

# *EU draft Constitution- Provisions governing the Common Foreign and Security Policy (CFSP)*

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# I) GENERAL PRINCIPLES OF EU LAW

## 1. FUNDAMENTAL PRINCIPLES

### Article I-9

*Principles governing EU Competence:*

*- Conferral:  
EU laws need legal base in the Constitution or else a Member State competence*

*- Subsidiarity:  
EU-action only when "Better achieved at Union level"*

*Principle of subsidiarity defined in attached protocol National Parliaments shall ensure compliance*

*- Proportionality:  
"Not exceed what is necessary"*

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.

2. Under the principle of conferral, the Union shall act within the limits of the competences conferred upon it by the Member States in the Constitution to attain the objectives set out in the Constitution. Competences not conferred upon the Union in the Constitution remain with the Member States.

3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence the Union shall act only if and insofar as the objectives of the intended action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The Union Institutions shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the Constitution. National Parliaments shall ensure compliance with that principle in accordance with the procedure set out in the Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Constitution.

The Institutions shall apply the principle of proportionality as laid down in the Protocol referred to in paragraph 3.

## 2. PRIMACY OF EU LAW

### Article I-10

*All EU law prevails over national laws and national constitutions*

*Require fulfilment of EU obligations by Member*

1. The Constitution, and law adopted by the Union's Institutions in exercising competences conferred on it, shall have primacy over the law of the Member States.

2. Member States shall take all appropriate measures, general or particular, to ensure fulfilment of the obligations flowing from the Constitution or resulting from the

States

Union Institutions' acts.

### 3. JURISDICTION ON QUESTIONS OF COMPETENCE

*The EU Court has jurisdiction on questions of competence*

#### Article III- 270

EU-Court reviews:

- *legality of legal acts*

- *lack of competence and infringement of:*

- *procedural requirements*

- *the Constitution*

- *rule of law*

1. The Court of Justice shall review the legality of European laws and European framework laws, of acts of the Council, of the Commission and of the ECB, other than recommendations and opinions, and of acts of the European Parliament intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of agencies and bodies of the Union which produce legal effects vis-à-vis third parties.

2. It shall for this purpose have jurisdiction in actions brought by a Member State, the European Parliament, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Constitution or of any rule of law relating to its application, or misuse of powers.

*... and although the national courts are not excluded from disputes to which the Union is a party.....*

#### Article III-281

Member States' courts are not excluded in cases where the Union is party, unless otherwise specified

Save where jurisdiction is conferred on the Court of Justice by the Constitution, disputes to which the Union is a party shall not on that ground be excluded from the jurisdiction of the courts or tribunals of the Member States.

*... no dispute on the interpretation and application of the Constitution shall be submitted to any other method of settlement.*

#### Article III-284

Member States undertake **not to submit a dispute** concerning the interpretation or application of the Constitution to **any method** of settlement **other than those provided for therein**.

*Therefore, only the EU Court, no national high court, has jurisdiction on questions of EU/Member States' competence*

## **II) COMMON FOREIGN AND SECURITY POLICY**

### **1. Definition of the Union's external action**

*According to the draft Constitution, the Union's external relations have been divided into:*

- Common Foreign and Security Policy and the Security and Defence Policy,*
- Common Commercial Policy,*
- Cooperation with third countries and humanitarian aid,*
- Adoption of restrictive measures against third countries,*
- Conclusion of international agreements,*
- Union's relation with international organisations and third countries and union delegations and*
- Solidarity clause.*

*The draft Constitution makes important changes, more by means of structural modifications, most notably in the creation of the post of Minister for Foreign Affairs (see below), than by improvement of procedures; these will remain practically unchanged. The role of the EP in foreign policy will not change fundamentally, although it will have to be consulted and informed as a matter of fact in the area of CFSP (and thus of CSDP) and will play a more prominent role in common commercial policy and the conclusion of international agreements.*

#### **Common commercial policy**

*The common commercial policy's scope regarding trade in services and intellectual property will be widened.*

*The EP will be given a more prominent role, with the ordinary legislative procedure taking precedence in establishing measures to put the common commercial policy into practice; negotiations leading to international agreements will regularly be reported to the EP; such agreements will be concluded only with the consent of the European Parliament.*

*A watered-down form of 'cultural exception' requires unanimity 'for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity'.*

#### **Development cooperation**

*The European Development Fund will be included in the budget.*

#### **Humanitarian aid**

*The draft Constitution will create a specific legal basis for humanitarian aid, which will include the creation of a Voluntary Humanitarian Aid Corps (using the ordinary legislative procedure).*

### **2. The Common Foreign and Security Policy**

*Although a special chapter has been dedicated to the Common Foreign and Security Policy under the title "Union's external relations", the CFSP can best be described as the definition and development of a common political guideline regarding the Union's relations with other countries. Such a policy will hence apply to ALL areas of the Union's external action and aim at their coherence and consistency. Accordingly, the CFSP's definition is to be found in Chapter I "provisions having general application". Paradoxically, the further provisions of the CFSP have been laid down in a distinct chapter.*

*Some new legal bases will be created: a solidarity clause between Member States in the event of a terrorist attack or natural disaster, and international agreements with neighbouring states.*

*The following new structural changes are planned:*

- Creation of the post of the Union's Foreign Minister
- Setting up of a European External action Service
- Setting up of a European Diplomatic Service
- Setting up of a European Armaments, Research and Military Capabilities Agency;

*Some new legal bases will be created: a solidarity clause between Member States in the event of a terrorist attack or natural disaster, and international agreements with neighbouring states.*

### **General clause for the framing of a CFSP**

*Common Foreign and Security Policy is based on:*

- solidarity among Member States
- identification of common interests
- convergence of actions

*The European Council shall identify the Union's interests*

*Prime Ministers and/or Foreign Ministers adopt decisions*

*Shared responsibility for putting the policy into action*

*Member States shall consult each other before taking action on the international scene*

### **Article I-39:**

1. The European Union shall conduct a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.
2. The European Council shall identify the Union's strategic interests and determine the objectives of its common foreign and security policy. The Council of Ministers shall frame this policy within the framework of the strategic guidelines established by the European Council and in accordance with the arrangements in Part III.
3. The European Council and the Council of Ministers shall adopt the necessary European decisions.
4. The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.
5. Member States shall consult one another within the European Council and the Council of Ministers on any foreign and security policy issue which is of general interest in order to determine a common approach. Before undertaking any action on the international scene or any commitment which could affect the Union's interests, each Member State

*Mutual solidarity among Member States*

*EP shall be consulted and be kept informed*

*Decisions are taken unanimously here, but with qualified majority in some cases in Part Three*

*Member States and EU- Foreign Minister have the right of initiative*

*Laws and framework laws excluded*

*Prime Ministers can unanimously change voting procedure to qualified majority*

shall consult the others within the European Council or the Council of Ministers. Member States shall ensure, through the convergence of their actions, that the Union is able to assert its interests and values on the international scene. Member States shall show mutual solidarity.

6. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common foreign and security policy, and shall be kept informed of how it evolves.

7. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part III. The European Council or the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support. European Laws and framework laws are excluded.

8. The European Council may unanimously decide that the Council of Ministers should act by qualified majority in cases other than those referred to in Part Three of the Constitution.

## **Definition of the CFSP:**

*Union shall defend the principles of:*

- *democracy*
- *rule of law*
- *human rights*
- *fundamental freedoms*
- *human dignity*
- *equality*
- *solidarity*
- *international law*
- *partnerships*
- *global organisations*
- *United Nations*

*The Union's external policies:*

- *safeguard of common interests*
- *consolidate human rights*
- *peace*

### **Article III-193**

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the United Nations Charter. The Union shall seek to develop relations and build partnerships with countries, and regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The European Union shall define and pursue common policies and Union actions, and shall work for a maximum degree of cooperation in all fields of international relations, in order to:

- (a) safeguard the common values, fundamental interests, security, independence and integrity of the Union;
- (b) consolidate and support democracy, the rule of law, human rights and international law;
- (c) preserve peace, prevent conflicts and strengthen international security, in

- conformity with the principles of the United Nations Charter;
- *sustainable development* (d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;
  - *a free world market* (e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;
  - *the environment* (f) develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;
  - *humanitarian aid* (g) assist populations, countries and regions confronting man-made or natural disasters;
  - *globalisation* (h) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives listed in paragraph 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of other Union policies.

*Union must ensure consistency between different areas of external action and internal policies*

The Union shall ensure consistency between the different areas of its external action and between these and its internal policies. The Council of Ministers and the Commission, assisted to that end by the Union's Minister for Foreign Affairs, shall be responsible for ensuring this consistency and shall cooperate to that effect.

## ***2. Common Security and Defence Policy (CSDP) as being a part of the Common Foreign and Security Policy (CFSP)***

***In the context of the CFSP, the framing of a Common Security and Defence Policy plays an important role. The draft Constitution clearly restates that the CSDP shall be an integral part of the CFSP.***

***Security policy will be modernised in a number of areas:***

- ***updating the Petersberg tasks (addition of a reference to tasks involving disarmament, military advice, post-conflict stabilisation and the fight against terrorism, including actions carried out on the territory of third countries);***
- ***creation of new forms of flexibility and cooperation in defence matters (setting up a mission by a group of Member States) and of a start-up fund for military defence independent of the Union budget;***
- ***setting up a European Armaments, Research and Military Capabilities Agency;***

***General provision for the setting up of a CSDP***

**Article I-40:**

*Operational capability: both military and civilian means  
Can be used outside the EU for peacekeeping, conflict prevention and strengthening of international security. The Union shall use national capabilities*

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

*NATO*

*Obligation to make military capabilities available to the EU Multinational forces can be part of common defence*

*Improve military capabilities*

*European Armaments and Strategic Research Agency*

*Defence issues implemented by unanimity*

*A group of states can carry out a Union task*

*Structured co-operation can be undertaken within Union structure*

*Mutual defence can be established as closer*

1. **The common security and defence policy shall be an integral part of the common foreign and security policy.** It shall **provide the Union with an operational capability drawing on assets civil and military**. The Union may use them on missions outside the Union for **peace-keeping, conflict prevention and strengthening international security** in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The common security and defence policy shall include the **progressive framing of a common Union defence policy**. **This will lead to a common defence, when the European Council, acting unanimously, so decides**. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council of Ministers in evaluating the improvement of military capabilities.

4. European decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council of Ministers acting unanimously on a proposal from the Union Minister for Foreign Affairs or from a Member State. The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

5. The Council may entrust the execution of a task, within the Union framework, to a group of Member States in order to maintain the Union's values and serve its interests. The execution of such a task shall be governed by Article III-211.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall **establish structured cooperation within the Union** framework. Such cooperation shall be governed by the provisions of Article III-213.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, **closer cooperation** shall be established, in the Union framework, as regards

*cooperation until a true common defence policy is established by the European Council*

*EP shall be consulted and informed*

mutual defence. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.

## ***2.1. Petersberg tasks - (now also include the fight against terrorism)***

***The Petersberg tasks are a list of security, defence and peacemaking tasks, originally set out by the Western European Union in June 1992. The tasks have been introduced into the TEU under the Amsterdam Treaty as a new EU competence, allowing the EU to act. The Draft Constitution proposes to add the fight against terrorism to the Petersberg tasks.***

*Use of civilian or military means for*

- disarmament
- humanitarian tasks
- military assistance
- combat forces
- conflict prevention
- peacemaking
- stabilisation

*Council decides by unanimity*

### **Article III-210**

1. The tasks referred to in Article I-40(1), in the course of which the Union may use military and civilian means, shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peacemaking, and post-conflict stabilisation. **All these tasks may contribute to the fight against terrorism, including by supporting third countries in combating terrorism in their territories.**

2. The Council of Ministers, acting unanimously, shall adopt European decisions relating to the tasks referred to in paragraph 1, defining their objectives and scope and the general conditions for their implementation. The Union Minister for Foreign Affairs, acting under the authority of the Council of Ministers and in close and constant contact with the Political and Security Committee, shall ensure coordination of the civilian and military aspects of such tasks.

