



Statewatch

EU Constitution: Veto abolition

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The issue of the extent to which EU Member States would lose their veto on certain matters under the draft EU Constitution is one of the most controversial issues in the debate over the Constitution. As background for this debate, this summary contains a complete list of cases where the veto would be abolished by the draft Constitution, along with other relevant information.

Table I is a complete list of cases in which the **veto would be abolished**, and also includes cases where the EU would have new powers that would be covered by qualified majority voting. In several of these cases, the powers are not exactly ‘new’, as the EU adopted measures on the subject before, but they are still listed here if the previous measures were adopted using unanimous voting (particularly by using Article 308 of the EC Treaty, the ‘residual powers’ clause of that Treaty, which provides for unanimous voting). In any event, the tables indicate whether a ‘new’ power has previously been used.

This table also lists cases where the EU’s existing powers which already entail qualified majority voting would be enlarged in some way. It should be kept in mind that in some of these cases, the additional power would be quite modest.

Table II is a complete list of cases in which the **veto would be retained** (or where a new clause providing for a veto would appear).

Table III is a first list of ‘special cases’: the cases where an ‘**emergency brake**’ would apply. This system applies to cases where in principle there is no veto for Member States, but however a Member State would be able to prevent a majority vote from taking place if it declares that its specified vital interests would be threatened.

Finally, **Table IV** lists the cases where a veto would be abolished, but where some Member States would not be affected by its abolition because they have an **opt-out** of some form from the relevant policy. This table is particularly relevant to the UK, Ireland

and Denmark as regards immigration, asylum and the single currency, but is also relevant to the new Member States and Sweden (as they have not yet joined the single currency).

The references are to the text of the original draft Constitution emerging from the EU's constitutional Convention, as finalised by legal experts in doc. IGC 50/03, as later amended by IGC docs. 81/04 and 85/04, agreed by EU leaders on June 18th, 2004.

An asterisk (*) indicates that the decision under the draft Constitution would be taken by the European Council (EU leaders), rather than the Council (Member States' ministers). Decisions taken by Member States by 'common accord' are also listed.

Table I: Vetoes Abolished by the Constitution

Part I:

<i>Constitutional proposal</i>	<i>Notes</i>
21(1) European Council chair appointed*	- new clause
23(6) Council rotation*	
26(1) nomination of Commission President*	
27(1) appointment of Foreign Minister*	- new clause
46(4) citizens' initiatives	- new clause
49(4) access to documents	- <i>text revised</i>
50(2) data protection	- <i>text revised</i>
59(2) withdrawal agreement for MS	- new clause

Part III:

<i>Constitutional proposal</i>	<i>Notes</i>
6 public services	- new power
11 EU citizens' consular protection	
26 mutual recognition of qualifications	- the existing veto power is very limited
41 customs cooperation	- <i>text revised</i>
49 capital movement restrictions	- new clause
56 amendment, German exception	- new clause
68 EU intellectual property system	- new clause [Article 308 EC used before]
134 transport	- the existing veto power is very limited
141 amendment, German exception	- new clause
149 research programmes	- <i>text revised</i>
155 space	- new clause
157 energy	- new clause [Article 308 EC used before]
171(1) criminal cooperation	- <i>text revised</i>
173 crime prevention	- new clause [prior measures adopted]
174 Eurojust	- <i>text revised</i>
176(2) police cooperation	- <i>text revised</i>
177 Europol	- <i>text revised</i>
179 public health	- <i>text revised</i>
181 culture	
181a tourism	- new clause [Article 308 EC used before]
182 education	- <i>text revised</i> [sport added]
184 civil protection	- new clause [Article 308 EC used before]
185 administrative cooperation	- new clause
197 external action service	- new clause
212(2) arms agency	- new clause [prior measures to be adopted]

213(2)	defence flexibility	- new clause
217	common commercial policy	- <i>text revised</i> ; some veto power remains
222	balance of payments	- new clause [Article 308 used before]
224	sanctions	- <i>text revised</i>
227(9)	treaties	- <i>text revised</i>
231	anti-terrorist measures	- new clause
244(3)	rules of procedure, Eur. Council*	- new clause
262	judicial screening panel	- new clause
264	specialised courts	
269	intellectual property courts	
289	statute of Court of Justice	
303	inter-institutional agreements	- new clause [prior measures adopted]
304	EU administrative law	- new clause
318(2)	financial regulations	
321	protection of EU financial interests	- <i>text revised</i>

Table II: Retained (or new) vetoes

Part I

<i>Constitutional proposal</i>	<i>Notes</i>
17 residual powers	- text revised
19(2) EP new rules on composition*	- text revised
25(6) Commission numbers (two powers)*	- text revised
39(7) foreign policy decisions(*)	- text revised
39(8) CFSP decision-making*	- new clause
40(2) common defence*	
40(4) defence decisions	
53(3) own resources	- text revised
54(2) multi-annual financial framework	- new power [prior measures]
54(2) multi-annual financial framework dec-making*	- new power
57(2) accession of new Member State(s)	
58(2) suspension of a Member State*	
59(3) extension of negs with withdrawing Member State*	- new clause

