the basis of this, Turkey would get a partnership agreement in due course instead of the full EU membership that is currently being negotiated.

The seats and meeting place of the European Parliament

The institutions' seats are laid down in a Protocol that may only be amended unanimously at an *intergovernmental conference*. Over a million citizens have signed a petition for the European Parliament to have only one seat.

The question was *not* raised at the intergovernmental conference. It can only be discussed if a Member State proposes it. The European Parliament cannot get the issue of its seat discussed itself.

Today, the Parliament meets for weekly sessions 12 times a year in Strasbourg. It has more than 2000 employees in offices in Luxembourg and even more in offices in Brussels. A plenary meeting room has also been built there, and Parliament meets there at least 6 times a year for mini sessions.

The European Parliament has proposed a new distribution of seats from the next European elections. Many small member states lose seats and will have difficulty in obtaining representation for smaller parties from the national parliaments.

At the other end of things Germany will have 96 of the 750 European Parliament seats and as a result can continue to dominate half of the groups in the Parliament and at the same time vote with its full population size in the Council.

As previously stated, Saar-land with one million citizens has 3 votes in the German Bundesrat and Rheinland-Phalz with 18 million citizens has 6 votes. In the USA every state has two senators each in the Senate. With the Lisbon Treaty Germany imposes on others a system it would never accept at home.

When Denmark joined the EU in 1973 Germany had 3 times the votes of Denmark and 3 ½ times the number of Danish seats in the Parliament. Now Germany will have 15 times the voting strength in the Council and 7 times as much in the European Parliament. .

In a few years, if the Lisbon Treaty is ratified, we will have a Commission without representation from all countries, a Council of Ministers where almost half of the member states can be voted down in making EU laws and a European Parliament where a lot of respected smaller parties will not be represented.

Legitimacy will be missing for many voters. The Lisbon Treaty will establish a system which is not fit for enlargement and it is harming the many small and medium sized states The Lisbon summit 13 December 2007 may in theory decide a new distribution of seats. In practise it

may offer Italy an extra seat in the Parliament which would then have 750 members plus a president.

Free and fair competition

The French President, *Nicolas Sarkozy*, got a reference to ‘free and fair competition’ taken out of the EU’s objectives in Article 3. He could then present this as a political victory in a France whose people still believes that one can protect oneself against competition in the world.

The amendment to the objective changes nothing in the 16 different operational provisions of the Treaty that continue to ensure free competition. A new Protocol on the internal market and competition was also added.

This specifies that Article 3, also without a supplement on free competition, ensures ‘that competition ... is not distorted’. The new legally binding Protocol adds that the EU can use the *catch-all* Article 308 of the EC Treaty, to adopt laws regarding competition in the internal market.

The EU’s internal market can thus be extended to cover, for example, all intellectual property rights and general financial services in the whole public sector.

It is an area where, in future, the European Court of Justice will achieve much by including new subjects, such as health, that were previously regarded as lying outside EU cooperation.

The use of Article 308 requires unanimity between the governments in the Council of Ministers, but not adoption by the national parliaments. The difficult process of treaty *ratification* for introducing new areas of cooperation through Treaty amendments is thus avoided.

For example, on general public services.

Services of general interest

The EU was originally about establishing a common market. The *Treaty of Rome* only applied to the sale of goods, services, capital and labour on the *common* market.

Radically comprehensive decisions by the Court of Justice have induced the EU to set limits on how voters and elected representatives can manage their own societies. The Court’s rulings have then been followed up with new Treaties that have often brought little order to the new competences created by the Court.

For example, the Court has declared waste to be a product that is sold as a commodity.. Similarly, health services have been deemed to be covered by the free competition provisions of the internal market.

Patients have the right to buy teeth and glasses in other EU countries of their own free will, with a grant from their home State. Even hospital services can be obtained in other countries, with a grant from the home State. There are some limits but they are not clear, because the Court has not yet defined them exactly.

Instead of waiting for more EU Court rulings, the Commission wants to have some common rules adopted. It has achieved much with the *Services Directive*, but not all services are included. Health, for example, is out.

In the revised Lisbon treaty, a special legally binding Protocol on services of general interest has now been inserted relating to Article 14 TFU of the Lisbon Treaty.

This is *interpreted* by Article 16 TEC of the EC Treaty, which deals with *services of general economic interest*. Services with no *economic* content have, up to now, fallen outside the scope of the Treaties and were thus within the exclusive competence of the Member States.

This distinction is kept. Article 1 of the Protocol lays down the ‘Essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users.’

