

## New institutions, bodies, offices, agencies and corps of the Union

‘The proposed draft Constitution does not contain the possibility of restoring individual competencies to the national level as a centralisation brake. Instead, it counts on the same one-way street as before, heading towards ever greater centralisation ... Most people have a fundamentally positive attitude to European integration. But at the same time, they have an ever increasing feeling that something is going wrong, that an untransparent, complex, intricate, mammoth institution has evolved, divorced from the factual problems and national traditions, grabbing ever greater competencies and areas of power; that the democratic control mechanisms are failing: in brief, that it cannot go on like this.’

**Roman Herzog**

(former German president and former member of the German Federal Constitutional Court)

*Welt am Sonntag*, 14 January 2007

	<b>New legal basis in the Constitution</b>	<b>Subject</b>	<b>Remarks</b>	<b>Decision-making</b>	<b>Changes or insertions of articles, chapters, titles in the new amended treaties</b>
1	Article I-22	European Council President (see B.IV.1 for the European Council becoming an official institution)	European Council elects its President for a term of two and a half years, renewable once	QMV	To be inserted into Article 9B(5) TEU
2	Article I-28	Foreign Affairs Minister (FAM) To be renamed: High Representative of the Union for Foreign Affairs and Security Policy	European Council, with the agreement of the President of the Commission, appoints the Union Minister for Foreign Affairs	QMV	To be inserted into Article 9E TEU
3	Article III-296(3)	European Foreign Service (European External Action	Council decides on establishment of EFS, organisation and functioning	Unanimity	To be inserted into Article 13b(3) TEU

		Service)			
4	Article III-321(5)	European Volunteers Corps (for humanitarian aid)	Legislative acts to define the rules and procedures for the operation of the Corps (for its establishment see above B.I.31)	QMV	To be inserted into Article 188J(5) TFU (TEC)
5	Article III-357	Judicial appointment panels to give opinion on judges	Council establishes the panel's operating rules and appoints its members	QMV	To be inserted into Article 224(bis) TFU(TEC)
6	Article I-41(3), III-311	European Defence Agency	The Council decides on the Agency's statute, seat and operational rules  Note: A European Defence Agency has already been established by Council decision on 16.06.2004	QMV	To be inserted into Article 27(3) TEU
7	Article III-195, III-198(2.2), Protocol No. 12	Euro-Council	The Ministers of the Eurozone Member States shall meet informally  Note: The informal Euro-Council is now officially mentioned in the Constitution		To be inserted into Article 115 TFU (TEC) and into Protocol No 3
8	Protocol No. 12	President of the Eurozone countries	The Ministers of the Member States whose currency is the euro shall elect a president for two and a half years  Note: Luxemburg Prime Minister Jean-Claude Juncker has already been appointed Eurozone-Council President	Simple majority of the Eurozone Member States	To be inserted into Article 115 TFU (TEC) and into Protocol No 3, Article 2
9	Article III-274(1)	European Public Prosecutor	Legislative act establishes a European Public Prosecutor's Office in order to combat crimes affecting the financial interests of the Union  The European Council may decide to extend the powers of the European Public Prosecutor's Office	Unanimity  Unanimity	To be inserted into Article 69 I TFU (TEC)
10	Article III-328	Delegations of the Union	Delegations of the Union in third countries and at international		To be inserted into

			<p>organisations shall represent the Union</p> <p>They shall be placed under the authority of the FAM/High Representative</p> <p>Note: Now officially mentioned in the Constitution - so far only a reference to <i>Commission</i> delegations in Article 20 TEU)</p>		Article 188Q TFU (TEC)
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### Other new competences of the Union

‘We decide on something. We leave it lying around and wait and see what happens. If no one kicks up a fuss, because most people don't know what has been decided, we continue step by step until there is no turning back.’

