



## Statewatch

### EU Reform Treaty

#### Likely text of the Justice and Home Affairs provisions

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#### *Introduction*

The following text sets out what will likely be the text of the EU's Reform Treaty as regards Justice and Home Affairs. This text is based on the relevant text of the EU's Constitutional Treaty as signed in 2004 (OJ 2004 C 310), the text of which would be inserted by the planned 'Reform Treaty' into the EU Treaty and the EC Treaty (TEC, to be renamed the 'Treaty on the Functioning of the Union', or TFU), including amendments referred to in the mandate for the Intergovernmental Conference (IGC) which was agreed by EU leaders on 23 June.

This is **not** an official text. The official text of a draft Treaty is due to be circulated when the IGC officially begins (likely to be late July), and this text will be finalised upon conclusion of the IGC (planned for mid-October). Some further changes to the text are possible before its signature - which I would estimate would be in December, if the IGC concludes as planned in October.

Any text which I consider is particularly likely to be altered is set out in square brackets. Additions from the Constitutional Treaty are set out in bold/underline; deletions are set out in ~~strikeout~~.

This text does not include any reference to the particular position of the UK, Ireland and Denmark, who will have opt-outs from most or all of these provisions. This is because the position of these countries is/will be set out in separate Protocols.

The numbering of the Treaty Articles will obviously change (we can surely expect that the entire TEC/TFU will be renumbered), and the wording of the text relating to the decision-making process is provisional, as it is not clear how the Reform Treaty drafters will refer to decision-making processes.

The annotations in italics compare the text of the Constitutional/Reform Treaty to the current Treaty rules, and explain the changes to the Constitutional Treaty text which EU leaders have agreed in the IGC mandate for negotiations on the Reform Treaty.

## [CHAPTER IV]

### AREA OF FREEDOM, SECURITY AND JUSTICE

#### SECTION 1

##### GENERAL PROVISIONS

###### [Article III-257]

1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Chapter, stateless persons shall be treated as third-country nationals.
3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

###### [Article III-258]

The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

###### [Article III-259]

National Parliaments shall ensure that the proposals and legislative initiatives submitted under Sections 4 and 5 of this Chapter comply with the principle of subsidiarity, in accordance with the arrangements laid down by the Protocol on the application of the principles of subsidiarity and proportionality.

*Note: the IGC mandate includes changes to this Protocol. Although these changes are not specific to JHA issues, they will impact upon it.*

###### [Article III-260]

Without prejudice to [Articles 226 to 228], the Council may, on a proposal from the Commission, [adopt European regulations or decisions] laying down the arrangements

whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation.

*Note: I have inserted a reference to the current Articles of the EC Treaty, in place of the relevant Articles of the Constitutional Treaty (Articles III-360 to III-362). These provisions govern infringement proceedings before the Court of Justice.*

[Article III-261]

A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. Without prejudice to Article [207], it shall facilitate coordination of the action of Member States' competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee. The European Parliament and national Parliaments shall be kept informed of the proceedings.

*Note: I have inserted a reference to the current Article of the EC Treaty, in place of the relevant Article of the Constitutional Treaty (Article III-344). This provision concerns the Committee of [Member States'] Permanent Representatives [to the EU] (known as Coreper), which prepares the work of the Council.*

[Article III-262]

This Chapter shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

**It shall be open to Member States to organize between themselves and under their responsibility forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security.**

*Note: this text, agreed as part of the IGC mandate, is presumably intended to clarify that cooperation between security services falls outside the scope of this Title.*

*The first paragraph is identical to the current Article 33 TEU and Article 64(1) TEC.*

[Article III-263]

The Council shall adopt European regulations to ensure administrative cooperation between the relevant departments of the Member States in the areas covered by this Chapter, as well as between those departments and the Commission. It shall act on a Commission proposal, subject to [Article III- 264], and after consulting the European Parliament.