Article 2 of the Protocol lays down: ‘The provisions of the Treaty do not in any way affect the powers of the Member States to provide, order and develop non-economic services of general interest.’

The Protocol may be perceived as a nudge to the Court to hold back from non-economic services and to show a little more respect for the Member States’ management of their public sector services. But the Protocol does not change some of the sweeping judgments that *have* brought key areas of the public sector under the control of the Commission and the Court.

It also does not change the very comprehensive Services Directive that *has* already been adopted.

The Protocol mostly exists in order to appease French voters, who are very scared of EU interference in French public services, something that caused them to vote against the proposed EU Constitution in their 2005 referendum.

Summary of new majority decisions

The Lisbon treaty will introduce majority decisions in 68 new cases. This is the biggest leap to date from unanimity to qualified majority.

The Treaty of Rome had with amendments 38 majority decisions. The 1987 Single European Act on the Internal Market introduced 12 new decisions by qualified majority. The 1992 Maastricht Treaty introduced 30. The 1998 Treaty of Amsterdam introduced 24 and the 2002 Treaty of Nice 46.

The most important EU Treaty to date should *not* have a referendum, says the Danish government and the majority in the Folketinget, the Danish Parliament.

At the same time, this new Treaty will make it much easier to adopt decisions by qualified majority at EU level.

Today, 74% of the weighted votes in the Council of Ministers are required. The Lisbon treaty’s ‘double majority’ reduces the threshold to 55% of the countries, representing 65% of the population.

Accordingly, it will be much easier to outvote smaller countries and to harmonise laws between countries. The argument for this is that an enlarged EU would make it more difficult to adopt decisions any other way.

The 12 new Member States have not, however, made the negotiations of new laws difficult since they joined the EU in 2004. On the contrary. The Science-Po University in Paris has calculated that new rules have been adopted 25% more quickly *since* the enlargement from 15 to 27 Member States.

This study showed that the 15 older Member States block proposed EU laws twice as often as the new Member States.

The last time you will be asked on an EU Treaty

As something radically new, a general basis for shifting EU law-making provisions from unanimity to qualified majority voting has been inserted without the need to ask voters again.

This is the so-called *simplified review procedure* in Article IV-444 of the Constitution, which is now incorporated in Article 33 (6) TEU of the Lisbon Treaty.

It may be used to introduce the principle of majority decision at the Federal level in all areas where unanimity applies, apart from the matters relating to armed forces.

As compensation for that, the armed forces can be developed in the special *structured cooperation* by fewer Member States. So there will no longer be any need for changing the new Constitution to permit this through the general amendment procedure.

So this is probably the last time we have the chance to be asked.

The “simplified review procedure” only requires all the governments to agree, and that none of the national parliaments object to the amendments. This is not as difficult to achieve as it sounds.

The rejected Constitution actually had unanimous decision among the Prime Ministers of the EU countries in the European Council. It was rejected by *voters* in France, even if 90% of the French elected representatives in the National Assembly – and all the other national parliaments - supported the Constitution.

The “simplified review procedure” may also be used to introduce the general legislative procedure with Commission monopoly to propose, qualified majority vote in the Council and the right to propose amendments or reject the proposal for an absolute majority of members in the European Parliament instead of a special procedure.

The Lisbon Treaty is thus a Constitution that can amend itself.

There is also another simplified review procedure in Article 445 of the rejected Constitution, which can now be found in Article 33(3) TEU of the Lisbon Treaty.

This may be used to introduce new policy areas for EU-level law-making by unanimity among the countries. But this provision presupposes that the result is *ratified* by the Member States.

There is, however, a way of avoiding a difficult referendum in countries such as Denmark. It is called *reinforced cooperation*, where the other countries implement what might otherwise be stopped by, for example, Danish or Irish voters.

Reinforced cooperation made easier

All the same, if a Parliament or voters want to say No, this removes a barrier to implementing *reinforced cooperation* for, for example, a common EU penal code and police cooperation.

It only needs 9 countries to implement this, and it can be decided by qualified majority among the EU countries. The rejected Constitution required a third of the countries to agree to this. A third of the current 27 members is 9. It will still need just 9 countries after future enlargements.

The permission that should be given according to Articles I-44(2) and III-419(1) of the rejected Constitution is now regarded as being given *automatically* if one country blocks the implementation of common rules for all. The decision can be found in the Lisbon Treaty, Art. 10 TEU and 280 A - H TFEU. This is a signal to the UK that the other Member States will not stop integration in justice and home affairs..

