

A comparison between the current EU treaties, the constitutional treaty and the reform treaty

LEGAL PERSONALITY		
Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
- Recognition only for the "Community" (mainly economic competences)	- Recognition for the European Union itself	- Recognition for the European Union itself

According to the case-law (AETR, 1971) the Member States are replaced in their international relations by the "Community" – now, the "Union" – with its own legal personality. From a legal and diplomatic point of view this is an important step toward the building of a European State.

PRIMACY OF THE EU TREATIES AND LAWS		
Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
- Protocol N° 7 on subsidiarity annexed to the Amsterdam Treaty recalls the existing case law of the Court of Justice	- Explicit recognition of this primacy	- Recognition by means of an annexed declaration which recalls this primacy over the laws of the Member States as set out in the case law of the Court of Justice

*Relevant case law: Costa vs Enel, 1964; Internationale Handelsgesellschaft, 1970; Simmenthal, 1977; The Greens, 1986; Kreil, 1970.
EU law (treaties, directives and regulations) is becoming a superior law, a federal law, which has primacy over national laws and constitutions.*

SYMBOLS AND TERMINOLOGY		
Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
- No provisions	- The flag, anthem, motto, currency and "Europe Day" become Treaty-based symbols of the Union. - The terms "law", "framework law" and "Minister for Foreign Affairs" to be deleted	- The EU symbols are not mentioned but will remain in use without a legal basis. - Part of the terminology pertaining to a State remains ("legislative function", "legislative acts"...).

These changes are purely cosmetic, like the abandonment of the word "Constitution" itself.

INSTITUTIONS

	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
Commission	<ul style="list-style-type: none"> - 27 commissioners (1 per country) appointed “en groupe” by QMV. The rule has to be revised before November 2009. - Appointment of the President of the Commission “approved” by the European Parliament. - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of Community legislation - Monitoring, preventive, and controlling functions 	<ul style="list-style-type: none"> - 27 commissioners (28 with Croatia): one per country until 2014. From 2014, 18 commissioners (2/3 of the Member States). - President of the Commission is chosen by QMV of the European Council and “elected” by the European Parliament. - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of the Community legislation - Monitoring, preventive and controlling functions 	<ul style="list-style-type: none"> - 27 commissioners (28 with Croatia): one per country until 2014. From 2014, 18 commissioners (2/3 of the Member States). - President of the Commission is chosen by QMV of the European Council and “elected” by the European Parliament. - Quasi-monopoly of the legislative initiative - Its proposals for a Directive/Regulation can be amended by the Council only unanimously or be adopted by the majority - Execution of the Community legislation - Monitoring, preventive and controlling functions

By abolishing the link between a Country and a Commissioner, the Commission will become more supranational, looking only to the “European general interest”. Also for every two mandates, around one- third of the Member States will not have any Commissioner for the next five years. This is a potentially serious change for small and middle-sized countries.

European Council	<ul style="list-style-type: none"> - Six-monthly Council presidency. 	<ul style="list-style-type: none"> - A European Council President elected for 30 months by the Heads of State or Government by QMV; not more than 2 mandates; President cannot have a national mandate (but theoretically another European one) - The European Council becomes an institution of the EU : its decisions or failures to act are subject to review by the Court of Justice 	<ul style="list-style-type: none"> - A European Council President elected for 30 months by the Heads of State or Government by QMV; not more than 2 mandates; President cannot have a national mandate (but theoretically another European one) - The European Council becomes an institution of the EU : its decisions or failures to act are subject to review by the Court of Justice
-------------------------	---	--	--

The Six-monthly Council presidency system is maintained, but the creation of the office of President is supposed to give visibility to EU action. This new EU political President could enter into competition with the six-monthly Presidency, the President of the Commission and the High Representative for Foreign Affairs and Security Policy, and with the Heads of State or Government themselves. The transformation of the European Council into a Union institution will make the acts and failures to act of the Heads of State and Government subject to review by the Court of Justice.