## ***2.2 Mutual assistance - A core of a Common Defence policy***

***According to the draft Constitution, the European Council has to frame a common defence policy which would comprise mutual (assistance) defence commitments. As long as a common defence policy has not been framed, the Member States can establish a closer cooperation to commit themselves to mutual defence. Once a common defence policy is established, the Member States would be able to make use of structured and enhanced cooperation in the area of CFSP and CSDP (see below II.2.4).***

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

*NATO*

*Mutual defence can be established as closer cooperation until a true common defence policy is established by the European Council*

### ***Mutual assistance clause***

*Closer cooperation on mutual defence open to all Member States*

*Assistance clause*

*Aggrieved Member State may request aid and assistance*

*UN-Security Council must be informed*

*No affect on NATO obligations*

## **Article I-40:**

2. The common security and defence policy shall include the **progressive framing of a common Union defence policy**. **This will lead to a common defence**, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

7. Until such time as the European Council has acted in accordance with paragraph 2 of this Article, **closer cooperation** shall be established, in the Union framework, as regards **mutual defence**. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.

## **Article III-214**

1. The **closer cooperation** on mutual defence provided for in Article I-40(7) shall be open to all Member States of the Union. A list of participating Member States shall be set out in a Declaration (title). If a Member State wishes to take part in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention and subscribe to the Declaration.

2. A participating Member State which is the victim of armed aggression on its territory shall inform the other participating States of the situation and may request aid and assistance from them. Participating Member States shall meet at ministerial level, assisted by their representative on the Political and Security Committee and the Military Committee.

3. The United Nations Security Council shall be informed immediately of any armed aggression and the measures taken as a result.

4. These provisions shall not affect the rights and obligations resulting, for those concerned, from the North Atlantic Treaty.

## **2.3 Solidarity clause**

***The new draft Constitution now also provides for a so-called solidarity clause should a Member State be the victim of terrorist attack or natural or man-made disaster. Although the solidarity clause, Article III-231 is mentioned in a different Chapter, it is to be considered as part of the CFSP and CSDP, especially because the fight against terrorism has been added to the Peterberg tasks (see above).***

### ***Solidarity clause***

*Member States and Union shall act jointly against terrorism and disasters*

*- Prevention*

*- Protection*

*- Assistance:  
\* terrorism*

*\* disaster*

### **Article I-42**

1. The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the victim of terrorist attack or natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States, to:

(a)

prevent the terrorist threat in the territory of the Member States;

protect democratic institutions and the civilian population from any terrorist attack;

assist a Member State in its territory at the request of its political authorities in the event of a terrorist attack;

(b)

assist a Member State in its territory at the request of its political authorities in the event of a disaster.

2. The detailed arrangements for implementing this provision are at Article III-231.

## ***2.4 Enhanced cooperation***

***At present, the use of enhanced cooperation is possible for CFSP. However, the use of enhanced cooperation for military and defence issues has been explicitly excluded according to the provision of Article 27b TEU. The new Draft Constitution does not provide for such an "exclusion clause". Thus, those Member States would be able to use the instrument enhanced for issues related to military and defence. Nevertheless, the use of enhanced cooperation for the defence are will only be possible, when a common defence policy has been framed by the European Council. Until then and according to Art. III-40.7, the Member States will only be allowed to cooperate more closely. The EP only has to be informed and consulted for the use of closer cooperation.***

***Furthermore, Article I-40.6 states that Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall establish structured cooperation within the Union framework.***

## Defence policy

*Operational capability: both military and civilian means Can be used outside the EU for peacekeeping, conflict prevention and strengthening of international security. The Union shall use national capabilities*

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

*NATO*

*Structured co-operation can be undertaken within Union structure*

*Mutual defence as enhanced cooperation until a common defence is established*

*Solidarity-clause for countries in the enhanced co-operation, with automatic common military response, from the WEU Treaty Art. 5*

*EP shall be consulted and informed*

## Article I-40:

1. The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capability drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States.

2. The **common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides**. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

6. Those Member States whose military capabilities fulfil higher criteria and which have made more binding commitments to one another in this area with a view to the most demanding missions shall **establish structured cooperation within the Union framework**. Such cooperation shall be governed by the provisions of Article III-213.

7. **Until such time as the European Council has acted in accordance with paragraph 2 of this Article, closer cooperation shall be established, in the Union framework, as regards mutual defence**. Under this cooperation, if one of the Member States participating in such cooperation is the victim of armed aggression on its territory, the other participating States shall give it aid and assistance by all the means in their power, military or other, in accordance with Article 51 of the United Nations Charter. In the execution of closer cooperation on mutual defence, the participating Member States shall work in close cooperation with the North Atlantic Treaty Organisation. The detailed arrangements for participation in this cooperation and its operation, and the relevant decision-making procedures, are set out in Article III-214.

8. **The European Parliament shall be regularly consulted** on the main aspects and basic choices of the common security and defence policy, and shall be **kept informed** of how it evolves.

**Article 213 states that the provisions relating to enhanced cooperation shall apply to the structured cooperation.**

*Member States with high military capabilities may establish structured*

## Article III-213

1. The Member States listed in (*title*), which fulfil high military capability criteria and wish to enter into more binding commitments in this matter with a view to more demanding tasks, hereby establish **structured cooperation** between themselves within

cooperation...

...open to other Member States, on the approval of the Member States already involved

Member States taking part in structured cooperation can be asked to carry out ESDP tasks

the meaning of Article I-40(6). The military capability criteria and commitments which those Member States have defined are set out in that Protocol.

2. If a Member State wishes to participate in such cooperation at a later stage, and thus subscribe to the obligations it imposes, it shall inform the European Council of its intention. The Council of Ministers shall deliberate at the request of the Member State in question Only the members of the Council of Ministers that represent the Member States taking part in structured cooperation shall participate in the vote.

3. When the Council of Ministers adopts European decisions relating to matters covered by structured cooperation, only the members of the Council of Ministers that represent the Member States taking part in structured cooperation shall participate in the deliberations and the adoption of such decisions. The Union Minister for Foreign Affairs shall attend the deliberations. The representatives of the other Member States shall be duly and regularly informed by the Union Minister for Foreign Affairs of developments in structured cooperation.

4. The Council may ask the Member States participating in such cooperation to carry out at Union level a task referred to in Article III-210.

5. Notwithstanding the previous paragraphs, the **appropriate provisions relating to enhanced cooperation shall apply to the structured cooperation** governed by this Article.