*Note: this provision is similar to the current Article 66 EC, and would be subject to the same decision-making procedure. This clause is, however, wider than the current Article 66 EC because it would also apply to criminal law and policing.*

**[Article III-263a]**

**When necessary to achieve the objectives set out in [Article III-257], as regards terrorism and related activities, ~~[European laws]~~ [Regulations] shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-state entities.**

**The Council, on a proposal from the Commission, shall adopt [European regulations or European decisions] in order to implement the ~~[European laws]~~ [Regulations] referred to in the first paragraph.**

**The acts referred to in this Article shall include necessary provisions on legal safeguards.**

*Note: This is Article III-160 of the Constitutional treaty, which the IGC mandate moves from the provisions concerning free movement of capital to the general provisions of the JHA Title. It is not clear whether the UK, Irish or Danish opt-outs will apply to this clause.*

*I have assumed that, as with the Constitutional Treaty, the ‘default’ decision-making process for EU legislation (ie, Regulations and Directives), which is a proposal from the Commission, qualified majority voting in the Council and co-decision with the European Parliament (to be called the ‘ordinary legislative procedure’), will not be specified in the Articles to which it applies.*

**[Article III-264]**

The acts referred to in Sections 4 and 5, together with the [European regulations] referred to in Article [III-263] which ensure administrative cooperation in the areas covered by these Sections, shall be adopted:

- (a) on a proposal from the Commission, or
- (b) on the initiative of a quarter of the Member States.

**SECTION 2**

**POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION**

**Article III-265**

1. The Union shall develop a policy with a view to:

- (a) ensuring the absence of any controls on persons, whatever their nationality, when crossing internal borders;

- (b) carrying out checks on persons and efficient monitoring of the crossing of external borders;
- (c) the gradual introduction of an integrated management system for external borders.

2. For the purposes of paragraph 1, ~~[European laws or framework laws]~~ [Regulations or Directives] shall establish measures concerning:

- (a) the common policy on visas and other short-stay residence permits;
- (b) the checks to which persons crossing external borders are subject;
- (c) the conditions under which nationals of third countries shall have the freedom to travel within the Union for a short period;
- (d) any measure necessary for the gradual establishment of an integrated management system for external borders;
- (e) the absence of any controls on persons, whatever their nationality, when crossing internal borders.

2a. ~~[For the same purpose as those referred to in paragraph 1, a European law or framework law of the Council may establish measures concerning passports, identity cards, residence permits or any other such document, or measures concerning social security or social protection.] [For the purpose of facilitating the right of every citizen of the Union to move and reside freely, as set out in Article 18(1), measures shall be established by the Council, acting in accordance with a special legislative procedure, concerning passports, identity cards, residence permits or any other such document,]~~ The Council shall act unanimously after consulting the European Parliament.

3. This Article shall not affect the competence of the Member States concerning the geographical demarcation of their borders, in accordance with international law.

*Note: the IGC mandate asked for Article 18(3) of the TEC, as amended by the Constitutional Treaty, to be transferred to the Article on border controls. This appears to concern only issues relating to passports and comparable documents, not social security or social protection. The line in strikethrough is the text of the first line Article III-125(2) of the Constitutional Treaty; the text in brackets is the text as it would probably look in the Reform Treaty, amended to remove social security/social protection (which will presumably stay, as amended by the Constitutional Treaty, in Article 18(3) TEC/TFU), along with technical amendments to the provisions on decision-making and legal instruments.*

*Note also that moving this provision to the border controls article means that the UK, Irish and Danish Protocols will presumably be applicable to it. This would be the only Treaty provision related to immigration that would be subject to unanimous voting.*

*The powers in paragraph 2, which equate to the powers currently set out in Article 62 EC, would be subject to the ordinary legislative procedure. They are already subject to this procedure (ie, qualified majority voting and co-decision) at present, except for visa lists and the common visa format (currently subject to ) However, the competence of the EU over visas and border controls would be clarified a little by this paragraph.*

[Article III-266]

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, ~~European laws or framework laws~~ **[Regulations or Directives]** shall lay down measures for a common European asylum system comprising:

- (a) a uniform status of asylum for nationals of third countries, valid throughout the Union;
- (b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;
- (c) a common system of temporary protection for displaced persons in the event of a massive inflow;
- (d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;
- (e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;
- (f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;
- (g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

3. In the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries, the Council, on a proposal from the Commission, may adopt **[European regulations or decisions]** comprising provisional measures for the benefit of the Member State(s) concerned. It shall act after consulting the European Parliament.

*Note: this can be compared to the current Articles 63(1), 63 (2) and 64(2) TEC. The decision-making process (QMV and co-decision) is the same as at present for asylum measures (paragraph 2), but the competence of the EU would be extended. Paragraph 3 is changed in several respects, and the obligation to consult the EP is also new.*

[Article III-267]

1. The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

2. For the purposes of paragraph 1, ~~European laws or framework laws~~ **[Regulations or Directives]** shall establish measures in the following areas:

- (a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion;
- (b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
- (c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- (d) combating trafficking in persons, in particular women and children.