Council of Ministers	<ul style="list-style-type: none"> - Six-monthly Council presidency. - QMV: 258 votes out of 345. Germany, France, Italy, United Kingdom : 29 votes Spain, Poland : 27 votes Blocking minority : 91 votes 	<ul style="list-style-type: none"> - Six-monthly Council presidency. - Double majority system: QMV reached with 55% of the number of Member States (i.e. 15 out of 27) and 65% of the aggregate EU population. 	<ul style="list-style-type: none"> - Six-monthly Council presidency. - Double majority voting system delayed to 1 November 2014. During a transitional period until 31 March 2017, a country will be allowed to ask for votes according to the rules of Nice. Until 31 March 2017, if a group of States is opposed to a Council measure and approaches a blocking minority, the text cannot be adopted and the negotiations must continue.
-----------------------------	---	--	--

“The population of the Union” is assessed in aggregate and replaces the current “people of the Member States. This indicates an important change of philosophy. The six-monthly presidency sequence is: Germany, Portugal: 2007; Slovenia, France: 2008; Czech Republic, Sweden: 2009; Spain, Belgium: 2010; Hungary, Poland: 2011. The current system governed by the Treaty of Nice can remain for 10 years.

INSTITUTIONS			
	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
European Parliament	736 MEP elected for 5 years from 2009. - UK, Italy, France: 72; Netherlands: 25; Denmark: 13; Ireland: 12; Greece: 22; Sweden: 18; Poland: 50; Czech Republic: 20; Romania: 33, etc, and Germany: 99...	- No change in the composition of the EP. - EP now represents globally the "Union's citizens", not the different "peoples" of the Member States. - Generalization of the co-decision procedure, the "ordinary legislative procedure", where the Parliament co-decides for 40 new areas: e.g. the EU budget and own resources, visas, asylum, immigration, comitology, agriculture, services, space, energy, intellectual property etc.	- European Council asked the EP to propose a new composition for the Elections of 2009 - EP represents the « citizens of the Union » - Generalization of the co-decision procedure.
<i>Strengthening of the powers of the Parliament, which is not a representative assembly of the peoples of the EU's nation States anymore, but the Parliament of a State. However, without a European people, this is pretence of democracy. A start to democratizing the EU would have given rights of opposition to and participation in EU legislation to National Parliaments. Under the new arrangements they will only be informed earlier of draft EU legislative acts and will have the right to give an opinion and protest, but not to block any European text. The Court of Justice remains the master of the subsidiarity and proportionality principles, interpreting the treaties to the detriment of the powers of Member States in the interest of increasing Union power.</i>			
Union Minister for Foreign Affairs	- "Mr CFSP".	- Creation of the office of Union "Minister for Foreign Affairs" (elected by QMV) and an accompanying European diplomatic service - Decisions in CFSP are taken by unanimity, with four important exceptions. By using the "passerelle" clause (modification of the voting system without revision of the treaties) the European Council can unanimously extend QMV and abolish the national veto in the relevant area.	- Creation of the office of "High Representative of the Union for Foreign Affairs and Security Policy", appointed by QMV of the European Council, with a diplomatic services. He or she will also be a Vice-President of the Commission and President of the Council of Foreign Affairs Ministers. - Decisions in CFSP are taken by unanimity, with four important exceptions. By using the "passerelle" clause (modification of the voting system without revision of the treaties) the European Council can unanimously extend QMV and abolish the national veto in the relevant area.
<i>Four issues :(1) Foreign Affairs is a sensitive and strategic area and central to the sovereignty and independence of States; (2) There is no real political responsibility of this High Representative except to the European Council); (3) Who will give the main political impulsion to the High Representative's decisions ?; (4) Who will represent the EU in international relations, the HR or the President of the European Council ?</i>			
Court of Justice	- Interpretation of the treaties.	- Becomes the Supreme Court of the Union because of the primacy of the EU law and the single legal personality of the EU. - Becomes the supreme judge of human rights in the EU, because of the incorporation of the Charter of Fundamental Rights - Its competences are enlarged by the merging of the pillars (immigration, visas, asylum, movement of people etc., even CFSP)	- Becomes the Supreme Court, of the Union because of the primacy of the EU law and the single legal personality of the EU. - Becomes the supreme judge of human rights in the EU, because of the incorporation of the Charter of Fundamental Rights. - Its competences are enlarged by the merging of the pillars (immigration, visas, asylum, movement of people etc., even CFSP)