A country that says No to an amendment on reinforced cooperation can only have its influence removed and be put in a coffin – together with some such as Denmark and her Danish exemptions.

The United Kingdom wanted to be sure that it cannot be forced to change its penal code. Instead it ”won” a guarantee that there will be a common police force, a common border guard, common EU sentences for crimes and a common penal code.

The only unanswered question is whether all the Member States will be in this or not. The United Kingdom and Denmark could be out.

The Union train is going further. With the Treaty amendments, the right of veto will be abolished in practice, because cooperation can be built in different ways, for some or for all. We can count on it being made into something which some states can use to force everyone else to go along with.

Referendums cannot change the direction of European cooperation anymore. They can only decide a country's own relationship with the built-up EU. If a country becomes too difficult, one can now point out a new provision on voluntary withdrawal from the EU and ask a country to leave.

This text has been taken, unchanged, from the rejected Constitution. The Union will thereby be released from having to pay attention to its voters. We can still have elections for the national parliaments and the European Parliament every five years. But we cannot change anything important with our votes. The EU is turning itself into a state that is run by small committees of top politicians and civil servants, whether voters want it or not.

The cradle of democracy was in ancient Athens for 2500 years ago. There are grounds for bringing the cradle out again.

Let us at least have a referendum on whether we want to limit our influence as voters. Then we will see whether that will be the last referendum.

Born of secret diplomacy

In its new incarnation, the EU Constitution is the result of a very successful piece of secret diplomacy carried out by the otherwise very nice new German Federal Chancellor, *Angela Merkel*, and her helpers at the Prime Ministers' Offices and Foreign Ministries.

She started the German Presidency of the EU in good time before 1 January 2007, when she officially put herself in the driving seat. She had bilateral meetings with a number of key Europeans to start up the stranded EU Constitution again.

Merkel planned the German Presidency together with the two next Presidencies, Portugal and Slovenia. They agreed on a common 18-month programme and a common plan. She thus guaranteed German influence on the final result, even if there were delays, and she would not be able to get the negotiations going herself.

The national parliaments and the European Parliament were deliberately kept out of the negotiations. The public was not involved either. Every country could have two civil servants taking part, generally one from the Foreign Ministry and one from the Prime Minister's Office.

When the Czech Republic selected a Euro-sceptic from the European Parliament as a negotiator, she cancelled joint meetings and instead allowed her own people to negotiate through bilateral meetings with the different delegations.

Only Germany could know the positions of the different countries. Angela Merkel went to the difficult countries, which she visited before she took on the German Presidency.

After many consultations, Merkel wrote a confidential letter to her Prime Minister colleagues in which she asked whether they would like to participate in deciding the content of the Constitution if some other name for it could be found. They said they would indeed.

A total of 16 countries had approved the Constitution when she took office. They only represented 59% of the EU countries, with 37% of the population of the EU countries. The UK had been committed by Tony Blair to a referendum on the Constitution. The new ratification process was set in motion. Portugal did not dare to have the referendum that had been announced, because

they were sure of a ‘No’. The Danish Prime Minister, Anders Fogh Rasmussen, had the same fear, and cancelled the Danish one.

Slovakia and Germany themselves won majorities in their parliaments. But their Presidents had not ratified the Constitution, because some objections had been raised in the courts. In Germany itself, Merkel risked the Constitution being rejected by the country’s own constitutional court in Karlsruhe.

The former President of Germany and of its Constitutional Court, *Roman Herzog*, has warned that the EU already decides 84% of German legislation and is a threat to parliamentary democracy.

QUOTE by Roman Herzog:

‘The Federal Ministry of Justice has compared the amount of legislation from the Federal Republic of Germany and the amount from the EU with each other for the years 1998 to 2004. The result: 84% comes from Brussels, and only 16% from Berlin (...).’

‘It raises the question of whether one unreservedly can call the Federal Republic of Germany a parliamentary democracy at all’.

Source: Die Welt, 21 January 2007 and Welt am Sonntag

Roman Herzog is a former German President, former head of the Constitutional Court in Karlsruhe and former head of the Convention that prepared the Charter of Fundamental Rights.

In my opinion, a referendum in Germany would give a bigger ‘No’ than in France and the Netherlands in many areas of debate. In Germany, the three biggest parties are in favour of the Constitution, but citizens in the *federal state* are tired of centralism and detailed regulation from Brussels.

