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**Note on the changes of procedures
at EU-level concerning the area of
freedom, security and justice**

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Note on the changes of procedures at EU-level concerning the area of freedom, security and justice¹

1. Introduction

The constitutional treaty is going to have a significant impact on the European Union's cooperation in the area of freedom, security and justice.

Most importantly it will bring an end to the current intergovernmental method in the field of Police and Judicial cooperation in criminal matters and introduce the so-called community method, leaving it to the EU-institutions to "legislate" in that area. The predominant way of adopting legislation will be co-decision making it a joint responsibility between the Council and the European Parliament to legislate.

It is proposed that the so-called co-decision procedure shall be named the "**ordinary legislative procedure**", because this procedure becomes the predominant way of adopting European legislation. The remaining procedures will be called "**specialised legislative procedures**", without drawing a distinction between the European Parliament being consulted, asked for its consent or not involved.

Furthermore, the Council is going to take decision by qualified majority in most of the area. However unanimity will still be maintained in certain sensitive fields within the area of freedom, security and justice, such as the rules for establishment of the European Public Prosecutor. The treaty also seeks greater direct involvement of national Parliaments in the area by giving them tasks in monitoring the activities of the EU-institutions.

2. The change in legislative procedures

As already mentioned in the introduction, the draft constitutional treaty foresees a number of changes to the legislative procedures of the European Union. The draft treaty puts the European Parliament on an equal level with the European Council for legislating in a number of policy areas, where previously it held a smaller role. This applies also for the area of freedom, justice and security, where the ordinary legislative procedure becomes the predominant procedure. This will for example be the case for Art.III-271 p.1 concerning the establishment of minimum rules concerning the definition of criminal offences and sanctions in the areas of particular serious crime with a cross-border dimension, where the decision making procedure currently foresees only consultation of the European Parliament. For a complete list of the legal bases in the area of freedom, security and justice, where the ordinary legislative procedure is going to be applied, refer to Table 1.

In other fields, the actual decision making process is going to remain unchanged, which in many cases implies unanimity in the Council. Art. III-269 specifies that Council shall act unanimously after consulting the European Parliament on measures concerning family law with cross-border implications. For a complete list of the legal acts in the area of freedom, security and justice, where the specialised legislative procedures are going to be applied, please refer to Table 2.

Concerning Sections 4, **Judicial cooperation in criminal matters** and Section 5, **Police cooperation** of the area of freedom, security and justice, the right of initiative is not an exclusive Commission prerogative. As today, under the Nice treaty, the Commission is going

¹ In the area of freedom, security and justice, there are some special opt-outs for Denmark, Ireland and United Kingdom which will not be described in detail in this note.

to share the right of initiative also under the constitutional treaty with the Member States. The acts referred to in Sections 4 and 5 as well as the ones referred to in article III-263 which ensure administrative cooperation in the area of freedom, security and justice can be adopted on a proposal from the Commission or from a quarter of the Member States, whereas under the current treaty, one single Member State can submit a proposal.

3. The role of national Parliaments in the area of freedom, security and justice

The draft constitutional treaty does provide for a privileged role for national parliaments in the area of freedom, security and justice.

Early Warning mechanism under Section 4 and 5

First of all, national Parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4, **Judicial cooperation in criminal matters** and Section 5, **Police cooperation** comply with the principle of subsidiarity, as described in the Protocol on the application of the principles of subsidiarity and proportionality. This means that national Parliaments would be able to use the early warning mechanism for monitoring compliance with the principle of subsidiarity for initiatives brought forward under these two sections. Moreover, the Protocol on the application of the principles of subsidiarity and proportionality specifies that the necessary threshold for draft legislation in the area of freedom, security and justice to be reviewed is reduced from one third to a quarter of all the votes allocated to the national Parliaments.

National Parliament's right of information

Furthermore, Art. III-260 whereby Member states, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union's policies in the area of freedom, security and justice, national parliaments shall be informed of the content and the results of that evaluation. There is a similar requirement to inform national Parliaments and the European Parliament of the proceedings of the standing committee to be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened in the Union. The new standing Committee is to be established under Art.III-261.