3. The Union may conclude agreements with third countries for the readmission to their countries of origin or provenance of third-country nationals who do not or who no longer fulfil the conditions for entry, presence or residence in the territory of one of the Member States.

4. ~~European laws or framework laws~~ **[Regulations or Directives]** may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States.

5. This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed.

*Note: this can be compared to the current Article 63(3) and (4) TEC. The EU's competences would generally be expanded somewhat, but note the limit on competence set out in paragraph 5.*

*The decision-making process (QMV and co-decision) is the same as at present for illegal migration, but would change for legal migration, which is currently governed by unanimous voting in the Council and consultation of the EP.*

*Note that this change will **not entail the loss of a veto for the UK, Ireland or Denmark**, since they have an opt-out instead of a veto in this area currently.*

[Article III-268]

The policies of the Union set out in this Section and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Section shall contain appropriate measures to give effect to this principle.

## SECTION 3

### JUDICIAL COOPERATION IN CIVIL MATTERS

[Article III-269]

1. The Union shall develop judicial cooperation in civil matters having cross-border implications, based on the principle of mutual recognition of judgments and decisions in extrajudicial cases. Such cooperation may include the adoption of measures for the approximation of the laws and regulations of the Member States.

2. For the purposes of paragraph 1, ~~European laws or framework laws~~ **Regulations or Directives** shall establish measures, particularly when necessary for the proper functioning of the internal market, aimed at ensuring:

- (a) the mutual recognition and enforcement between Member States of judgments and decisions in extrajudicial cases;
- (b) the cross-border service of judicial and extrajudicial documents;
- (c) the compatibility of the rules applicable in the Member States concerning conflict of laws and of jurisdiction;
- (d) cooperation in the taking of evidence;
- (e) effective access to justice;
- (f) the elimination of obstacles to the proper functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States;
- (g) the development of alternative methods of dispute settlement;
- (h) support for the training of the judiciary and judicial staff.

~~3. Notwithstanding paragraph 2, a European law or framework law of the Council shall establish measures concerning family law with cross-border implications. The Council shall act unanimously after consulting the European Parliament.~~

~~The Council, on a proposal from the Commission, may adopt a European decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.~~

**3. Notwithstanding paragraph 2, measures concerning family law with cross-border implications shall be established by the Council, acting in accordance with a special legislative procedure. The Council shall act unanimously after consulting the European Parliament.**

**The Council, on a proposal from the Commission, may adopt a decision determining those aspects of family law with cross-border implications which may be the subject of acts adopted by the ordinary legislative procedure. The Council shall act unanimously after consulting the European Parliament.**

**The proposal referred to in the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the second subparagraph**



shall not be adopted. In the absence of opposition, the Council may adopt the decision."

*Note: the revised text of para 3 was agreed as part of the IGC mandate. The revised text gives national parliaments control over any extension of QMV and co-decision to the issue of family law. This actually gives more power to national parliaments than they have at present - since Article 67(2) TEC presently allows the Council, acting unanimously, to extend QMV and co-decision to family law, without a requirement of national parliamentary control.*

*Otherwise this Article is comparable, but not identical to the current Article 65 EC. Apart from family law, decision-making remains subject to QMV and co-decision, which has applied to this area since 1 February 2003, when the Treaty of Nice entered into force (see Article 67(5) EC).*

## SECTION 4

### JUDICIAL COOPERATION IN CRIMINAL MATTERS

[Article III-270]

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in [Article III-271].

~~European laws or framework laws~~ **[Regulations or Directives]** shall establish measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, ~~European framework laws~~ **[Directives]** may establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure which the Council has identified in advance by a [European decision]; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

~~3. Where a member of the Council considers that a draft European framework law **[Directive]** as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law **[Directive]** be referred to the European Council. In that case, the procedure referred to in Article III-396 **251** shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:~~

~~(a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-396 **251**, or~~

~~(b) request the Commission or the group of Member States from which the draft originates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.~~

~~4. If, by the end of the period referred to in paragraph 3, either no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3(b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.~~

~~In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-44(2) and III-419(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.~~