The leaders of Germany therefore want to avoid a referendum at all costs. So Mrs. Merkel negotiated with each country to induce the countries that had announced a referendum to cancel them. To this end, the EU Constitution would be created indirectly through making changes to the existing Treaties rather than directly through the total repeal of the existing Treaties and their replacement by an explicitly titled Constitution.

She kept her cards close to her chest.

Voters in Europe want a referendum

A British think-tank, 'Open Europe', has allowed a number of opinion poll institutions measure attitudes to a referendum on the Lisbon Treaty in a number of European countries

(<http://www.openeurope.org.uk/media%2Dcentre/pressrelease.aspx?pressreleaseid=31>). Let the citizens of Europe have the last word:

'If a new treaty is drawn up which gives more powers to the EU, do you think that people should be given a say on this in a referendum or citizen consultation or do you think that it should just be up to the national parliament to ratify this treaty?'

	Yes to referendum	No to referendum	Don't Know
Ireland	87%	11%	1%
Greece	83%	14%	3%
United Kingdom	83%	15%	3%
Czech Rep.	82%	15%	3%
France	81%	16%	3%
Latvia	80%	11%	10%
Germany	77%	23%	1%
Malta	77%	17%	6%
Cyprus	76%	21%	3%
TOTAL	75%	20%	5%
Estonia	74%	16%	11%
Luxembourg	74%	23%	3%
Poland	74%	16%	10%
Belgium	73%	25%	2%
Denmark	73%	22%	4%
Spain	73%	24%	3%
Finland	72%	25%	3%
Bulgaria	71%	13%	16%
Austria	71%	25%	4%
Italy	70%	23%	8%
Sweden	68%	30%	2%
Lithuania	67%	15%	18%
Hungary	66%	30%	4%
Romania	66%	11%	23%
Portugal	64%	21%	15%
Slovakia	64%	20%	16%
Netherlands	62%	29%	9%
Slovenia	55%	40%	4%

You can sign yourself at: www.x09.eu

See also the annexes:

Summary of the changes in the new Constitution made by Klaus Heeger

Appendix

Proposals from SOS Democracy for the Intergovernmental Conference which started on 23 July 2007

Democracy

Double majority is defined as 75% of the Member States in the Council and a simple majority in the European Parliament.

Justification: Today, decisions by qualified majority require 74% of the weighted votes in the Council. Amendments from the European Parliament are also based on weighted representation for the different Member States. In the USA, all states are represented equally in the Senate. In the German Bundesrat, states have between 3 and 6 votes each, irrespective of population size.. There may eventually be a protocol giving a Member State the right to block a decision if a national parliament instructs its Prime Minister to raise the topic at the next EU summit. (WHERE AND IN WHAT CONTEXT MAY THIS BE DONE?)

Composition of the Commission

Each Member State elects its own Commissioner.

Justification: 60% of the members of the Convention signed a written proposal to keep one Commissioner for each Member State. The Commission has a monopoly of legislative initiative and decides most laws and implementing rules itself. We cannot have laws governing our countries decided only by foreigners – and with a legal status above our own constitutions.

Minimum rules instead of total harmonisation

When harmonising laws, the EU must allow Member States greater protection of health and the environment, security and the work environment, consumer protection, animal welfare and cultural diversity.

Justification: The EU aims to deliver a high level of protection for health, the environment and consumer protection. When harmonising laws, no country should be bound to lower its level of protection. The right of a country to adopt the highest levels of protection must always be safeguarded through the establishment of minimum rules instead of identical rules - 'total harmonisation'.

Seat of the European Parliament

The European Parliament is asked to decide its permanent seat by a simple majority vote.

Justification: The European Parliament is discredited by the public for the waste of taxpayers' money for meetings in different locations. The Heads of State have to change the existing protocol on the seat of different institutions. The locations losing the European Parliament may be compensated by giving them other European institutions of similar economic benefit.

A fairer budget

The budget is financed by progressive contributions based on GNP. Rebates can be established for countries with below-average GNP.

Justification: Free trade normally benefits the richest countries more than the poor countries. Therefore, we often link financial protocols to free trade agreements. Our own EU budget is not financed progressively and deserves a reform with contributions defined according to a progressive scale based on GNP.

A transparent budget

No money can be spent from the budget without publishing the purpose and the recipient.

Justification: No one is bound to receive subsidies from the EU. To avoid fraud and misuse of taxpayers' money, we must establish full transparency for all spending.

More votes for Romania and Malta

Romania will have 19 votes in the Council instead of 14 and Malta 4 instead of 3 under the agreement from the Treaty of Nice.