A role for national Parliaments in scrutinising Eurojust and Europol

Finally, the draft constitutional treaty also makes provision for national Parliaments, together with the European Parliament to evaluate the activities of Eurojust, as laid down in Art. III-273. Furthermore, Art.III-276 paragraph 2 referring to Europol calls for procedures for scrutiny of Europol by the national Parliaments, together with the European Parliament.

"Safety clauses for Member States"

Even if the draft constitutional treaty is going to abandon the intergovernmental character in favour of the Community method, Member states will have a sort of safety clause. Art.III-270 p.3 and Art.III-271 p.3 specify that a Member of the Council may request that a draft framework law referred back to the European Council if it considers that this law would affect fundamental aspects of its criminal justice system. These paragraphs are applicable to the

field of mutual recognition of judgements and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension as well as the areas of particular serious crimes (defined in Art.III-271) with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

Table 1: Overview of legal acts in the area of freedom, security and justice, where the ordinary legislative procedure is going to be applied

	New procedure?	Article	Decision-making procedure today	Role of the European Parliament today
1		III-265, p.2: Controls on persons when crossing internal and external borders, etc. <i>(TEC Art. 62 and 67)</i>	Unanimity ² /QMV	Consultation/Co-decision.
2		III-266, p.2: Asylum. <i>(TEC Art. 63, p.1 and 2 and 67)</i>	Unanimity/QMV	Consultation/co-decision ³
3		III-267, p.2: Immigration. <i>(TEC Art. 63, p.3 and 4 and 67)</i>	Unanimity ⁴	Consultation
4	New article	III-267, p.4: Measures to provide incentive measures and support action of Member States with a view to promoting the integration of third-country nationals.		
5	Partly new article ⁵	III-269, p.2: Judicial cooperation in civil matters. <i>(TEC Art. 65 and 67)</i>	QMV - Unanimity in Council is however maintained with regard to measures concerning Family law with cross-border implications.	Co-decision except measures concerning Family law, where EP is consulted.
6		III-270, p.1: Judicial cooperation in criminal matters; mutual recognition of judgements and judicial decisions. <i>(TEU Art. 31)</i>	Unanimity	Consultation
7	New article	III-270, p.2: Judicial cooperation in criminal matters; minimum rules concerning mutual admissibility of evidence between Member States, the rights of individuals in criminal procedures and the right of victims of crime.		
8		III-271, p. 1: Minimum rules concerning the definition of criminal offences and sanctions in the areas of particular serious crime with a cross-border dimension. <i>(TEU Art.. 31)</i>	Unanimity	Consultation
9	New article	III-271, p.2: Minimum rules with regard to the definition of criminal offences and sanctions in relation to the approximation of criminal laws and regulations of the Member States.		

10	New article	III-272: Measures to promote and support the action of Member States in the field of crime prevention.		
11	New article	III-273: Eurojust. (TEU Art. 31)	Unanimity	Consultation
12	New article	III-273: Arrangements for involving the European Parliament and national parliaments in the evaluation of Eurojust's activities.		
13		III-275, p.2: Police cooperation. (TEU Art. 30)	Unanimity	Consultation
14	New article	III-276, p.2: Europol. (TEU Art. 30)	Unanimity	Consultation
15	New article	III-276, p. 2: Procedures for scrutiny of Europol's activities by the European Parliament and national parliaments.		

Table 2: Overview of the legal bases in the area of freedom, security and justice, where the specialised legislative procedures is going to be applied

	New procedure?	Article	Decision-making procedure today	Role of the European Parliament today
1		III-269, p.3: Family law with cross-border implications. (TEC Art. 65 and 67)	Unanimity/unanimity	Consultation/consultation
2	New article	III-274, p.1: European Public Prosecutor.	Unanimity	Consent
3		III-275, p.3: Operational cooperation between authorities of Member States' including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences. (TEU Art. 30, p. 1a)	Unanimity/unanimity	Consultation/consultation
4		III-277: Conditions and limitations under which the competent authorities of the Member States may operate in the territory of another Member State in liaison and in agreement with the authorities of that state. (TEU Art. 32)	Unanimity/unanimity	Consultation/consultation