

New legal status or formal competences of institutions

‘The Convention (which drafted the EU Constitution) brought together a self-selected group of the European political elite, many of whom have their eyes on a career at a European level, which is dependent on more and more integration and who see national governments and parliaments as an obstacle. Not once in the sixteen months I spent on the Convention did representatives question whether deeper integration is what the people of Europe want, whether it serves their best interests or whether it provides the best basis for a sustainable structure for an expanding Union. The debates focused solely on where we could do more at European Union level. None of the existing policies were questioned.’

Gisela Stuart

British member of parliament

The Making of Europe’s Constitution, Fabian Society (London, 2003)

	New basis in the Constitution	Subject	Remarks	Decision-making	Changes or insertions of articles, chapters, titles in the new amended treaties
1	Articles I-19, I-21	European Council now officially an EU institution (See B.II.1 for the creation of the post of the European Council President)	The European Council shall define the general political directions and priorities and shall not exercise legislative functions Note: The summit meetings have already been called the European Council since 1974. It was first mentioned in primary law in the TEU (Maastricht). From now on, it will be an official EU institution. Its acts or its ‘failing to act’ will therefore be subject to review by the Court of Justice (Articles 230 ff. TFU)		To be inserted into Article 9 TEU
2	Article I-20(2.2)	Composition of the European Parliament	New competence for the European Council Note: At present decisions on the composition of the EP require Treaty amendments	Unanimity	To be inserted into Article 9A(2.2) TEU
3	Article I-24(4)	Establishment of list of Council configurations	New competence for the European Council Note: At present the list of	QMV	To be inserted into Articles 9C(6) TEU and 201ter TFU

			configurations is drawn up by the General Affairs Council		(TEC)
4	Article I-26(1)	Promotion of the 'general interest of the Union'	<p>Strengthening the role of the Commission</p> <p>Note: So far, Article 211 TEC defines the role of the Commission as 'the guardian of the treaties' and as the Union's executive – in addition to its right of legislative initiative</p>		To be inserted into Articles 9D(1) TEU
5	Article I-26(6)	Composition of the Commission: Altering the number of Commissioners	<p>New competence for the European Council</p> <p>The first Commission appointed under provisions of Constitution shall consist of one national per Member State. After that the Commission shall consist of members from two-thirds of the Member States, <i>unless</i> the <i>European Council</i> decides otherwise</p> <p>Note: According to present Art 213, as amended by the Act on Romania's and Bulgaria's accession to the EU, the number of Members of the Commission may be altered by the <i>Council</i>, acting unanimously</p>	Unanimity	To be inserted into Article 9D(5) TEU
6	Article I-27 (1-2)	Election of Commission and Commission President	<p>Strengthening the role of the European Parliament</p> <p>European Council proposes to the EP a candidate for President of the Commission.</p> <p>This candidate is <i>elected</i> by the European Parliament by a majority of its component members.</p> <p>The Commission as a body must be approved by a vote of assent of the European Parliament</p> <p>Note: The difference basically only lies in the terminology (so far 'approval' of EP is concerned), since the EP can only decide on candidates</p>	<p>Absolute majority in the EP</p> <p>Simple majority in the EP</p>	To be inserted into Article 9D(8) TEU

			proposed by the European Council or Council		
7	Article I-27(3)	Commission President: Appointment of vice-presidents and dismissal of members	A member of the Commission shall resign if the President so requests The President appoints the vice-presidents of the Commission Note: Up to now the President needs the approval of the college of Commissioners – Art. 217(3-4) TEC		To be inserted into Article 9D(7) TEU
8	Articles I-28(2), III-300(2b)	Foreign Affairs Minister High Representative of the Union for Foreign Affairs and Security Policy: Right of initiative	The FAM/High Representative conducts the CFSP and makes proposals for its development Note: Hitherto the initiative lies with the European Council, the Council, the Commission and the Member States Note: The Council can act by QMV in the field of CFSP on a proposal from the Union Minister for Foreign Affairs (following a specific request to him or her from the European Council)		To be inserted into Article 10B(2) TEU
9	Article I-28(3-4)	Foreign Affairs Minister High Representative of the Union for Foreign Affairs and Security Policy: Double-Hat function	The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission and preside over the Foreign Affairs Council Note: The FAM/High Representative will become one of the key figures of the Union. This will have considerable impact on the development of CFSP. Due to his right of proposal and his double-hat function, the Commission will indirectly be given the right of initiative in this area too.		To be inserted into Article 9E(3-4) TEU
10	Article I-30(3)	European Central Bank	The ECB becomes formally an institution of the Union Note: That clarification is missing in Articles 8, 107 TEC		To be inserted into Article 9 TEU