Justification: Romania has 57% of the Polish population but only 52% of their votes. The Netherlands have 43% of the Polish population but 48% of their votes. 19 votes is fairer for Romania. Malta and Luxembourg have 0.08 and 0.09% of the total population. It does not justify the difference between 3 and 4 votes under the system established in Nice.

Transparency and openness

All documents and meetings should be transparent and public unless derogations are decided by qualified majority.

Justification: This proposal was signed by 200 of 220 members and deputies at the Convention. The proposal was supported by all members from the national parliaments, all members from the European Parliament bar one, and 23 of 28 governments. No other proposal had such big support in the Convention. It deserves to be put in place.

An alternative cooperation agreement in 47 paragraphs

Introduction

We, the peoples of Europe, have drawn up and voted for this European cooperation agreement in order to strengthen our democracies and expand them beyond our borders and to relegate war and poverty to the historical record.

We are desirous of reaching common decisions and finding common solutions for the benefit of the citizens, sustainable development for the entire world and of those who come after us.

We are desirous of coordination and cooperation between living democracies and of creating a common democracy in those areas where we cannot ourselves legislate effectively in our Member States.

What we can decide ourselves, we wish to decide ourselves democratically in our countries.

What we cannot resolve ourselves, we wish to decide as openly, locally and democratically as possible in the EU in cooperation with the United Nations.

Our objective is to ensure peace and sustainable development, security, employment and welfare, health, the environment and cultural diversity.

1. Nature of cooperation

The EU shall respect the UN, the constitutions of the Member States and the allocation of powers in this agreement.

Member States and the common institutions shall assist each other and cooperate loyally.

Common EU laws shall outrank the Member States' own legislation only in the specifically defined and circumscribed areas in which the EU is empowered under this agreement to adopt common legislation.

The EU may negotiate international agreements with countries and organisations where the EU may adopt common legislation. The EU may assist Member States in other areas of international cooperation.

2. Human rights

The EU shall accede to the European Convention on Human Rights and shall respect all decisions by the European Court of Human Rights and the freedoms enshrined in national constitutions.

3. A common market

EU legislation shall ensure a common internal market with freedom of movement for labour, services, goods and capital as well as freedom of establishment, common competition rules and a ban on discrimination.

4. Common civil rights

All nationals of EU Member States shall be entitled to vote in local elections and elections to the European Parliament in their country of residence.

They may move and travel freely throughout the EU and enjoy protection from the diplomatic and consular authorities of any Member State in third countries in accordance with the rules laid down in the relevant legislation.

5. Allocated powers and proximity principle

The EU shall enjoy only those powers allocated under this basic agreement. They shall be applied in compliance with the principles of proximity and proportionality.

The proximity principle means that the EU adopts common binding laws only where Member States cannot themselves adopt rules with equal effectiveness.

The proportionality principle means that EU laws and actions cannot go further than necessary to achieve the set objectives.

6. National parliaments

The national parliaments shall consider all proposals for EU laws and shall ensure compliance with the principles of proximity and proportionality.

They shall adopt an annual legislative programme authorising the Commission to draw up proposals.

Where 25% of the national parliaments oppose a proposal for an EU law, it shall lapse.

Any parliament can bring an action in the EU Court of Justice for breach of the proximity and proportionality principles.

7. Nature of powers

The EU is entitled to adopt binding laws and decisions in the areas specified in this agreement.

In all other areas the Member States have sole authority to legislate. The EU may assist with coordination and cooperation but may not harmonise the laws and administrative provisions of the Member States. Cooperation may result in non-binding recommendations and communications.

The scope of the EU's powers shall be spelt out in greater detail for each area in an annex to this agreement. These powers can be increased only with unanimity and approval from the Member States.

8. Powers of the EU

The EU has sole authority to legislate on international trade and competition rules for the common market.

The EU may legislate for the internal market, the environment, agriculture and fisheries, transport, trans-European networks and energy and may adopt minimum provisions for social and labour market policy, economic, social and territorial cohesion, consumer protection and animal welfare.

The EU may implement common programmes for research, technological development, public health, development aid and humanitarian cooperation.

9. Economic policy

Member States shall coordinate their economic policy in order to ensure stable growth and full employment. The EU shall lay down detailed rules for those countries with the Euro as their common currency.

10. Foreign and security policy

Member States may coordinate their foreign and security policy. Military matters shall remain outside the scope of the EU/or: the EU shall lay down detailed rules for those countries that have established enhanced cooperation on joint military forces.