**Jean-Claude Juncker**  
(Luxembourg prime minister)  
*The Economist*, 24 September 2004

	<b>New legal basis in the Constitution</b>	<b>Subject</b>	<b>Remarks</b>	<b>Decision-making</b>	<b>Changes or insertions of articles, chapters, titles in the new amended treaties</b>
1	Article I-3	Many new objectives of the Union	Adding objectives means adding competence, even without an explicit legal basis in the treaties (e.g. with the help of the flexibility clause – I-18)		To be inserted into Article 3 TEU
2	Article I-7	General legal personality of the Union	So far, only the Community (281 TEC), not the European Union, has legal personality. The new Article 32 TEU will state that the entire ‘Union’ shall have legal personality (see general remarks at A.3)		To be inserted into Article 32 TEU
2a	Article I-8	Symbols of the Union	Deleted		
3	Article I-9 (III-325(6))	Accession to the ECHR	By acceding to the ECHR, the Union is expected to gain more legislative and judicial responsibilities and thus competences	QMV (according to III-325(6))	To be inserted into Article 6(2) TEU

3a	Article I-18	Flexibility clause also applicable to CFSP	Deleted		To be inserted into Article 308(4) TFU (TEC)
4	Article I-32(5)	Committee of the Regions  Economic and Social Committee	New clause: Regular revision of CoR and ECOSOC rules by Council decision	QMV	To be inserted into Article 256bis(1) TFU (TEC)
5	Article I-36	Delegated regulation as a new legal act	A new category of legal acts: the Commission can be empowered by a legislative act to adopt delegated European regulations to supplement or to amend certain non-essential elements of a law or framework law  Note: It is not defined what has to be considered as 'essential'	QMV	To be inserted into Article 249B TFU (TEC)
6	Article I-40(7), III-300(3)	Passerelle for CFSP	Decision of the European Council authorising the Council to act by a qualified majority in the area of CFSP  Note: This does not apply to decisions having military or defence implications	Unanimity	To be inserted into Article 17(3) TEU
7	Article I-41(3)	CSDP: Capabilities of the Member States	Member States shall make capabilities available to the Union		To be inserted into Article 27(3) TEU
8	Article I-41(7)	CSDP: Mutual assistance clause	In cases of armed aggression against a Member State, the other Member States have an obligation of aid and assistance		To be inserted into Article 27(7) TEU
9	Article I-43	Solidarity clause	In cases of terrorist attacks or natural or man-made disasters, the Union and Member States act jointly in a spirit of solidarity. The Union shall mobilise all instruments at its disposal, including the military resources made available by		To be inserted into Article 188R TFU (TEC)

			the Member States (see I-41(3))		
10	Article I-51	Protection of personal data	Legislative acts lay down rules relating to the protection of individuals  Note: Although I-51 corresponds to 286 TEC, its scope of application will be widened since it will also apply to those areas of JHA which will be effectively moved from the 3rd to the 1st pillar (cooperation in criminal matters).		To be inserted into Article 24 TEU and into a special declaration
11	Article I-52(3)	Dialogue with Churches	New commitment which will create new competences		To be inserted into Article 15(3) TFU (TEC)
12	Article I-57	Dialogue with neighbouring states	New commitment which will create new competences		To be inserted into Article 7bis TEU
13	Article I-60(2)	Agreement on the withdrawal from the Union of a Member State	The Union shall negotiate and conclude an agreement with a Member States that wishes to withdraw	QMV (among the remaining states)	To be inserted into Article 35(2) TEU
14	Entire PART II	Charter of Fundamental Rights	By creating binding fundamental rights and freedoms, the Union will gain more legislative and judicial responsibilities and thus competences (to guarantee their protection and to meet respective entitlements) which will have a profound impact on national legislatures and judiciaries		The statement that the Charter shall be legally binding will be inserted into Article 6(1) TEU  By means of a Declaration(No 51) and Protocol on UK(No 7), the Charter shall not be wholly binding for Poland and the UK
15	Article III-152	Customs cooperation	Legislative acts shall establish measures to strengthen customs cooperation between	QMV	To be inserted into Article 27bis TFU