***Enhanced cooperation will require the involvement of one third of the Member States. It will apply only to the Union's non-exclusive competences. In general, authorisation to proceed with enhanced cooperation will be granted by the Council by a qualified majority, after obtaining the consent of the European Parliament, on a proposal from the Commission.***

***In the CFSP, the opinion of the Minister for Foreign Affairs and of the Commission is required. The European Parliament will only be informed. Member States not participating in enhanced cooperation will take part in Council meetings even though they will not be involved in the decision-making process.***

### **Enhanced Cooperation**

*Decision making:  
Commission or Member States propose  
Council decides by qualified majority, after assent from EP*

*In the area of Common Foreign and Security Policy the Council, after hearing the Minister of Foreign*

### **Article III-325**

1. Member States which wish to establish enhanced cooperation between themselves in one of the areas covered by the Constitution, with the exception of the common foreign and security policy, shall address a request to the Commission, specifying the scope and objectives of the enhanced cooperation proposed. The Commission may submit a proposal to the Council of Ministers to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States concerned of the reasons for not doing so.

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council of Ministers, acting by a qualified majority on a proposal from the Commission and after obtaining the assent of the European Parliament.

2. **In the framework of the common foreign and security policy, the request of the Member States which wish to establish enhanced cooperation between themselves shall be addressed to the Council of Ministers. It shall be forwarded to the Minister for Foreign Affairs, who shall give an opinion on whether the**

*Affairs and Commission, decides by qualified majority (majority of Member States representing 60% of the population)*

**enhanced cooperation is consistent with the Union's common foreign and security policy, and to the Commission, which shall give its opinion in particular on whether the enhanced cooperation proposed is consistent with other Union policies. It shall also be forwarded to the European Parliament for information.**

Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council of Ministers.

### ***3. Institutional changes***

#### ***3.1 Foreign Affairs Minister***

***The Minister for Foreign Affairs will be appointed by the European Council by qualified majority with the agreement of the President of the Commission. He will conduct the Union's common foreign and security policy, chair the Foreign Affairs Council and will also serve as Vice-President of the Commission. As such his nomination will be subject to the EP's approval of the Commission as a whole, and eventually to a vote of censure.***

***In this 'two-hatted' role (Commission-Council), the Minister will be responsible for carrying out the Union's external policy as a whole. The Minister will have the power of initiative (in which absence a decision by qualified majority within the Council will not only require the majority, but two thirds of Member States), will represent the Union alone or with the Commission, and will have authority over the external delegations.***

***The Foreign Minister's (and the Commission's) opinion will be required for the Council's authorisation to proceed with enhanced cooperation in matters related to the Common Foreign and Security Policy.***

#### **Article I-27**

##### ***EU Foreign Minister***

*Elected by qualified by Prime Ministers in agreement with Commission President*

##### ***Tasks of Foreign Minister***

1. The European Council, acting by qualified majority, with the agreement of the President of the Commission, shall appoint the Union Minister for Foreign Minister. He shall conduct the Union's common foreign and security policy. The European Council may end his tenure by the same procedure.

2. The Union Minister for Foreign Affairs shall contribute by his proposals to the development of the common foreign policy, which he shall carry out as mandated by the Council of Ministers. The same shall apply to the common security and defence policy.

**Double hat**  
*Foreign Minister also  
Vice-President of  
Commission for external  
relations*

*External service  
established in part III*

3. The Union Minister for Foreign Affairs shall be one of the Vice-Presidents of the Commission. He shall be responsible there for handling external relations and for coordinating other aspects of the Union's external action. In exercising these responsibilities within the Commission, and only for these responsibilities, The Union Minister for Foreign Affairs shall be bound by Commission procedures.

[Footnote 1: The establishment of a Joint European External Action Service, to assist the Minister, will be addressed in a Declaration/Part III.]

***The Foreign Minister implements the CFSP together with the Member States and has the right to initiate proposals together with the support of the Commission.***

*Shared responsibility for  
putting the policy into action*

*Decisions are taken  
unanimously here, but with  
qualified majority in some  
cases in Part Three*

*Member States and EU-  
Foreign Minister have the  
right of initiative*

### Article I-39

4. **The common foreign and security policy shall be put into effect by the Union Minister for Foreign Affairs and by the Member States, using national and Union resources.**

7. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except in the cases referred to in Part III. **The European Council or the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support.** European Laws and framework laws are excluded.

***In the CSDP, the Foreign Minister and the Member States have the right of proposal.***

### Article I-40:

*Defence issues implemented  
by unanimity*

*EP shall be consulted and  
informed*

4. **European decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council of Ministers acting unanimously on a proposal from the Union Minister for Foreign Affairs or from a Member State.** The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

8. The European Parliament shall be regularly consulted on the main aspects and basic choices of the common security and defence policy, and shall be kept informed of how it evolves.

### Article III-193

*Union shall defend the  
principles of:  
- democracy  
- rule of law  
- human rights*

1. The Union's action on the international scene shall be guided by, and designed to advance in the wider world, the principles which have inspired its own creation, development and enlargement: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, equality and solidarity, and for international law in accordance with the principles of the

- *fundamental freedoms*  
 - *human dignity*  
 - *equality*  
 - *solidarity*  
 - *international law*  
 - *partnerships*  
 - *global organisations*  
 - *United Nations*  
*The Union's external policies:*

- *safeguard of common interests*

- *consolidate human rights*

- *peace*

- *sustainable development*

- *a free world market*

- *the environment*

- *humanitarian aid*

- *globalisation*

*Union must ensure consistency between different areas of external action and internal policies*

United Nations Charter. The Union shall seek to develop relations and build partnerships with countries, and regional or global organisations, which share these values. It shall promote multilateral solutions to common problems, in particular in the framework of the United Nations.

2. The European Union shall define and pursue common policies and Union actions, and shall work for a maximum degree of cooperation in all fields of international relations, in order to:

(a) safeguard the common values, fundamental interests, security, independence and integrity of the Union;

(b) consolidate and support democracy, the rule of law, human rights and international law;

(c) preserve peace, prevent conflicts and strengthen international security, in conformity with the principles of the United Nations Charter;

(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;

(e) encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade;

(f) develop international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources, in order to ensure sustainable development;

(g) assist populations, countries and regions confronting man-made or natural disasters;

(i) promote an international system based on stronger multilateral cooperation and good global governance.

