

Consumer protection in the EU - Present provisions and the Draft Constitution

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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 States

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 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) Consumer protection

General remarks:

According to the new Draft Constitution, the entire area of consumer protection is to be considered as a shared competence where the Member States lose the right to decide (legislate) on their own when the Union takes a common decision for a topic.

At present, the TEC distinguishes between measure taken according to Article 151 TEC, for which the Community only has the "framework" competence, and those taken according to Article 95 TEC, measures falling under the shared competence.

1. The Community's consumer protection policy according to the TEC

Consumer protection is basically dealt with in Article 153 of the EC Treaty (former Article 129a), which was inserted by the Treaty of Maastricht. It is intended to promote consumers' health, safety, economic and legal interests, and their right to information. Decisions are taken according to Article 251: co-decision procedure.

Article 153 also explicitly refers to another legal basis for the attainment of its objectives, namely to Article 95 (former Article 100a), which requires the codecision procedure for all measures involving closer alignment of Member States' legislation on completion of the single market where consumer protection is concerned. At the same time, it stipulates that specific action supporting and supplementing the policy pursued by the Member States is to be adopted under the codecision procedure, after consultation of the Economic and Social Committee.

A Member State may keep or introduce stricter consumer protection measures than those laid down by the Community, as long as they are compatible with the Treaty and if the Commission has been notified. Its approval is not needed for measures that are stricter than those adopted according to Article 153 since they do not aim at the harmonisation of laws but at the protection of consumers (however, the approval of the Commission is needed for rules that are stricter than measures taken according to Article 95, since they aim at the harmonisation of the laws- see below).

According to Article 153.1 TEC, consumer protection comprises:

- the right to protection of health and safety;***
- the right to protection of economic interests;***
- the right to damages;***
- the right to information and education;***
- the right to representation.***

1.1. Two legal bases to enact measures in the area of consumer protection policy

To take measure in the field of consumer policy, the Community can act on the basis of Article 153 or of 95 TEC.

Art. 153 applies if a measure primarily aims at raising the level of consumer protection

ARTICLE 153 (ex Article 129a) TEC

High, not the highest, level of consumer protection

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:

- a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
- b) measures which support, supplement and monitor the policy pursued by the Member States.

Measures by qualified majority and conciliation procedure

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).

Stricter national rules, if compatible with the Treaty – but not for the Internal Market in paragraph a)

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

Art. 95 applies if a measure primarily aims at the realisation of the single market:

ARTICLE 95 (ex Article 100a) TEC

Laws of the Internal Market by qualified majority and conciliation procedure

1. By way of derogation from Article 94 and save where otherwise provided in this Treaty, the following provisions shall apply for the achievement of the objectives set out in Article 14. The Council shall, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

excluding

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of

-taxation
-movement of persons
-employees' rights
High level of protection
for health, safety,
environment, consumer
protection

Keep better rules
-environment
-working environment

Introduce better rules
-environment
-working environment
- specific problem for a
State

The Commission decides:
-excluding:
-discriminatory treatment
-hidden trade restrictions
-obstruct the functioning
of the Internal Market

persons nor to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article 30, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption by the Council or by the Commission of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions as well as the grounds for introducing them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market.
In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.
When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

1.2. Limits of the Community's competence in the area of consumer protection

The competence of the Community to take measures for the protection of the consumers is limited by the following:

- Article 153.3 TEC: The Community only has the so-called "framework competence" which means it can only "contribute" to the attainment of the objectives by fixing minimum, not maximum standards (it must however be pointed out, that measures that primarily aim at the realisation of the single market and are taken according to article 95 TEC fall under the shared competence);

- Article 153.5 TEC: The Member States can keep or introduce more stringent rules as long as they are compatible with the Treaty (it must however be pointed out, that the keeping of more stringent rules than measures taken according to article 95 need the approval of the Commission and that the later introduction of such rules is excluded, Article 95.4 and 5 TEC);

- Article 153.5 TEC: Measure taken to protect consumers must be compatible with all other provisions of the Treaty, and especially with the internal market rules.

2. Consumer protection according to the new Draft Constitution

In principle, the area of Consumer protection would remain unchanged. However and according to Article I-13 of the draft Constitution, the shared competence applies to the area of consumer protection. At present (see above), consumer protection is an area in which the Community only has a "framework" competence.

The Union has to ensure a high, but not the highest, level of consumer protection within all its policies:

Article II-38

High level of consumer protection is to be ensured by the CAP

Union policies shall ensure a high level of consumer protection.

Article III-5

Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

Article III-132

Objective: a high level of protection, not the "highest" level

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article III-65 in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

3. The measures referred to in paragraph 2(b) shall be enacted by European laws. Such laws shall be adopted after consultation of the Economic and Social Committee.

