TABLE OF CONTENTS

List of figures page xiv

	List of tables xv	
	List of boxes xvi	
	Series editors' preface xvii	
1	Acknowledgments xix	
	Table of cases xx	
	List of annexes xxiii	
	Introduction 1	
1	Is The constitution for Europe 'dead and buried'? 5	
	The ratification process of the Constitution 7	
	Analysis of the negative referenda in France and in the Netherlands	9
	Factors which determined the results of the referenda and motivations of t	the
	voters 19	
	The Netherlands 19	
	France 20	
	Conclusion of the analysis 23	
	The experience of the two previous instances of negative referenda in	
	Denmark and in Ireland 24	
	The case of Denmark 24 The case of Ireland 26	
	Comparison with the referenda in France and in the Netherlands 2	7
	The continuation of the ratification process 28	
		28
	What next? 30	
	The unavoidable questions on the shape of the 'European project'	32
2	The process that led to the Constitution 38	
	A short history of the idea of establishing a European Union 38	
	The political background which led to the Constitution 40	

	The European Convention which proposed the draft Constitution 4
	The Intergovernmental Conference which approved the Constitution 49
	The Working Party of Legal Experts of the IGC 50
3	Changes in structures and procedures 56
	Simplifying the structures of the Union 57
	One Treaty 57
	One legal personality 60
	One pillar 62
	The existing 'pillar structure' of the Treaties 63
	The effects of the removal of the 'pillar structure' by the
	Constitution 66
	The jurisdiction of the Court of Justice 67
	The application of the basic principles of EU law 67
	The so-called 'flexibility clause' 68
	The protection of personal data 69
	The powers of the European Ombudsman 69 by the European Parliament 69
	The territorial scope of the Constitution 69
	Privileges and immunities 70
	Streamlining the instruments and the procedures of the Union 70
	Streamlining the legal instruments adopted by the EU institutions 70
	The 15 existing types of legal instruments 71
	The six types of legal instruments in the Constitution 71
	Streamlining the procedures followed by the institutions of the
	Union 73
	The present rules on implementing powers ('comitology') 73
	The new system of delegated and implementing powers in the
	Constitution 76
	New rules by default in legislative matters and other streamlining of
	procedures 76
	Codifying existing rules and principles of EU law 78
	Classifying EU competences into three categories 78
	The debate on the issue of division of competences and the solutions
	found 79
	Codifying long-standing principles of EU law 82
	The principle of primacy of EU law 82
	The principle of conferral of competences 84
	The principle of subsidiarity 85

The principle of proportionality

The principle of sincere cooperation 85
The principle of indirect administration 86
The principle of equality of Member States before the
Constitution 86
There are a time of the state o
Changes in the institutions 87
dapting the institutions to an enlarged EU 87
wo more institutions: the European Council and the European Central
Bank 87
Legal consequences of the European Council becoming an
institution 88
Legal consequences of the European Central Bank becoming an
institution 89
he institutions' powers and functioning 89
The European Parliament: more powers 90
Extension in the scope of codecision 90
Other cases of increase in the European Parliament's powers 90 The composition of the European Parliament 01
The composition of the European Parliament 91 The European Council: a strengthened role 92
The new office of President of the European Council 92
The Council: a more legitimate decision-making and a Minister for
Foreign Affairs 94
Extension in the coverage of Qualified Majority Voting (QMV) 94
A new QMV method 95
A short history of qualified majority voting in the Council 96
The debate on QMV in the Convention and in the IGC 102
Changes to the six-monthly rotating Presidency of the Council 105
The new office of Union Minister for Foreign Affairs 108
The Convention's failed attempt to create a 'legislative Council' 109
The Commission: streamlined and more efficient 110
The debate on the size and composition of the Commission in the
Convention and in the IGC 112
Additional powers of the President of the Commission 113
The Court of Justice: an extended jurisdiction 113
lore democracy: conferring increased rights on actors other than the EU
institutions 115
he national Parliaments 116
A right of direct information from the EU institutions and a direct role in
controlling respect for the principle of subsidiarity 116