3. The Union shall respect the principles and pursue the objectives listed in paragraph 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and the external aspects of other Union policies.

The Union shall ensure consistency between the different areas of its external action and between these and its internal policies. The Council of Ministers and the Commission, assisted to that end by the Union's Minister for Foreign Affairs, shall be responsible for ensuring this consistency and shall cooperate to that effect.

### 3.2 European Union delegations and External Action service

#### Union delegations

Union delegations, under

#### Article III-230

1. Union delegations in third countries and to international organisations

*the authority of the Foreign Minister, represent the Union*

**shall represent the Union.**

2. Union delegations shall operate **under the authority of the Union Minister for Foreign Affairs** and in close cooperation with Member States' missions.

***External Action Service shall assist Foreign Affairs Minister***

*Foreign Minister:  
- chairs the Foreign Affairs Council  
- makes proposals  
- implements decisions  
- represents the Union externally (with the President of the European Council)*

*Foreign service*

**Article III-197**

1. The Union Minister for Foreign Affairs, who shall chair the Council of Ministers for Foreign Affairs, shall contribute through his proposals towards the preparation of the common foreign and security policy and shall be responsible for implementing the decisions taken by the European Council and the Council of Ministers.
2. For matters relating to the common foreign and security policy, the Union shall be represented by the Union Minister for Foreign Affairs, who shall conduct political dialogue on the Union's behalf and shall express the Union's position in international organisations and at international conferences.
3. In fulfilling his mandate, the Union Minister for Foreign Affairs shall be assisted by a **European External Action Service**. This service shall work in cooperation with the diplomatic services of the Member States (See the Declaration on the creation of a European External Action Service).

***3.3 Establishment of a European Armaments, Research and Military Capabilities Agency***

*Obligation to make military capabilities available to the EU Multinational forces can be part of common defence*

*Improve military capabilities*

*European Armaments and Strategic Research Agency*

**Article I-40:**

3. Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers. Those Member States which together establish multinational forces may also make those forces available to the common security and defence policy.

Member States shall undertake progressively to improve their military capabilities. A **European Armaments, Research and Military Capabilities Agency** shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council of Ministers in evaluating the improvement of military capabilities.

**Article III-212**

European Armaments,

1. The European Armaments, Research and Military Capabilities Agency, subject

research and Military Capabilities Agency  
 - identifies military needs

- promotes harmonisation of operational needs

- manages common programmes

- supports defence technology research

- strengthens defence sector

Agency open to all Member States

to the authority of the Council of Ministers, shall have as its task to:

- (a) contribute to identifying the Member States' military capability objectives and evaluating observance of the capability commitments given by the Member States;
- (b) promote harmonisation of operational needs and adoption of effective, compatible procurement methods;
- (c) propose multilateral projects to fulfil the objectives in terms of military capabilities, ensure coordination of the programmes implemented by the Member States and management of specific cooperation programmes;
- (d) support defence technology research, and coordinate and plan joint research activities and the study of technical solutions meeting future operational needs;
- (e) contribute to identifying and, if necessary, implementing any useful measure for strengthening the industrial and technological base of the defence sector and for improving the effectiveness of military expenditure.

2. The Agency shall be open to all Member States wishing to be part of it. The Council authority, acting by qualified majority, shall adopt a decision defining the Agency's statute, seat and operational rules. Such rules should take account of the level of effective participation in the Agency's activities. Specific groups shall be set up within the Agency bringing together Member States engaged in joint projects. The Agency shall carry out its tasks in liaison with the Commission where necessary.

#### 4. Decisions in the area of CFSP

*The implementation of the CFSP - by unanimous European Council or Council decision, except in certain cases provided for by the Constitution or where the European Council decides differently - will not be subject to the 'ordinary legislative procedure'. The adoption of laws or framework laws will be excluded. The EP will from now always be informed and consulted, also in CSDP.*

#### CFSP

*EP shall be consulted and be kept informed*

*Decisions are taken unanimously here, but with qualified majority in some cases in Part Three*

*Member States and EU- Foreign Minister have the right of initiative*

#### Article I-39

6. The **European Parliament shall be regularly consulted** on the main aspects and basic choices of the common foreign and security policy, and shall be **kept informed** of how it evolves.

7. European decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers **unanimously**, except in the cases referred to in Part III. The European Council or the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support. **European Laws and framework laws are excluded.**

*Laws and framework laws excluded*

## **CSDP**

*EP shall be consulted and informed*

## **Article I-40:**

8. **The European Parliament shall be regularly consulted** on the main aspects and basic choices of the common security and defence policy, and shall be **kept informed** of how it evolves.

### **4.1- Unanimity required for CFSP and CSDP**

## **CFSP**

*Decisions are taken unanimously here, but with qualified majority in some cases in Part Three*

*Member States and EU-  
Foreign Minister have the right of initiative*

*Laws and framework laws excluded*

## **Article I-39**

7. European **decisions relating to the common foreign and security policy shall be adopted by the European Council and the Council of Ministers unanimously, except** in the cases referred to in Part III. The European Council or the Council of Ministers shall act on a proposal from a Member State, from the Union Minister for Foreign Affairs or from that Minister with the Commission's support. European Laws and framework laws are excluded.

## **CSDP**

*Common defence to be decided unanimously*

*Specific character of certain Member States defence policy shall be respected*

*NATO*

*Implementation of CSDP unanimously*

## **Article I-40:**

2. The common security and defence policy shall include the **progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides.** It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements.

The policy of the Union in accordance with this Article shall not prejudice the specific character of the security and defence policy of certain Member States and shall respect the obligations of certain Member States, which see their common defence realised in the North Atlantic Treaty Organisation, under the North Atlantic Treaty, and be compatible with the common security and defence policy established within that framework.

4. **European decisions on the implementation of the common security and defence policy, including those initiating a mission as referred to in this Article, shall be adopted by the Council of Ministers acting unanimously on a proposal from the Union Minister for Foreign Affairs or from a Member State.** The Union Minister for Foreign Affairs may propose the use of both national resources and Union instruments, together with the Commission where appropriate.