3. Where a member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply."

*Note: the changes agreed in the IGC mandate clarify the prospect of applying an 'emergency brake' and the possibility of a group of Member States applying a 'flexibility' procedure afterward. This is distinct from the separate agreement that the UK (and possibly Ireland) will be able to opt out of proposals at the outset. Note that the 'emergency brake' does not apply to paragraph 1.*

*The voting procedure otherwise is QMV and co-decision, a change from the present unanimity and consultation.*

*The competence on these issues is far more precise than the current Article 31(1)(a) to (d) TEU, but whether it is wider or narrower than Article 31(1)(a) to (d) TEU depends on the scope of Article 31(1)(a) to (d), and there is major dispute about the scope of those provisions.*

[Article III-271]

1. ~~European framework laws~~ **[Directives]** may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime 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.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

On the basis of developments in crime, the Council may adopt a [European decision] identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, ~~European framework laws~~ **[Directives]** may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such ~~framework laws~~ shall be adopted by the same procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article III-264.

~~3. Where a member of the Council considers that a draft European framework law as referred to in paragraph 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft framework law be referred to the European Council. In that case, where the procedure referred to in Article III-396 is applicable, it shall be suspended. After discussion, the European Council shall, within four months of this suspension, either:~~

~~(a) refer the draft back to the Council, which shall terminate the suspension of the procedure referred to in Article III-396 where it is applicable, or~~

~~(b) request the Commission or the group of Member States from which the draft originates to submit a new draft; in that case, the act originally proposed shall be deemed not to have been adopted.~~

~~4. If, by the end of the period referred to in paragraph 3, either no action has been taken by the European Council or if, within 12 months from the submission of a new draft under paragraph 3(b), the European framework law has not been adopted, and at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft framework law concerned, they shall notify the European Parliament, the Council and the Commission accordingly.~~

~~In such a case, the authorisation to proceed with enhanced cooperation referred to in Articles I-44(2) and III-419(1) shall be deemed to be granted and the provisions on enhanced cooperation shall apply.~~

3. Where a member of the Council considers that a draft directive as referred to in paragraphs 1 or 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure.

Within the same timeframe, in case of disagreement, and if at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply.

*Note: again, the changes agreed in the IGC mandate clarify the prospect of applying an 'emergency brake' and the possibility of a group of Member States applying a 'flexibility' procedure afterward. This is distinct from the separate agreement that the UK (and possibly Ireland) will be able to opt out of proposals at the outset.*

*The voting procedure otherwise is QMV and co-decision, a change from the present unanimity and consultation.*

*The competence on these issues is far more precise than the current Article 31(1)(e) TEU.*

[Article III-272]

~~European laws or framework laws~~ **[Regulations or Directives]** may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

*Note: The voting procedure is QMV and co-decision, a change from the present unanimity and consultation.*

[Article III-273]

1. Eurojust's mission shall be to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member States' authorities and by Europol.

In this context, ~~European laws~~ **[Regulations]** shall determine Eurojust's structure, operation, field of action and tasks. Those tasks may include:

- (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions, conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
- (b) the coordination of investigations and prosecutions referred to in point (a);
- (c) the strengthening of judicial cooperation, including by resolution of conflicts of jurisdiction and by close cooperation with the European Judicial Network.

~~European laws~~ **[Regulations]** shall also determine arrangements for involving the European Parliament and national Parliaments in the evaluation of Eurojust's activities.

2. In the prosecutions referred to in paragraph 1, and without prejudice to [Article III-274], formal acts of judicial procedure shall be carried out by the competent national officials.

*Note: The voting procedure is QMV and co-decision, a change from the present unanimity and consultation.*

[Article III-274]

1. In order to combat crimes affecting the financial interests of the Union, a ~~European law~~ **[Regulation]** of the Council may establish a European Public Prosecutor's Office from Eurojust. The Council shall act unanimously after obtaining the consent of the European Parliament.

In case of absence of unanimity in the Council, a group of at least one third of the Member States may request that the draft [regulation/measures] be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.

Within the same timeframe, in case of disagreement, and if at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft [regulation/measures] concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply."

2. The European Public Prosecutor's Office shall be responsible for investigating, prosecuting and bringing to judgment, where appropriate in liaison with Europol, the perpetrators of, and accomplices in, offences against the Union's financial interests, as determined by the ~~European law~~ **[Regulation]** provided for in paragraph 1. It shall exercise the functions of prosecutor in the competent courts of the Member States in relation to such offences.