Evaluation and scrutiny of certain activities in the field of Justice and Home Affairs 118
Active role in the simplified revision procedure of the
Constitution 118
The Committee of the Regions 118
The EU's citizens 119
Establishing 'facilitating' mechanisms for a more flexible functioning of the EU 121
A modified 'enhanced cooperation' procedure 122
Cases of 'inbuilt closer cooperation' 123
The existing cases 123
The new case added by the Constitution: the 'permanent structured cooperation' in the field of defence 124
General and sectoral 'passerelles' to amend the Constitution 125
The existing 'passerelles' in the EU and EC Treaties 125
The new general 'passerelle' in the Constitution 125
The sectoral 'passerelles' in the Constitution 125
A general simplified revision procedure to amend Title III of Part III of the
Constitution (on internal policies and competences) 127 Specific simplified revision procedure to amond cortain provisions of the
Specific simplified revision procedure to amend certain provisions of the Constitution 127
Voluntary withdrawal from the EU 129
rotalitaly william the Bo
Changes in substance 131
Better protection for human rights and fundamental freedoms 134
Incorporation of the Charter of Fundamental Rights of the EU 134
A short history of fundamental rights in the EU 139
The way the Charter of Fundamental Rights is incorporated into the
Constitution 141
Accession of the EU to the European Convention on Human
Rights 143
Strengthening existing EU competences 145
Foreign policy(CFSP): new tools for a real foreign policy 145
A short history of CFSP in the EU 145
The innovations brought about by the Constitution 146
The merger into a single Title of all provisions on external
action 147 The creation of the office of Union Minister for Foreign Affairs 147
The creation of the office of Union Minister for Foreign Affairs 147 The creation of the office of full-time President of the European
Council 150

A timid opening towards more QMV in CFSP matters 150
The creation of an External Action Service 151
The Commission's general role in ensuring the Union's external
representation, except for CFSP 153
Assessment of the new provisions 153
Defence (ESDP): further steps towards a more efficient policy 155
A short history of Defence in the EU 155
The innovations brought about by the Constitution 160
The clarification of the scope of EU crisis management tasks 161
The 'solidarity clauses' 161
The possibility of entrusting a group of Member States with an ESDP
mission 162
The 'permanent structured cooperation' 162
The creation of a Defence Agency 164
The possibility of establishing a start-up fund for ESDP
operations 164
Justice and Home Affairs (JHA): better decision-making, more competences
and full judicial control 164
A short history of Justice and Home Affairs in the EU 165
The innovations brought about by the Constitution 168
QMV and codecision for asylum, immigration and external border
controls 168
QMV and codecision for most provisions on criminal matters 168
A European Public Prosecutor's Office to protect the EU's financial
interests 170
Specific procedures for improving the functioning and democratic control
of JHA 170
Full judicial control 170
Keeping unanimity in a few very sensitive cases 171
Keeping the right of initiative of Member States 171
Assessment of the new provisions 171
Economic and monetary policy and the 'euro zone': improved decision-
making 173
A short history of economic and monetary issues in the EU 173
The innovations brought about by the Constitution 174
Improved decision-making and representation for the euro zone 174
Improved decision-making in the area of economic and monetary
policy 175
Public health: higher standards and better monitoring of threats 175
Social policy: a horizontal clause 175
Public services: a new legal basis 178

General Assessment 179
Does the Constitution fulfil the Nice and Laeken mandates? 179
The Nice mandate 179
The delimitation of powers between the EU and the Member
States 179
The status of the Charter of Fundamental Rights 180
The simplification of the Treaties 180
The role of national Parliaments in the EU architecture 181
The Laeken mandate 181
A more democratic and transparent Union 181
A more efficient Union 183 The adoption of a 'constitutional text' 185
Legal, economic and social assessments 186
Legally, the Constitution is far from being a revolution 186 The Constitution will not bring about major changes in the economic and
social fields 188
An important symbolic step from a political point of view 190
An important symbolic step from a pointical point of view
Conclusion what will the final form of the union be? 19
Conclusion with the initial form of the uniton be.
List of annexes 198
Laeken Declaration on the Future of the European Union 198
Existing legal bases switched to ordinary legislative procedure
(codecision) 207
Existing legal bases switched to qualified majority voting in the
Council 211
New legal bases 215
New legal bases where QMV in the Council will apply 215
New legal bases where unanimity in the Council will apply 217
New legal bases where QMV in the European Council will apply 219
New legal bases where unanimity in the European Council will
apply 219
New legal bases where consensus in the European Council will
apply 221
Existing legal bases where unanimity, common accord or consensus will
continue to apply 222
Existing legal bases where unanimity in the Council will continue to
apply 222

Existing legal bases switched from QMV to unanimity in the Council 229

Existing 'passerelles' where unanimity in the Council will continue to apply 229

Existing legal bases where unanimity in the Council will continue to apply, followed by approval or adoption by Member States, in accordance with their constitutional requirements 229

Existing legal bases where unanimity in the European Council will continue to apply 231

Existing legal bases where common accord of the Member States will continue to apply 231

Table of equivalences between the provisions of the Treaty establishing a Constitution for Europe and the provisions of the EU and EC Treaties 232

List of 'passerelles' and provisions on a simplified revision procedure 249

Table of references 251

Index 257