### 4.1.1 Constructive abstention

*However, the Draft Constitution provides for the possibility of constructive abstention in the whole area of CFSP and thus also in CSDP.*

*General rule: Unanimity with constructive abstention*

*Abstention by 1/3 of weighted votes blocks a decision*

#### Article III-201

1. European decisions referred to in this Chapter shall be adopted by the Council of Ministers acting unanimously. **Abstentions by members present in person or represented shall not prevent the adoption of such decisions.**

When abstaining in a vote, any member of the Council of Ministers may qualify its abstention by making a formal declaration. In that case, it shall not be obliged to apply the European decision, but shall accept that the latter commits the Union. In a spirit of mutual solidarity, the Member State concerned shall refrain from any action likely to conflict with or impede Union action based on that decision and the other Member States shall respect its position. If the members of the Council of Ministers qualifying their abstention in this way represent at least one third of the Member States representing at least one third of the population of the Union, the decision shall not be adopted.

### 4.1.2 "CFSP passerelle"

*Furthermore, the Draft Constitution provides for the possibility to change from unanimity to qualified majority. This "CFSP passerelle" is either applicable to the cases others than those referred to in part III (Art. I-39.8) or in cases referred to in part III (Art. III-201 III).*

*This "CFSP passerelle" does not apply to the CSDP.*

*Finally, in opposition to the general passerelle clause (Art. I-24.4), this "CFSP passerelle" does not require the information of the national Parliaments.*

*"CFSP passerelle" for cases others than those mentioned in part III*

*Prime Ministers can unanimously change voting procedure to qualified majority*

#### Article I-39:

8. The European Council may unanimously decide that the Council of Ministers should act by qualified majority in cases other than those referred to in Part Three of the Constitution.

*"CFSP passerelle"*

*for cases mentioned  
in part III*

**Article III-201**

Extension of qualified majority by unanimity in European Council

3. The European Council may decide unanimously that the Council shall act by a qualified majority in cases other than those referred to in paragraph 2.

*No "CFSP passerelle"  
for Defence*

**Article III-201**

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence implications.

**4.2 Qualified majority**

*Finally, the Council can decide by qualified majority in certain cases: The use of qualified majority - like the use of the "CFSP passerelle"- is excluded for the Defence.*

Council by qualified majority:

- when European Council has decided Union interest

- following the initiative of the Foreign Minister acting on the request of the European Council

- implementation of actions and positions

- appointment of special representative

Veto right for vital areas of national policy  
Qualified majority can send the matter to the European Council

*No qualified majority*

**Article III-201**

2. By derogation from paragraph 1, the Council of Ministers shall act **by qualified majority**:

(a) **when adopting European decisions** on Union actions and positions **on the basis of a European decision of the European Council relating to the Union's strategic interests and objectives**, as defined in Article III-194(1);

(b) **when adopting a decision on a Union action or position, on a proposal which the Minister puts forward to it following a specific request to him from the European Council made at its own initiative or that of the Minister.**

(c) **when adopting any European decision implementing a Union action or position;**

(d) **when appointing a special representative in accordance with Article III-203.**

If a member of the Council of Ministers declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken **by qualified majority**, a vote shall not be taken. The Union Minister for Foreign Affairs will, in close consultation with the Member State involved, search for a solution acceptable to it. If he or she does not succeed, the Council of Ministers may, acting by a qualified majority, request that the matter be referred to the European Council for decision by unanimity.

4. Paragraphs 2 and 3 shall not apply to decisions having military or defence

on defence matters

implications.

## 5. Financial provisions

### Article III-215

Administrative expenditures: EU budget

1. Administrative expenditure which the provisions referred to in this Chapter entail for the institutions shall be charged to the Union budget.

Operational expenditures: always EU budget, unless military and defence operations

2. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council of Ministers acting unanimously decides otherwise.

If not EU budget, then Member States' budgets, unless Council decides otherwise

In cases where expenditure is not charged to the Union's budget it shall be charged to the Member States in accordance with the gross national product scale, unless the Council of Ministers acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article III-201(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

Costs for military and defence operations not for those abstaining

Rapid access to budget for urgent financing

3. The Council of Ministers shall adopt a European decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for tasks as referred to in Article I-40(1). It shall act after consulting the European Parliament.

Consult the EP

Preparatory activities for tasks as referred to in Article I-40(1) which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions.

A start up fund

Qualified majority for

The Council shall adopt by a qualified majority on a proposal from the Minister for Foreign Affairs:

- establishing the "....." fund

(a) the procedures for setting up and financing the fund, in particular the amounts allocated to the fund and the procedures for reimbursement;

- administration of the fund

(b) the procedures for administering the fund;

- financial control

(c) the financial control procedures.

Foreign Minister can use fund

When it is planning a task as referred to in Article I-40(1) of the Constitution which cannot be charged to the Union's budget, the Council of Ministers shall authorise the Union Minister for Foreign Affairs to use the fund. The Union Minister for Foreign Affairs shall report to the Council of Ministers on the implementation of the remit.

### **III) THE INSTITUTIONS OF THE UNION**

- 1. EUROPEAN PARLIAMENT**
- 2. EUROPEAN COUNCIL**
- 3. COUNCIL OF MINISTERS**
- 4. EUROPEAN COMMISSION**
- 5. FOREIGN MINISTER**

#### **1) EUROPEAN PARLIAMENT**

*The European Parliament will, jointly with the Council of Ministers, enact legislation and exercise the budgetary function, as well as functions of political control and consultation.*

*"Jointly with the Council" means that according to Article III-302.7 the EP can reject the proposals of law or propose amendments to them, but only with the absolute majority of its members in second reading.*

*The Council cannot adopt laws without the approval of the EP and the latter cannot decide anything without the approval of a qualified majority in the Council.*

*The EP "elects" the President of the European Commission but it can only elect the candidate proposed by the European Council acting by qualified majority. If the EP rejects a candidate, it will be up to the European Council to propose a new one.*

*After the President of the Commission has selected other Members of the Commission, the EP has to approve the College as a whole.*

*The number of MEPs will be limited to 736. The allocation of seats before the elections scheduled for 2009, will be decided by the European Council, on a proposal from Parliament and with its consent, with a minimum threshold of four seats per Member State.*

#### **Article I-19**

##### ***The European Parliament***

*- co-legislates with the Council  
- controls politically  
- approves the Commission President proposed by the Prime Ministers*

*Direct elections every 5 years, max. 736, min. of 4 members per Member*

1. The European Parliament shall, jointly with the Council, enact legislation, and exercise the budgetary function, as well as functions of political control and consultation as laid down in the Constitution. It shall elect the President of the European Commission.

