

Draft Proposals for a European Constitution
- overview of the contributions by Mr. Elmar Brok and Mr. Andrew Duff -

	Proposal of Mr. Brok	Proposal of Mr. Duff
Constitution of the EU	EU with own legal personality (Art. 55)	EU with own legal personality (Art. 2 I)
Charter of Fundamental Rights	original text fully integrated in draft (Art.1-54)	integrated as a protocol to the draft constitution (Art. 3 I)
Competencies of the Union	distinction between exclusive and shared competencies (Art. 67-71)	distinction between exclusive and “shared or co-ordinating” competencies; however, distinction between the individual categories of competencies is not always clear (see Art. 5)
- exclusive:	Art. 67: - citizenship of the Union - external trade, customs and competition policy - EMU - structural and cohesion policy, statistics of the Union - agricultural and fisheries policy	Art. 5 I+II: - trade and the customs union - competition, monetary policy and the euro - basic freedoms of the common market - common foreign policy and a joint capability in the field of external security and defence
- shared:	- internal market and basic freedoms taking into account the principle of subsidiarity (Art. 69) - codification of the current AETR-doctrine of the ECJ concerning the external competence of the EU in the fields where it is competent internally (Art. 71)	so-called co-ordinating competence (Art. 5 II+III): - macro-economic policies - common policies regarding employment, equality of opportunity, the financial markets, transport and communications, energy, science, research and technology, food, consumer protection, environment, overseas development, immigration and asylum - international crime, co-ordinating of member state police, customs and judicial authorities
- complementing/ supportive:	- no comment	- sport, youth, tourism, planning, civil defence, public health, social services, culture and education

Legal and executive instruments	introduction of a hierarchy of norms and distinction between: <ul style="list-style-type: none"> - legal acts: Union acts, Union framework acts, Union regulations (Art. 154, 157) - executive acts: decisions, recommendations and opinions (Art. 157) 	conclusive catalogue of instruments with a hierarchy of norms (Art. 6): <ul style="list-style-type: none"> - Organic Law - Regulation - Directive - Joint Action - Decision - Opinion - Code of Conduct (mandatory or compulsory) - Interinstitutional Agreement
Legislation	Council and EP as “House of States/Peoples” (Art. 82 I, 93 I)	Council and EP as legislative bodies; no law or budget may be passed unless approved by both of them (Art. 7)
Right of Initiative	right to submit legislative proposals to COM (Art. 155 I)	sole right for legislative and budgetary proposals to COM (Art 7 II)
Legislative Procedures	Codecision procedure as a rule (Art. 155-159); Council decides with QMV; unanimity only where especially stipulated	Codecision procedure, in which decisions are adopted by: <ul style="list-style-type: none"> - EP simple majority (abs. majority for Organic Laws) (Art.10 II, 7 IV) - Council qualified majority, e.g. majority of MS representing majority of Union population (3/4 for Organic Laws) (Art. 12 IV, 7 IV)
Finance	<ul style="list-style-type: none"> - EU with own budget wholly financed by own resources; esp. option to levy a direct tax by EU; rate of VAT and GNP of MS (Art. 162) - no different procedure for obligatory/non-obligatory expenditure 	<ul style="list-style-type: none"> - EU with own resources (creation of system of own revenue by Organic Law that may include levying of taxes and duties of the EU) - expenditure limits expressed as a percentage of EU GDP (Art.8)
Institutions	<u>institutional novelties:</u> <ul style="list-style-type: none"> - Convention for constitutional amendments (consisting of a Chairman appointed by the Council, approved by EP; 1 representative per gov. and 2 per national parliament of MS, 54 members from EP, 2 members of COM (Art. 196) - ECJ with Grand Chambers on Competence and on Fundamental Rights (Art.113 II) 	<u>institutional novelties:</u> <ul style="list-style-type: none"> - Congress of Parliaments (EP + same number of representatives of nat. Parliaments to elect or impeach COM-President, Art. 9 II) - Convention for constitutional amendments (consisting of a President, representatives from Council and COM, equal number of delegates from EP and national parliaments, Art. 9 III)
EP	<ul style="list-style-type: none"> - “House of Peoples” (Art. 82) - max. 700 MEPs starting from 2009 (Art. 82) - right to request submission of proposals from COM (Art. 85) - Ombudsman (Art. 87), but no direct petition right to EP mentioned - motion of censure against COM as a whole (Art. 106) 	<ul style="list-style-type: none"> - 700 MEP elected for a 5-year term (Art. 10 I) - 630 from regional constituencies, 70 elected from across the whole territory of the EU (Art. 10 I) - dissolution of EP in the event of a dismissal of COM through a motion of censure by EP (Art.10 IV, 13 VI)