INSTITUTIONS			
	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
Court of Justice <i>(Continued)</i>		<ul style="list-style-type: none"> - Decision as to the boundaries of the new exclusive or shared competences are given to the Union through the ECJ - Acts of or failures to act by the European Council are subject to review by the Court, because of the Council's transformation into a Union institution 	<ul style="list-style-type: none"> - Decision as to the boundaries of the new exclusive or shared competences are given to the Union through the ECJ - Acts of or failures to act by the European Council are subject to review by the Court, because of the Council's transformation into a Union institution
<i>The Court of Justice is becoming a Supreme Constitutional Court.</i>			

ENHANCED COOPERATION <i>(cooperation between a reduced number of States)</i>			
	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
	<ul style="list-style-type: none"> - Threshold of Member States: 8 - Approval by the Parliament in the areas of co-decision. - Establishment by QMV 	<ul style="list-style-type: none"> - Approval by the Parliament in all areas where introduced - Threshold : 1/3 of the Member States (9 with 27 States and 10 with 30 States) - Forbidden in the area of the exclusive competences of the Union, which includes currency policy - With the agreement of the Commission in the area of the "Community acquis" - Extension to Defence, CFSP 	<ul style="list-style-type: none"> - Approval by the Parliament in all areas where introduced - Threshold : 1/3 of the Member States (9 with 27 States and 10 with 30 States) - Forbidden in the area of the exclusive competences of the Union, which includes currency policy - With the agreement of the Commission in the area of the "Community acquis" - Extension to Defence, CFSP
<i>Introduced in 1997 (Treaty of Amsterdam), enhanced cooperation has never been used. Its interest is limited because the rules governing it show that it is relevant only to an exclusively Federalist path of development.</i>			

SOME OF THE COMPETENCES OF THE UNION			
	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
Commercial policy	<ul style="list-style-type: none"> - Shared competence for many areas of the Commercial policy: approval by the Council with unanimity as regards international agreements negotiated by the Commission 	<ul style="list-style-type: none"> - Exclusive competence of the Union - QMV for negotiation and conclusion of international agreements (rare exceptions) 	<ul style="list-style-type: none"> - Exclusive competence of the Union - QMV for negotiation and conclusion of international agreements (rare exceptions)
Euro and budget deficits	<ul style="list-style-type: none"> - The Commission sends a recommendation to the Council if there is a risk of a major budget deficit in a Member State. The Council decides on eventual sanctions. 	<ul style="list-style-type: none"> - The Commission will directly send an opinion to a Member State if it faces a risk of a major budget deficit. The Council could veto this by unanimity. 	<ul style="list-style-type: none"> - The Commission will directly send an opinion to a Member State if it faces a risk of a major budget deficit. The Council could veto this by unanimity.
Energy	<ul style="list-style-type: none"> - No competence for the EU, which intervenes on the basis of the "internal market" flexibility clause (art. 308 TEC) - Unanimity 	<ul style="list-style-type: none"> - Shared competence. - QMV, except for fiscal provisions. 	<ul style="list-style-type: none"> - Shared competence. - QMV, except for fiscal provisions. - Solidarity in energy matters between Member States.