Part III

<i>Constitutional proposal</i>	<i>Notes</i>
8(1) non-discrimination on various grounds	
9(2) EU citizens' passports, etc.	- new power
10 EU citizens' electoral rights	
13 new EU citizens' rights	
46(3) capital exceptions	
47(4) capital exceptions	- new power
57(2) state aid approval	
62 indirect taxation	
64 harmonisation of law	
68 languages rules, EU intellectual property system	- Article 308 used before
76(13) amendment to excessive deficit protocol	
77(6) banking supervision by European Central Bank	
92(3) exchange rates	
104(3) social policy (4 exceptions)	
106(2) labour agreements	
130(2) environmental policy (3 exceptions)	
135 transport exceptions	
157(3) energy taxation	- new clause [prior measures]
170(3) family law with cross-border element	
171(2) criminal procedure, powers extension	- new clause
175 European public prosecutor	- new clause

177(3)	police operational cooperation	- revised text
178	cross-border police action	
191	Overseas countries and territories	
194	CFSP strategies*	- text revised
201(1)	CFSP general rule	
210(2)	defence	- text revised
211(2)	defence	- text revised
215	CFSP funding	
217(4)	commercial policy exception	- revised text
227(9)	international agreements	- revised text
228(1)	exchange rate agreements	
232(1)	European Parliament election rules	
252(2)	non-appointment of Commissioner	
259	more Advocates-General	
260	appointment of ECJ judges, Advocates-General	
261	appointment of CFI judges	
264(4)	lower court appointments	
292	composition of committee	- new clause
295	composition of committee	- new clause
299	European Investment Bank Statute amendments	- revised text
301	voting to amend Commission proposal	
302(9)	voting to amend Commission proposal	
325(2)	CFSP flexibility	- text revised
326(2)	MS joining flexibility	- text revised
327	flexibility: budget	
328	flexibility: decision-making	- new clause
338	seat of institutions	
339	languages	
342	arms exception	

Part IV

4(7)	Constitutional amendment	- new clause
7	Constitutional amendment	- text revised
7a	Constitutional amendment	- new clause
7b	Constitutional amendment	- new clause
8	ratification of Constitutional treaty	

Table III: Special cases (Emergency Brakes)

III-21	social security for migrant workers and self-employed persons
III-171(2)	criminal procedure
III-172	substantive criminal law
III-201(2)	CFSP exception

Further notes:

Article III-21 also has a wider scope than the present power (in Article 42 of the EC Treaty), as it would apply to the self-employed as well as workers. At present, EC rules covering the social security for migrant self-employed persons are adopted using the ‘residual powers’ clause of Article 308 EC.

The texts of Articles III-171(2) and 172 have also been revised, as compared to the current Article 31(1) of the EU Treaty, although in the case of Article III-172 it is arguable that the scope of the EU power has actually been narrowed.

The ‘emergency brake’ already exists for some CFSP decisions (see the current Article 23(2) of the EU Treaty), but the scope of decisions subject to this rule, instead of ‘pure’ unanimous voting, would be widened by the Constitution.

Table IV: Special cases (opt-outs)

83	monetary legislation	- <i>text revised</i>
88(1)	Eurozone measures	- new clause
161	JHA evaluation	- new clause [prior measures adopted]
164	JHA administrative cooperation	- <i>revised text</i>
166	border controls	- <i>revised text</i>
167	asylum	- <i>text revised</i>
168(2)	migration	- <i>text revised</i>
168(3)	readmission treaties	- new clause [prior measures adopted]
168(4)	integration of migrants	- new clause
170(2)	civil law (except family law)	- <i>text revised</i>
289a	Appointment of ECB executive*	

Further notes:

The opt-outs regarding the single currency and immigration, asylum and civil law are set out in Protocols to the existing Treaties, which would also be attached to the Constitution. The texts of all the relevant Protocols to be attached to the Constitution are in IGC document 50/03 add 1.

As noted above, the UK, Ireland and Denmark have an opt-out related to immigration, asylum and civil law, while the UK and Denmark have an opt-out related to the single currency. Sweden and the new Member States are obliged in principle to adopt the single currency at some point, but do not yet meet the relevant criteria.

The veto has already been abolished for four matters relating to visas issued for less than three months (see the current Article 67 of the EC Treaty), although the power in Article III-166(2)(a) of the draft Constitution is arguably wider than the current EC visa powers. The veto will also, according to some interpretations, be abolished for most asylum issues once the last core piece of EC legislation on asylum issues is adopted, likely before the end of 2004 (see Article 67(5) of the EC Treaty), although the asylum powers in Article III-167 are certainly wider than the current EC powers over this issue.