			Member States and between them and the Commission  Note: The scope of application has been widened because 135 TEC shall not concern national criminal law or the national administration of justice. This exclusion will be deleted		(TEC)
16	Article III-167(1c)	State aid: Repeal of East German exemptions	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision according to which state aid granted to East Germany is compatible with the internal market	QMV	To be inserted into Article 87(2c) TFU(TEC)
17	Article III-180	Economic policy: Energy	New competence proposed by the 2007 Treaty in the area of <b>economic policy</b> : Measures in case of severe difficulties in the supply of certain products: A reference to the spirit of solidarity between Member States and to the particular case of <b>energy</b> will be inserted (Council decision)	QMV	To be inserted into Article 100(1) TFU (TEC)
18	Article III-243	Transport: Repeal of East German exemptions	Five years after the entry into force of the Constitution, the Council may decide to repeal the provision allowing measures compensating for the economic disadvantages caused by the division of Germany	QMV	To be inserted into Article 78 TFU (TEC)
19	Article III-194(1a-b)	Eurozone members: Strengthened budgetary and economic coordination	Council decides measures for Eurozone Member States to strengthen the coordination and surveillance of their budgetary discipline and to set out economic policy guidelines for them	QMV Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 114(1a-b) TFU (TEC)
20	Article III-196(1-2)	Eurozone members: Common representation in international organisations	Council decides on common positions on matters of particular interest for economic and monetary union within international financial institutions such as the IMF, World Bank, etc. and at international conferences	QMV Note: Euro members will have no veto, non-Euro members no vote	To be inserted into Article 115bis(1-2) TFU (TEC)

21	Article III-213	Social policy: Guidelines, indicators, best practice	Commission establishes guidelines, indicators, exchange of best practice  Note: Strengthened Role of the Commission; so far Article 140 TEC does not explicitly foresee these measures	Majority of Commission members	To be inserted into Article 140 (subpar. 2) TFU (TEC)
22	Article III-260	JHA: Evaluation of policies	Council may adopt regulations or decisions to conduct the evaluation of the implementation of policies relating to the area of freedom, security and justice, and in particular to the principle of mutual recognition	QMV	To be inserted into Article 64 TFU (TEC)*
23	Article III-267(3)	Immigration: Readmission agreements	Council may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals	QMV (according to III-325)	To be inserted into Article 69B(3) TFU (TEC)*
24	Article III-268	Asylum, border controls, immigration: Principle of solidarity	Union takes appropriate measures to give effect to the principles of solidarity and fair sharing of responsibility regarding asylum and immigration	QMV (according to articles III-265-268)	To be inserted into Article 69C TFU (TEC)*
25	Article III-270 (1)	Judicial cooperation in criminal matters: Principle of mutual recognition	Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition and shall include the approximation of laws  Note: Although this principle was already mooted by the Tampere Summit in 1999, it is now explicitly mentioned in the Constitution and will give further impetus to the approximation of both substantive and procedural criminal laws		To be inserted into Article 69E(1) TFU (TEC)*

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

26	Article III-300(2b)	CFSP: Initiatives of the FAM /High Representative	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)	QMV	To be inserted into Article 17(2, 2 <sup>nd</sup> indent) TEU
27	Article III-305(2)	CFSP: Coherent actions in international organisations	Member States of the UN Security Council shall request that the FAM/High Representative presents the Union position		To be inserted into Article 19(2.3) TEU
28	Article III-309	CSDP: Additional tasks	Additional tasks of the Union: -joint disarmament operations - military advice and assistance -conflict prevention - post-conflict stabilisation -fight against terrorism	Unanimity (Decision of the Council to define objectives and scope for implementation of these tasks)	To be inserted into Article 28(1) TEU
29	Article III-310	CSDP: Implementation by a group of Member States	The Council may decide to entrust the implementation of a task to a group of Member States that are willing and have the necessary capability  Note: In addition to that, Member States may launch structured (B.III.31) or enhanced (B.III.37) cooperation in the field of CSDP	Unanimity	To be inserted into Article 27(5) TEU
30	Article III-311(2)	CSDP: European Defence Agency (statute, seat and operational rules)	Council decides on the Agency's statute, seat and operational rules  Note: For its creation see B.II.6	QMV	To be inserted into Article 30(2) TEU
31	Article III-312 (2-4)	CSDP: Permanent structured cooperation	Council decides to establish permanent structured cooperation and determine the list of participating Member States  Note: The Constitution also allows enhanced cooperation	QMV Note: For decision <i>within</i> the frame of structured cooperation: QMV or unanimity	To be inserted into Article 31(2-4) TEU