2. The European Parliament shall be elected by directly universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred and thirty-six in number. Representation of European citizens shall be

*State, the remaining seats will be divided degressively proportional. According to a proposal from the EP this could mean fewer members from the smaller states than at present*

*EP President*

degressively proportional, with a minimum threshold of four members per Member State.

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter, for further elections, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out above.

3. The European Parliament shall elect its President and its officers from among its members.

### ***1.1) COMPOSITION OF THE EUROPEAN PARLIAMENT AT PRESENT:***

Belgium	25
Denmark	16
Germany	99
Greece	25
Spain	64
France	87
Ireland	15
Italy	87
Luxembourg	6
Netherlands	31
Austria	21
Portugal	25
Finland	16
Sweden	22
United Kingdom	87
TOTAL	626

***Absolute Majority of Members= 314votes***

### ***1.2 COMPOSITION OF THE EUROPEAN PARLIAMENT 2004-2009***

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13

Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Hungary	27
Austria	18
Poland	54
Portugal	24
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78
<b>TOTAL</b>	<b>732</b>

*After having joined the EU, Romania will have 33, and Bulgaria 17 seats in EP  
From the date of Romania's and Bulgaria's accession and until 2009, the European Parliament will therefore be composed of up to 782 MEPs. From 2009 onwards, the number of MEPs will be limited to 736 (see below).*

### **1.3 COMPOSITION OF THE EUROPEAN PARLIAMENT FROM 2009 ONWARDS**

*Before the elections in 2009, the European Council decides by unanimity and with EP's consent on the latter's composition. However, the number of seats shall not exceed 736 and the minimum threshold shall be 4 MEPS per Member State.*

#### **Article I-19**

*Direct elections every 5 years, max. 736, min. of 4 members per Member State, the remaining seats will be divided degressively proportional According to a proposal from the EP this could mean fewer members from the smaller states than at present.*

2. The European Parliament shall be elected by directly universal suffrage of European citizens in free and secret ballot for a term of five years. Its members shall not exceed seven hundred and thirty-six in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.

Sufficiently in advance of the European Parliamentary elections in 2009, and, as necessary thereafter, for further elections, the European Council shall adopt by unanimity, on the basis of a proposal from the European Parliament and with its consent, a decision establishing the composition of the European Parliament, respecting the principles set out above.

## 2) EUROPEAN COUNCIL

*The European Council is to become a full institution. It will provide impetus and define political priorities but will not exercise legislative functions. The present rotating presidency will be replaced by a permanent presidency, elected by a qualified majority of its members for a renewable term of two and a half years. The general rule regarding the adoption of decisions will be consensus.*

### Article I-20

#### ***European Council***

*European Council =  
Prime Ministers,  
President of European  
Council and President of  
Commission.  
Minister of Foreign  
Affairs shall take part*

*The European Council  
meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus*

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative function.
2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.
3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene an special meeting of the European Council.
4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

## THE EUROPEAN COUNCIL CHAIR

### Article I-21

*Prime Ministers will  
appoint for 2 ½ years –  
may re-elect once*

*Tasks of the President*

*Represents the EU  
in the wider world on*

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his mandate according to the same procedure.
2. The President of the European Council:  
  
shall chair it and drive forward its work,  
  
shall ensure proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Council,  
  
shall endeavour to facilitate cohesion and consensus within the European Council,

*CFSP issues*

shall present a report to the European Parliament after each of its meetings.

The President of the European Council shall at his or her level and in that capacity ensure, the external representation of the Union on issues concerning its common foreign and security policy, without prejudice to the responsibilities of the Union Minister for Foreign Affairs.

*President cannot have a national mandate*

3. The President of the European Council may not hold a national mandate.

### 3) COUNCIL OF MINISTERS

*The establishment of a Legislative and General Affairs Council has been proposed in order to ensure consistency in the Council's work. The draft Constitution also provides for a Foreign Affairs Council chaired by the EU Minister for Foreign Affairs. A specific legal basis will allow the European Council to set up other formations of the Council, chaired by representatives of Member States on the basis of equal rotation.*

#### Article I-22

**Council of Ministers:**

- legislates with EP
- carries out policy making
- coordinates

*Status as minister, the only one to vote and commit the Member State*

*Decides by qualified majority  
The "Luxembourg compromise" has not been used since the 1980'es*

1. The Council of Ministers shall, jointly with the European Parliament, enact legislation, exercise the budgetary function and carry out policy-making and coordinating functions, as laid down in the Constitution.
2. The Council of Ministers shall consist of a representative of each Member State at ministerial level for each of its formations. Only this representative may commit the Member State in question, and cast its vote.
3. Except where the Constitution provides otherwise, decisions of the Council shall be taken by qualified majority.

#### 3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT:

Belgium	5
Denmark	3
Germany	10
Greece	5
Spain	8
France	10
Ireland	3
Italy	10
Luxembourg	2
Netherlands	5
Austria	4
Portugal	5
Finland	3
Sweden	4
United Kingdom	10
TOTAL	87

*Qualified majority = 62 votes (certain decisions require also the votes of 10 Member States)*

### **3.2 WEIGHTING OF VOTES IN THE COUNCIL 2004-2009**

Belgium	12
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29
<b>Total</b>	<b>321</b>

*Qualified majority: 1. 232 out of 321, 2. majority of Member States, 3. 62% of the population*

*Weighting of votes of Romania: 14, of Bulgaria: 10*

### **3.3 VOTING IN THE COUNCIL FROM 2009 ON**

*Qualified majority will become the general rule for the adoption of decisions within the Council of Ministers and, from 1 November 2009, will be defined as consisting of a majority of states representing three fifths of the population of the Union. For cases in which the Convention has not achieved consensus on changing over to qualified majority voting, a transitional measure (known in French as a 'passerelle') is planned, by which the European Council will have the opportunity to decide unanimously that the Council will in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the*

*need to amend the Constitution, which would in turn require ratification by each Member State.*

*When a Commission proposal is not required or when a decision is not adopted on the initiative of the Minister for Foreign Affairs, the qualified majority required will be made up of two thirds of Member States representing three fifths of the population of the Union.*

## Article I-24

### ***1. Majority of Member States***

#### ***2. 60 % of the EU population***

*(meaning that the 3 biggest states can block a decision sought by 22 Member States)*

### ***Enlarged qualified majority***

#### ***1. 2/3 of Member States***

#### ***2. 60% of the EU population***

*Until 2009: qualified majority is 232 of 321 votes from a majority of states and 62% of the EU-population*

### ***NB: New deepening clause***

***European Council can change legislative procedure regarding a Council decision by unanimity***

***Can change unanimity to qualified majority on their own without ratification and possible referendums***

1. When the European Council or the Council of Ministers take decisions by qualified majority, such a majority shall consist of the majority of Member States, representing at least three fifths of the population of the Union.