Council – Competencies	<p><u>European Council (Art. 98 I):</u></p> <ul style="list-style-type: none"> - provides impetus for development and defines general policy guidelines <p><u>Council of the EU (Art. 93):</u></p> <ul style="list-style-type: none"> - mainly functions as legislative body (“House of States”) - additionally coordinates the economic policies of MS, CFSP, police and judicial cooperation in criminal matters (JHA) 	<p><u>European Council (Art. 11 II):</u></p> <ul style="list-style-type: none"> - establishes work programme of the Union - gives overall political direction - may act on behalf of the Council of Ministers <p><u>Council of Ministers (Art.12):</u></p> <ul style="list-style-type: none"> - on proposal of COM and after consulting EP may take Joint Action or Decision - right of initiative in the field of external security and defence
Council – Presidency	<p><u>European Council (Art. 98 II):</u> rotation following the Council; chaired by Heads of State/Gov. in turn</p> <p><u>Council of the EU (Art. 94):</u> rotation every 6 months; longer term may be convened unanimously</p>	<p><u>European Council (Art. 11 I):</u> rotation every 6 months;</p> <p><u>Council of Ministers (Art. 12):</u> chaired by COM President or his representative (chairman has no vote in Council)</p>
Council – Composition	<p><u>European Council (Art. 98 II):</u> Heads of State/Gov. + COM-Pres.; assisted by Foreign Min. + 1 Comm.</p> <p><u>Council of the EU (Art. 94 I):</u> One representative of MS at ministerial level; may be assisted by conferences of departmental ministers (no decision-making powers in legislative affairs, Art. 94 III) and COREPER (Art. 99 I); at request of Council COM may act as General Secretariat (Art. 99 III)</p>	<p><u>European Council (Art. 11 I):</u> Heads of State/Gov. + COM-President</p> <p><u>Council of Ministers (Art. 12 I):</u> Ministers of the Gov. of MS and Com-President as chair</p>
Council – Decision making	<p><u>European Council:</u> N.N.</p> <p><u>Council of the EU (Art. 96):</u> QMV (majority of MS representing majority of EU population)</p>	<p><u>European Council (Art.11):</u> N.N.</p> <p><u>Council of Ministers (Art.12):</u> QMV (majority of member states representing majority of EU population)</p>
COM – Competencies	<ul style="list-style-type: none"> - executive (Art.102) and external representation of the EU respecting the decisions of the Council in CSFP-matters (174 I, III) - General Secretariat of the Council in JHA and CSFP (Art. 99 III) - shall forward to EP, Council, nat. Parliaments its annual legislative programme (Art.103 I) + right of initiative in leg. matters (Art.155) 	<ul style="list-style-type: none"> - right of initiative for budget + work programme of the EU - responsible for implementing the acts of the Union, management of expenditure and policy - negotiation of international treaties - power to take Decisions and issue Opinions (Art. 13 V)

COM – Presidency	<ul style="list-style-type: none"> - COM-Pres. appointed by EP and approved by the Council (Art. 105) 	<ul style="list-style-type: none"> - COM-Pres. nominated by one or more MS (immediately after elections of EP) and elected by Congress with absolute majority (Art.13 II) - may be impeached by 2/3 majority of Congress acting on initiative of EP or Council (Art. 13 VII)
COM – Composition	<ul style="list-style-type: none"> - no maximum number, but 1 Commissioner per MS; number may be changed unanimously by Council, if approved by EP (Art. 104) - COM-President nominates Comm. who are elected by EP and approved by Council (Art. 105) - COM-President may establish hierarchy among Commissioners and shall appoint 2 Vice-Pres.; one being “Commissioner for Foreign Relations” representing EU externally (Art.110) - motion of censure against COM as a whole by 2/3 EP (Art.106) 	<ul style="list-style-type: none"> - 15 Commissioners, including COM-Pres. + 1 Vice-Pres. resp. for CFSP - Vice-Pres. nominated by Council, elected by EP; thereafter nomination of other members of COM by COM-Pres. and appointment by EP (Art. 13 II, IV) - dismissing of COM as a whole by 2/3 majority of EP leading to dissolution of EP (Art. 13 VI, 10 IV)
Role of National Parliaments	<ul style="list-style-type: none"> - receives annual legislative programme with right to call on COM for a reasoned opinion on the compliance with the principle of subsidiarity (Art. 69 II) - competence control of EU through judicial ex-ante control of acts (Art. 130 I) and right to action of annulment (Art. 125 III) 	<ul style="list-style-type: none"> - national Parliaments legitimated to file action of annulment to ECJ on grounds of lack of competence of the EU (Art. 14 IV)
Control against Infringement of Competence	<ul style="list-style-type: none"> - <u>ex ante</u>: special preliminary procedure at ECJ against proposed acts by EP, Council, COM, nat. Parl./Gov. etc. (Art. 130) - <u>ex post</u>: action of annulment by EP, COM, Council, Gov. and Parl. of MS, Committee of the Regions , ECB etc. (Art.125 II, III) 	<ul style="list-style-type: none"> - ECJ has jurisdiction in actions brought by an institution of the EU, a Government or Parliament of a MS, or even regional/local governments (where their rights may be violated) on grounds of lack of competence (Art. 14 IV)
EU - Citizenship	<p>integration of current provisions through Protocol Nr.1 (Annex)</p>	<p>Citizens of MS are those of the EU; establishment of an Ombudsman at the EP; current provisions integrated through protocols to the treaty (Art. 3)</p>
Constitutional Amendments	<ul style="list-style-type: none"> - Convention prepares propositions (convened by Council on initiative of governments of MS, EP or COM) that are approved by conference of representatives of MS, ratified in MS and assented by EP (Art. 196) 	<ul style="list-style-type: none"> - COM or MS submit proposal to Convention which will prepare the amendment that will be adopted either: <ol style="list-style-type: none"> a) by the Council (3/4 majority MS) and EP (2/3 majority of cast votes) + ratification by all MS or b) by a referendum of the EU citizens, the EP and the Council (Art. 18)

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