11. Incentives

The EU may subsidise activities in order to protect and improve human health, industry, culture, tourism, education and vocational training, civil protection and administrative cooperation.

12. Institutions of the Union

The EU shall have common institutions that are allocated powers by the Member States. The institutions shall be the European Parliament, the Council of Ministers, the Commission, the Court of Justice, the Court of Auditors and the Ombudsman.

13. Separation of powers

The European Parliament and the Council of Ministers shall share legislative authority and shall adopt legislation and the budget. The Commission and the Member States shall exercise executive authority. The Court of Justice shall exercise judicial authority.

14. European Parliament

The number of members and the allocation of seats between the countries in the European Parliament shall be adopted by unanimous decision of the Council of Ministers.

Members shall be elected by direct secret ballot for five years.

The proceedings of the European Parliament shall be public. Parliament shall itself elect its President and its Bureau from among its members.

The European Parliament shall act by ordinary majority of the votes cast and shall adopt its rules of procedure by a 75% majority.

The European Parliament may call for any papers or supporting documentation within the EU's field of activity, where appropriate, subject to confidentiality.

The European Parliament's terms of remuneration and employment shall be agreed with the Council of Ministers, which shall act unanimously.

15. Council of Ministers

The Council of Ministers shall comprise one minister from each Member State. The Council of Ministers shall coordinate cooperation between the Member States and shall share legislative authority with the European Parliament.

The Council shall act by a 75% majority of the Member States unless otherwise specified. A country may request that the majority must also represent 50% of the total EU population.

A country may request that an item be not put to the vote where its national parliament has asked that country's prime minister to raise the issue at the next EU summit.

The Council's rules of procedure, configurations and election of one or more permanent chairmen shall be decided unanimously. The presidency shall rotate between the various countries at six month intervals.

The Council's working documents and meetings shall be public when the Council is considering legislation and at all other times when a reasoned dispensation has not been decided.

16. European Council

The Heads of State and/or Government shall meet in the European Council as required. They shall act unanimously. Countries may abstain from voting without this precluding unanimity.

17. Commission

The Commission shall consist of one member from each country who may possibly be elected by direct and secret ballot at the same time as the elections to the European Parliament.

The Commission shall itself elect its President and its Vice-Presidents.

The Commission shall exercise executive authority together with the Member States.

The Commission shall monitor compliance with EU legislation and may bring actions in the Court of Justice for Treaty infringements.

The Commission shall implement the budget and manage programmes and subsidy schemes.

The Commission shall represent the Union externally in those areas where the EU legislates for the Member States or authorises the Commission to act externally.

The Commission shall itself adopt its rules of procedure by a 75% majority and shall perform its duties with complete independence.

The Commission shall act by ordinary majority. An individual commissioner may receive instructions from his national parliament on how to vote in the Commission but must manage his portfolio in the common interest of all Member States and citizens.

18. Operation of the Commission

The Commission's proceedings shall be public when it is adopting proposed legislation and taking political decisions. Reasoned dispensations can be decided by a 75% majority.

The Commission may set up working parties. Their membership and working documents shall be accessible to the European Parliament unless Parliament approves a special dispensation.

The Commission's administrative decisions and actions are subject to full scrutiny by the Court of Auditors, the Ombudsman, the European Parliament and the oversight committees of the national parliaments.

19. Vote of no confidence in the Commission

Where the Council or Parliament adopts a vote of no confidence in a commissioner, the commissioner may be dismissed by the Court of Justice.

Where a national parliament adopts a vote of no confidence in its own commissioner, the country concerned shall elect a new one.

Where the Council or Parliament adopts a vote of no confidence in the entire Commission, it shall continue in office as a caretaker administration until a new Commission has been elected.

20. Court of Auditors

The Court of Auditors shall comprise one auditor elected by each national parliament.

It may call for any supporting documentation involving either full or partial use of EU funds.

It shall submit an annual report to the European Parliament on the EU's accounts. The accounts shall be recommended for approval or rejection by ordinary majority of the members of the Court of Auditors.

The Court of Auditors shall perform its duties with complete independence. Members may be dismissed only by the Court of Justice on a recommendation from a majority of the Court of Auditors.

21. Ombudsman

The Ombudsman shall be elected by the newly elected European Parliament from candidates who are or have been an ombudsman in their home country.

The Ombudsman may call for any document and any kind of information from the European institutions.

The Ombudsman shall consider complaints from citizens about EU actions or lack thereof and may raise issues on his own initiative.