SOME OF THE COMPETENCES OF THE UNION

	Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
Employment	- Cooperation between national policies for employment; agreement on “common guidelines”	- Coordination of the definition of global targets for employment in the Union. - Shared competence - Creation of a committee for employment with the representatives of trade unions.	- Coordination of the definition of global targets for employment in the Union. - Shared competence - Creation of a committee for employment with representatives of trade unions.
Justice and Home Affairs	- 3rd pillar (intergovernmental) : decisions by unanimity	- Merging of the pillars and the end of unanimity. QMV in particular for : - All the policies in the Area of freedom, security and justice - Visas policy, controls at external borders, suppression of internal borders, integrated system of management of internal borders - Common system of asylum, protection of refugees - Conditions for entry and stay of the nationals of third countries, definition of their rights, illegal immigration, readmission agreements - European external border policy and European Public Prosecutor. - Police and judicial cooperation in criminal matters	- Merging of the pillars and the end of unanimity. QMV in particular for : - All the policies in the Area of freedom, security and justice - Visas policy, controls at external borders, suppression of internal borders, integrated system of management of internal borders - Common system of asylum, protection of refugees - Conditions for entry and stay of the nationals of third countries, definition of their rights, illegal immigration, readmission agreements - European external border policy and European Public Prosecutor. - Police and judicial cooperation in criminal matters - Opt out for the United Kingdom and Ireland
Research, Space, Cooperation in development & humanitarian aid	- Shared competences. - Space policy integrated with the Research policy.	- Real shared competences: the intervention of the EU does not prevent Member States having their own policies. - New specific Treaty Article on Space policy.	- Real shared competences: the intervention of the EU does not prevent Member States having their own policies. - New specific Treaty Article on Space policy.
Free movement of workers	Unanimity	QMV	QMV
Intellectual property	Unanimity	QMV (except for linguistic affairs)	QMV (except for linguistic affairs)
Structural funds	Unanimity	QMV	QMV
Culture	Unanimity	QMV	QMV
Operation of services of general economic interest	Unanimity	QMV	QMV A protocol concerning services of general economic interest is annexed, indicating “ <i>the essential role of 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 users</i> ”.

FUNDAMENTAL RIGHTS		
Current EC/EU Treaties	Rejected Constitutional Treaty	IGC Mandate for the « Reform Treaty »
Competence of national Courts mainly, with a role for the Court of Human Rights in Strasbourg	- Charter of Fundamental rights included in the Constitution, Part II, which gives competence over human and various other rights to the European Court of Justice in Luxembourg.	- Charter included by an Article. It becomes legally binding for States in all areas of EU law, with primacy over national codes of human rights and fundamental freedoms (e.g. religion, family law, property, labour and social law, other “communitarisms”, criminal procedures, etc.) Opt-out for the United Kingdom and Poland; but ECJ has the final say and can bypass it by applying the provisions of the Charter.

Additional points relating to the “Renamed EU Constitutional Treaty”

- Free trade and competition: A Protocol “on internal market and competition” will be annexed to the Treaties, recalling that Article 3 of TEU includes a “system ensuring that competition is not distorted.”

- In the Title on Environment, amendments will refer to

measures “combating climate change”

- Unanimity remains the rule for the following policy areas: Foreign policy with important exceptions, Taxation, Social policy with exceptions, Financial resources for the EU, as well as amendment of the Treaties and the admission of new members to the Union.

Number of QMV articles introduced, or of unanimity articles moved to QMV by the different European treaties

SUMMARY OF QUALIFIED MAJORITY VOTING IN SUCCESSIVE EUROPEAN TREATIES

European Treaty	Number of - QMV articles introduced or - unanimity articles moved to QMV
Treaty of Rome (plus extensions)	38
Single European Act	12
Maastricht (Treaty on European Union)	30
Treaty of Amsterdam	24
Treaty of Nice	46
European Constitution	68
Draft Reform Treaty	68



Source: EUWatch, European Parliament;
Tables compiled by Christophe Beaudouin, a French lawyer working with the IND/DEM Group as Staff Coordinator for the EP Committee on Constitutional Affairs