3. The ~~European law~~ **[Regulation]** referred to in paragraph 1 shall determine the general rules applicable to the European Public Prosecutor's Office, the conditions governing the performance of its functions, the rules of procedure applicable to its activities, as well as those governing the admissibility of evidence, and the rules applicable to the judicial review of procedural measures taken by it in the performance of its functions.

4. The European Council may, at the same time or subsequently, adopt a [European decision] amending paragraph 1 in order to extend the powers of the European Public Prosecutor's Office to include serious crime having a cross-border dimension and amending accordingly paragraph 2 as regards the perpetrators of, and accomplices in, serious crimes affecting more than one Member State. The European Council shall act unanimously after obtaining the consent of the European Parliament and after consulting the Commission.

*Note: the new provisions agreed as part of the IGC mandate provide for possibility of a group of Member States applying a 'flexibility' procedure in the event of a veto by one or more Member States. This is distinct from the separate agreement that the UK (and possibly Ireland) will be able to opt out of proposals at the outset.*

## SECTION 5

### POLICE COOPERATION

#### Article III-275

1. The Union shall establish police cooperation involving all the Member States' competent authorities, including police, customs and other specialised law enforcement services in relation to the prevention, detection and investigation of criminal offences.

2. For the purposes of paragraph 1, ~~European laws or framework laws~~ **[Regulations or Directives]** may establish measures concerning:

- (a) the collection, storage, processing, analysis and exchange of relevant information;
- (b) support for the training of staff, and cooperation on the exchange of staff, on equipment and on research into crime-detection;
- (c) common investigative techniques in relation to the detection of serious forms of organised crime.

3. A ~~European law or framework law~~ **[Regulation or Directive]** of the Council may establish measures concerning operational cooperation between the authorities referred to in this Article. The Council shall act unanimously after consulting the European Parliament.

**In case of absence of unanimity in the Council, a group of at least one third of the Member States may request that the draft [regulation/measures] be referred to the European Council. In that case, the procedure in the Council shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council for adoption.**

**Within the same timeframe, in case of disagreement, and if at least one third of the Member States wish to establish enhanced cooperation on the basis of the draft [regulation/measures] concerned, they shall notify the European Parliament, the Council and the Commission accordingly. In such a case, the authorisation to proceed with enhanced cooperation referred to in [Articles I-44(2)] and [III-419(1)] shall be deemed to be granted and the provisions on enhanced cooperation shall apply."**

**The specific procedure provided in the second and third subparagraphs shall not apply to acts which constitute a development of the Schengen acquis.]**

*Note: the new provisions agreed as part of the IGC mandate provide for possibility of a group of Member States applying a 'flexibility' procedure in the event of a veto by one or more Member States. This is again distinct from the separate agreement that the UK (and possibly Ireland) will be able to opt out of proposals at the outset. Note that the new provisions do not apply to paragraph 2.*

*Paragraph 1, but not paragraph 2, will be subject to QMV and co-decision, a change from the present unanimity and consultation. The Article can be compared to the current Article 30(1) TEU.*

[Article III-276]

1. Europol's mission shall be to support and strengthen action by the Member States' police authorities and other law enforcement services and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy.

2. ~~European laws~~ **[Regulations]** shall determine Europol's structure, operation, field of action and tasks.

These tasks may include:

- (a) the collection, storage, processing, analysis and exchange of information forwarded particularly by the authorities of the Member States or third countries or bodies;
- (b) the coordination, organisation and implementation of investigative and operational action carried out jointly with the Member States' competent authorities or in the context of joint investigative teams, where appropriate in liaison with Eurojust.

~~European laws~~ **[Regulations]** shall also lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with national Parliaments.

3. Any operational action by Europol must be carried out in liaison and in agreement with the authorities of the Member State or States whose territory is concerned. The application of coercive measures shall be the exclusive responsibility of the competent national authorities.

*Note: The voting procedure is QMV and co-decision, a change from the present unanimity and consultation. This provision can be compared to the current Article 30(2) TEU.*

Article III-277

~~A European law or framework law~~ **[Regulation or Directive]** of the Council shall lay down the conditions and limitations under which the competent authorities of the Member States referred to in [Articles III-270 and III-275] may operate in the territory of another Member State in liaison and in agreement with the authorities of that State. The Council shall act unanimously after consulting the European Parliament.

*Note: This provision can be compared to the current Article 32 TEU.*