11	Article I-32(1)	CoR and ECOSOC	In addition to the Council and the Commission, the EP is now specially mentioned as being assisted by the CoR and the ECOSOC Note: Article 7(1) TEC only mentions the Council and Commission		To be inserted into Article 256bis(1) TFEU (TEC)
12	Article I-35(1)	European Council: Adoption of decisions	The European Council adopts decisions in the cases provided for in the Constitution Note: Article 4 TEU and Article 249 TEC do not foresee that possibility. Decisions of the European Council will thus also become <i>legally</i> binding		To be inserted – among other places- into Articles 9 TEU and 249(1) TFEU (TEC)
13	Article III-165(3)	Commission: Competition; Rules applying to undertakings: Power to adopt regulations	Commission may adopt its own regulations on the basis of regulations of the Council (relating to agreements/concerted practices between undertakings which are compatible with the internal market) Note : Not foreseen in Article 85 TEC	Majority of Commission members	To be inserted into Article 85(3) TFEU (TEC)
14	Article III-168(4)	Commission: State aid; power to adopt regulations	Commission may adopt European regulations relating to the categories of state aid that the Council has Declared as compatible with the internal market Note : Not foreseen in Article 88 TEC	Majority of Commission members	To be inserted into Article 88(4) TFEU (TEC)
15	Article III-184(5-6)	Commission: Excessive deficit procedure	(5) Commission addresses an opinion <i>directly</i> to the Member State concerned Note: Article 104(5) TEC only foresees an opinion to the Council (6) Council decides upon <i>proposal</i> of the Commission Note: According to Article 104(6) TEC Council decides on a recommendation from the	Majority of Commission members	To be inserted into Article 104(5) TFEU (TEC) To be inserted into Article 104(6) TFEU (TCE)

			Commission. Proposal requires unanimity to amend it (250 TEC)		
16	Article III-198(2.2)	Euro-Council	Recommendation to the Council to accept new Member States in the Eurozone	QMV (among Eurozone members)	To be inserted into Article 117(2.2) TFEU (TEC)
17	Articles I-29(1), III-257-277; III-377	Court of Justice	<p>Since all areas of JHA will be moved to the 1st pillar (also cooperation in criminal matters) and since legislative acts can be adopted (III-365(1)), the competences of the Court of Justice will embrace the entire area of JHA</p> <p>Note: A declaration of a Member State to accept its jurisdiction (35(2) TEC) will not be needed anymore</p> <p>Note: The restrictions of Article 68 TEC continue to apply</p>		To be inserted into Articles 9F TEU, 220-245 TFEU (TEC)*
18	Article III-362(3)	Commission: Specifying a lump sum as penalty when bringing a case before the Court of Justice	<p>When the Commission brings a case before the Court of Justice it may already then specify the amount of the lump sum or penalty payment to be paid</p> <p>Note: Up to now 228(2) TEC only foresees that competence when a Member State has not complied with a previous judgment</p>	Majority of Commission members	To be inserted into Article 228(3) TFEU (TEC)*
19	Article III-376	Court of Justice	<p>Extension of its jurisdiction to restrictive measures against individuals in CFSP</p> <p>Note: The Court has also jurisdiction on restrictive measures taken according to Title V, Chapter V (taken in the frame of the Union's external action outside the CFSP, e.g. Common Commercial Policy)</p>		To be inserted into Article 11(1) TEU and 240bis TFEU (TEC)
20	Articles III-386	ECOSOC and CoR	Prolongation of the Members' mandate from 4 to 5 years		To be inserted into Articles

* *The protocols on the position of the United Kingdom and Ireland and on the position of Denmark are amended but remain in force*

	and III-390				259(1) and 263(subpar.3) TFU (TEC)
21	Article III-404	EP: Full budgetary powers	EP obtains full rights for the adoption of the annual budget Note: The current distinction of 272 TEC between non-obligatory (EP has the last word) and obligatory expenditures (Council has the final say) will be given up. This would be an important strengthening of the EP's powers		To be inserted into Articles 271 and 272 TFU (TEC)
22	Article III-404(5)	Conciliation Committee in budget procedure	If the EP amends the Council's position on the draft budget, a conciliation committee is convened		To be inserted into Article 271(5) TFU (TEC)
23	Parts I, III, IV	EP Powers	The European Parliament would be attributed more participative powers in about 36 cases (in addition to the new legal bases providing for the ordinary legislative procedure) - See Annex 1		To be inserted into TEU and TFU (TEC)