The Ombudsman may be dismissed only by the Court of Justice on a recommendation from a 75% majority of the European Parliament.

22. Working parties and committees

The institutions of the European Union may establish management committees, advisory committees and working parties. They shall operate under the responsibility of the institution which established them.

23. Court of Justice

The European Court of Justice shall comprise a supreme court and one or more subsidiary courts and specialist tribunals.

Each body shall comprise one judge from each Member State. He/She shall be appointed by the national parliament following fresh elections to the national parliament.

Only persons of unquestionable independence who have held office as a judge or professor shall be eligible for appointment as a judge or advocate-general.

Judges may be dismissed only by the Court of Justice itself.

24. Operation of the Court of Justice

The Court of Justice shall itself adopt its own rules of procedure and may subdivide into chambers.

The Court of Justice shall act by ordinary majority. Any ruling by a subordinate body may be appealed to a higher body.

Citizens of limited means may request free legal aid where the case is supported by the Ombudsman.

The Court of Justice shall decide cases brought by a Member State against another Member State or an institution or by any natural or legal person.

The Court of Justice shall give preliminary rulings on questions concerning the interpretation of EU law submitted by authorities in the Member States or by an EU institution.

The Court of Justice shall interpret EU legislation. New interpretations of the basic treaty must be approved by the Council of Ministers acting unanimously.

25. High Representative

The European Council shall nominate a High Representative for election by the European Parliament to coordinate a common foreign and security policy.

The High Representative shall chair the Council of Foreign Ministers and the EU delegations in third countries and international organisations.

The High Representative shall act in cooperation with the commissioners responsible for external trade and development policy.

26. Central Bank

The European Council shall appoint the President and the Governing Council of the European System of Central Banks and shall adopt the statute of the Central Bank unanimously.

27. Categories of decision-making

The EU may adopt laws and recommendations, regulations, decisions and opinions.

A law shall require a legal basis in this cooperation agreement, shall be generally applicable and binding in all details and shall take precedence over the law of the Member States. A recommendation shall not be binding. A decision shall be binding on the party to which it is addressed. An opinion shall not be binding. Regulations may be promulgated only on the basis of a law.

Legal acts shall enter into force on the indicated date or 20 days after publication in the EU Official Journal.

28. Right of initiative

All institutions may propose laws. One million citizens can with their signatures call on the Commission to present a proposal for a law.

The Commission must produce a proposal where it is supported by a 75% majority in the proposing institution.

29. Better legislation

Every law must stipulate a date on which it automatically lapses unless re-enacted.

Any regulation issued by the Commission can be considered as a proposed law on request from an ordinary majority in the European Parliament or the Council of Ministers.

All legal acts shall state the reasons behind them and shall refer to the proposals, initiatives, recommendations, requests and opinions that have preceded them.

All declarations in connection with legislation shall be on the public record and shall have no legal significance.

30. Finance

The EU budget shall be financed from own resources and shall be adopted in the form of a law with 75% support in the Council of Ministers and an ordinary majority in the European Parliament.

The budget must respect a financial ceiling of 1% of the EU's total gross domestic product. Increases in this ceiling may be adopted by the Member States acting unanimously.

Only expenditure that is authorised in a law and entered as expenditure in a validly adopted budget may be incurred.

In the event of disagreement over a new budget, the maximum expenditure that may be incurred each month is one twelfth of the expenditure that was approved for the previous year or entered in the draft budget.

31. Monitoring of spending

The budget shall be implemented in keeping with the principle of sound financial management.

The EU's annual accounts shall be adopted in the form of a law on a recommendation from the Court of Auditors.

All expenditure shall be publicly accessible unless reasoned dispensations are adopted by a 75% majority.

Member States and the EU institutions shall combat fraud and shall treat offences involving EU funds in the same way as offences involving a Member State's own funds.

32. Foreign and security policy

The European Union may pursue a common foreign and security policy. No laws may be adopted. The Court of Justice may not deliver judgements.

Decisions shall be taken unanimously and may contain special provisions to be decided with 75% support among the Member States. Where one country abstains, this shall not preclude decisions by unanimity.

33. Defence

EU Member States may make military resources available for peacemaking operations decided by the UN.

The EU shall respect the Member States' defence policies, membership of NATO or status as a neutral country.

34. Enhanced cooperation

Enhanced cooperation may be established in all areas with shared powers, for foreign and security policy and for judicial and police cooperation and must respect any EU decision.

A decision on enhanced cooperation shall be taken unanimously while allowing for countries to abstain.