			in CSDP (B-III-37)	among the participating states	
32	Article III-313(3)	CSDP: Start-up fund	Council decides on establishment, administration and financial control of fund (on a proposal from the FAM/High Representative)	QMV	To be inserted into Article 26(3) TEU
33	Article III-315(1)	Common Commercial Policy: International agreement on foreign direct investment	The scope of the Common Commercial Policy has been enlarged: By decision(s) of the Council, agreements on foreign direct investment can be concluded  Note: The Treaty of Nice had already added intellectual property rights to the scope of Article 133 TEC	Unanimity (where agreements include provisions for which unanimity is required for the adoption of internal rules)	To be inserted into Article 188C(1) TFEU (TEC)
34	Article III-320	Urgent financial aid	Council decides on urgent financial aid, when the situation in a third country requires urgent financial assistance from the Union	QMV	To be inserted into Article 188I TFEU (TEC)
35	Article III-322(2)	Economic sanctions against persons or non-state groups	Council decides on restrictive measures against natural or legal persons and groups or non-State entities	QMV Note: Hitherto, measures were taken on the basis of articles 301 and 308 TEC- flexibility clause by unanimity	To be inserted into Article 188K(2) TFEU (TEC)
36	Article III-415	Combating financial fraud	Legislative acts shall lay down the necessary measures in the fields of the prevention of and fight against fraud affecting the Union's financial interests  Note: The scope of application has been widened because 280 TEC does not concern national criminal law or national administration of justice. This exclusion will be deleted.	QMV	To be inserted into Article 280(4) TFEU (TEC)
37	Article III-419(2)	CSDP: Enhanced	Council decides on the establishment of enhanced	Unanimity	To be inserted into Article 10

		cooperation in Defence	<p>cooperation among members within the framework of the common foreign and security policy</p> <p>Note: Because</p> <ul style="list-style-type: none"> <li>- CFSP covers CSDP (I-41(1)),</li> <li>- III-422(3) explicitly refers to that case,</li> <li>- the exclusion of 27b TEU has been dropped,</li> </ul> <p>enhanced cooperation is also possible in CSDP</p> <p>Note: Furthermore, structured cooperation is possible in CSDP (see B.III.31)</p>		TEU
38	Article III-422(1)	Enhanced cooperation: Use of the passerelle	<ul style="list-style-type: none"> <li>- The Council can decide to act by QMV instead of unanimity in the frame of enhanced cooperation</li> <li>- The Council can decide that the ordinary legislative procedure shall apply (instead of a special procedure)</li> </ul> <p>Note: This applies also to enhanced cooperation in CFSP (but not to decisions having military or defence implications)</p>	Unanimity	To be inserted into Article 280H TFU (TEC)
39	Article IV-444	Simplified Treaty Revision - General passerelle	<ul style="list-style-type: none"> <li>- The European Council can authorise the Council to decide by QMV instead of unanimity</li> </ul> <p>Note: This applies also to CFSP (see also I-40(7)), but not to CSDP</p> <ul style="list-style-type: none"> <li>- The European Council may decide that the ordinary legislative procedure applies (instead of a special procedure)</li> </ul> <p>Note: This does not apply to CFSP and CSDP, because legislative acts cannot be adopted in these areas (I-40(6))</p>	Unanimity Note: National parliaments have a right of veto	To be inserted into Article 33(3) TEU

40	Article IV-445	Simplified Treaty Revision	European Council may decide to amend the Treaty  Notes: - No IGC needed - Ratification by the Member States - Applies only to internal policies	Unanimity	To be inserted into Article 33(2) TEU
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