2. When the constitution does not require the European Council or the Council of Ministers to act on the basis of a proposal of the Commission, or when the European Council or the Council of Ministers is not acting on the initiative of the Union Minister for Foreign Affairs, the required qualified majority shall consist of two-thirds of the Member State, representing at least three fifths of the population

3. The provisions of paragraphs 1 and 2 will take effect on 1 November 2009, after the European Parliament elections have taken place, according to the provisions of article I-19.

4. Where the Constitution provides in Part III for laws and framework laws to be adopted by the Council of Ministers according to a special legislative procedure, the European Council can adopt, on its own initiative and by unanimity, after a period of consideration of six months, a European decision allowing for the adoption of such European laws or framework laws according to the ordinary legislative procedure. The European Council shall act after consulting the European Parliament and informing the national Parliaments.

Where the Constitution provides in Part III for the Council of Ministers to act unanimously in a given area, the European Council can adopt, on its own initiative and by unanimity, a European decision allowing the Council to act by qualified majority in that area. Any initiative taken by the European Council under this subparagraph shall be sent to national Parliaments no less than four months before any decision is taken on it.

5. Within the European Council, its President and the President of the Commission do not vote.

## 4) The EU Commission

*The Commission's monopoly of legislative initiative is clearly restated. From 2009, it may be made up of different classes of Commissioners.*

### Article I-25

#### **EU-Commission**

##### **Role:**

- promote general interest
- oversee application of Union law
- execute the budget
- implementation
- ensure external representation outside the common foreign and security policy

**Monopoly of initiative:**  
*No one else can propose new laws*

**Composition:**  
*15 members, no longer one from each Member State*

*Rotate on equal basis*  
*- max one term between having a member*  
*- represent demographic and geographical range of the Union*

*Non-voting Commissioners from the other states*

*Effect from 2009*

**Independence**  
*May not take instructions from any one*

1. The European Commission shall promote the general European interest and take appropriate initiatives to that end. It shall ensure the application of the Constitution, and steps taken by the institutions under the Constitution. It shall oversee the application of Union law under the control of the Court of Justice. It shall execute the budget and manage programmes. It shall exercise coordinating, executive and management functions as laid down in the Constitution. With the exception of the common foreign and security policy, and other cases provided for in the Constitution, it shall ensure the Union's external representation. It shall initiate the Union's annual and multiannual programming with a view to achieving interinstitutional agreements.

2. Except where the Constitution provides otherwise, Union legislative acts can be adopted only on the basis of a Commission proposal. Other acts are adopted on the basis of a Commission proposal where the Constitution so provides.

3. The Commission shall consist of a College comprising its President, the Union Minister of Foreign Affairs/Vice-President, and thirteen European Commissioners selected on the basis of a system of equal rotation between the Member States. This system shall be established by a European decision of the European Council on the basis of the following principles:

- Member States shall be treated on a strictly equal footing as regard determination of the sequence of, and the time spent by, their nationals as Members of the College; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one.
- subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all Member States of the Union

The Commission President shall appoint non-voting Commissioners, chosen according to the same criteria as apply for Members of the College and coming from all other Member States.

These arrangements will take effect on 1 November 2009.

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties the European Commissioners and Commissioners shall neither seek nor take instructions from any government or other body.

### **Censure**

*The EP can only censure Commission as a single body, not as individual members*

5. The Commission, as a College, shall be responsible to the European Parliament. The Commission President shall be responsible to the European Parliament for the activities of the Commissioners. Under the procedures set out in Article III-243, the European Parliament may pass a censure motion on the Commission. If such a motion is passed, the European Commissioners and Commissioners must all resign. The Commission shall continue to handle everyday business until a new college is nominated.

## **COMMISSION PRESIDENT**

***The political power of the President of the Commission will be backed through his approval by the European Parliament and will include the appointment of Commissioners, allocation of portfolios and the right to request the resignation of a Commissioner without needing the approval of the College, as it is actually the case.***

### **Commission President**

- 1. Prime Ministers elect by qualified majority*
- 2. EP approves with majority of Members*
- 3. If rejected a new candidate shall be put forward within 1 month*

### **Commission members**

- 3 candidates from each Member State*
- The Commission President selects 13 members*
- EP approves by simple majority*
- Must have European commitment*
- Term: 5 years*

*The Commission President decides guidelines and internal organisation, and appoints vice presidents and dismisses members*

### **Article I-26**

1. Taking into account the elections to the European Parliament, and after appropriate consultations, the European Council, deciding by qualified majority, shall put forward to the European Parliament its proposed candidate for the Presidency of the Commission. This candidate shall be elected by the European Parliament by a majority of its members. If this candidate does not receive the required majority support, the European Council shall within one month put forward a new candidate, following the same procedure as before.

2. Each Member State determined by the system of rotation shall establish a list of three persons, in which both genders shall be represented, whom it considers qualified to be a European Commissioner. By choosing one person from each of the proposed lists, the President-elect, shall select the thirteen European Commissioners for their competence, European commitment, and guaranteed independence. The President and the persons so nominated for membership of the College, including the future Union Minister for Foreign Affairs, as well as the persons nominated as non-voting Commissioners, shall be submitted collectively to a vote of approval by the European Parliament. The Commission's term of office shall be five years.

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

decide its internal organisation, ensuring that it acts consistently, efficiently and on a collegiate basis;

appoint vice-presidents from among the members of the College.

A European Commission or Commissioner shall resign if the President so requests.