Enhanced cooperation shall involve the EU institutions and shall be subject to joint democratic guidance and scrutiny.

Administrative expenditure shall be financed from the general budget unless stipulated otherwise in the law. Operational expenditure shall be financed by the participating countries unless the law stipulates unanimously that it be financed from the EU budget where minor expenditure is concerned.

35. Principle of equality

The EU shall respect the principle of the equality of citizens and states in all activities.

Citizens are entitled to participate in the democratic life of the EU. Decisions must be taken as openly, democratically and close to citizens as possible. Citizens may freely form parties and associations to express their will.

36. Freedom of negotiation

The EU shall respect the two parties on the labour market and their right to conclude voluntary arrangements and agreements on pay and working conditions at both national and European level.

37. Minimum rules

Laws relating to the environment, working environment, safety, health, consumer protection, personal data, social conditions and animal welfare shall be adopted as common minimum rules.

Every country is entitled to adopt more comprehensive protection of citizens as long as the rules are applied without discrimination.

38. Religion

The EU shall respect the status of churches, religious communities and non-denominational organisations and their operation in accordance with national legislation.

39. International agreements

The EU shall develop special ties with its neighbouring countries, other countries and international organisations. It may, acting unanimously in the Council and with the approval of the European Parliament, conclude agreements involving reciprocal rights and obligations.

40. Membership of EU

The EU is open to all European countries that fully respect the European Convention on Human Rights. Applications for membership shall be addressed to the Council of Ministers.

Negotiations on membership shall be conducted by the Commission in accordance with the Council's guidelines. The outcome of negotiations shall be decided by unanimity in the Council and by ordinary majority in the European Parliament.

Where a country blatantly breaches its obligations, it may be excluded from the EU. Exclusion shall require unanimity among the other Member States, approval by 75% of the members of the European Parliament and a judgment from the International Court in The Hague.

A country may, by giving two years' notice, voluntarily secede from the EU by its own decision. The terms for secession shall be agreed between the seceding country and a 75% majority in the Council.

Any disagreement shall be subject to a binding ruling by the International Court in The Hague. A country that has seceded may reapply for membership in accordance with the usual procedure.

Member States shall themselves indicate which parts of their territories and possessions are covered by the provisions of the basic treaty.

41. Right of property

The arrangements governing property rights in the Member States shall not be affected by this cooperation agreement.

42. Officials

The staff regulations for officials and other employees and rules on professional secrecy shall be adopted in the form of a law.

43. Seats and languages

The seats of the EU institutions and agencies and the language regime shall be decided unanimously in the Council of Ministers.

44. Legal continuity

Previous treaties shall be repealed unless annexed to this cooperation agreement.

Laws and judgments shall continue unchanged unless explicitly amended in annexes to this agreement or subsequently under the usual legislative procedure.

Protocols and annexes to this agreement shall rank equally with the provisions of the agreement. Declarations shall have no legal significance.

45. Treaty amendments

The national parliaments and EU institutions may submit to the Council proposed amendments to this cooperation agreement.

Amendments shall be decided by unanimity in the Council and by a 75% majority in the European Parliament. They shall enter into force two months after ratification in all Member States in accordance with national constitutional requirements.

Where no more than 10% of Member States are unable to ratify a unanimously decided proposed amendment, a unanimous solution shall be found in the Council of Ministers.

46. Amendments to annexes

Annexes and protocols to this agreement may be amended by unanimity among the Member States unless a national parliament or one million citizens demand subsequent ratification.

47. Duration

This agreement shall be concluded for an indefinite period and shall enter into force two months after ratification by all Member States.

The letters of ratification shall be forwarded to the President of the Italian Republic who shall preserve them on behalf of the EU.

The agreement shall be drawn up in the official languages of all Member States. The texts shall be equally authentic.

FINAL ACT

Annexes, Protocols and Declarations

Important annexes:

The various policies and decision-making categories condensed from the Nice Treaty and Part III of the draft Constitution for Europe, much simplified.

Cooperation with the national parliaments on the proximity principle. The yellow card becomes a red card.

The detailed rules governing foreign and security policy, UN forces, the defence agency and the solidarity rule.

The detailed rules governing judicial and police cooperation.

Survey of all existing legislation showing expiry dates unless re-enacted in accordance with the provisions of the cooperation agreement.

Survey of judgments with changed effects in the future.

Practical survey of national competences not covered by any EU competence.

The European Convention on Human Rights indicating any reservations involving Member States and areas where the EU provides additional protection.