4. Measures adopted pursuant to paragraph 3 shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

Legislative procedure and consultation of EcoSoc

Stricter national rules can be kept, if compatible with the Constitution Commission must be notified

Consumer protection has hence also to be taken into account when setting up internal market rules:

Internal market rules

Internal market laws and framework laws made by legislative procedure, qualified majority voting

Excluding:

- taxation
- movement of persons
- employees' rights

High level of protection for health, safety, environment, consumer protection, but not the "highest" level

Protection of the environment

Keep better rules for the:

- environment
- working environment

Introduce better rules for the:

- environment
- working environment
- specific problems arising for a State after harmonisation

The Commission decides whether a measure is:

- excluding
- discriminatory treatment
- a hidden trade restriction
- an obstruction to the functioning of the Internal Market

Extend period by six months

If a national derogation from harmonisation is approved, Commission

Article III-65

1. Save where otherwise provided in the Constitution, this Article shall apply for the achievement of the objectives set out in Article III-14. European laws or frameworks law shall establish measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. It shall be adopted after consulting the Economic and Social Committee.

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons or to those relating to the rights and interests of employed persons.

3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and **consumer protection**, will take as a base a **high level of protection**, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

4. If, after the adoption of a harmonisation measure by means of European law or framework law or a Commission regulation, a Member State deems it necessary to maintain national provisions on grounds of major needs referred to in Article III-43, or relating to the protection of the environment or the working environment, it shall notify the Commission of these provisions as well as the grounds for maintaining them.

5. Moreover, without prejudice to paragraph 4, if, after the adoption of a harmonisation measure by means of a European law or framework law or a Commission regulation, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission of the envisaged provisions and the reasons for them.

6. The Commission shall, within six months of the notifications as referred to in paragraphs 4 and 5, adopt a European decision approving or rejecting the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they constitute an obstacle to the functioning of the internal market.

In the absence of a decision by the Commission within this period the national provisions referred to in paragraphs 4 and 5 shall be deemed to have been approved.

When justified by the complexity of the matter and in the absence of danger for human health, the Commission may notify the Member State concerned that the period referred to in this paragraph may be extended for a further period of up to six months.

7. When, pursuant to paragraph 6, a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that

shall propose adaptation for all

Health not included in the foregoing, so-called, environmental guarantee

Directly to the Court

Safeguard clause under EU control

measure.

8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures.

9. By way of derogation from the procedure laid down in Articles III-265 and III-266, the Commission and any Member State may bring the matter directly before the Court of Justice if it considers that another Member State is making improper use of the powers provided for in this Article.

10. The harmonisation measures referred to in this Article shall, in appropriate cases, include a safeguard clause authorising the Member States to adopt, for one or more of the non-economic reasons referred to in Article III-43, provisional provisions subject to a Union control procedure.

The limits of the competence of the Union to take measures for the protection of the consumers remain practically unchanged:

- ***Although the area of consumer protection is considered as being a shared competence in the new Draft Constitution, the Union shall only "contribute" to the attainment of the objectives by fixing minimum, not maximum standards (Article III-132.1);***
- ***The Member States can keep or introduce more stringent rules (Article III-132.5 TEC);***
- ***Measure taken to protect consumers must be compatible with other provisions of the Treaty, and especially with the internal market rules (Article III 132.5).***

This means that the principle that consumer protection rules are subject to the "higher ranked" internal market rules, will be maintained by the Draft Constitution:

- ***the "leading area" internal market has to take into account the consumer protection and not vice-versa (Article III-65);***
- ***Measures adopted in the frame of consumer protection must be compatible with the Constitution and thus with the internal market rules (Article III-132.4);***
- ***The present TEC and the Constitution only provide for a "high", and not the "highest" level of consumer protection.***

Although consumer protection rules are subject to the "higher" ranking internal market rules, they may prevail on the latter in very specific cases. Thus, Member States can restrict the free movement of goods on grounds of consumer protection, if the health and the security of the consumer is at stake:

Article III-43

.... the free movement of agricultural goods can only be restricted on grounds of:

- ***morality***
- ***public policy***

Article III-42 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between

- *public security*
- *protection of health*
and life of humans,
animals or plants
- *national treasures*
- *industrial and*
commercial property

Member States.

However, such restrictions shall not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. It is up to the EU Court in Luxemburg to decide on possible conflicts of interpretation.

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
TOTAL	732

*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
Total	321

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) EUROPEAN 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.

5) EU FOREIGN MINISTER

The Minister for Foreign Affairs will be appointed by the European Council by an extended 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. Although he is member of the Commission, it is still being discussed whether 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. His representation of the Union will be limited through the competence of the President of the Union who will represent the Union at "his or her level".

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

Double hat

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

*External service
established in part III*

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.

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.]