

Articles of the EU draft Constitution related to decision-making

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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:
"shall 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 since 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**.

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

II) LEGAL INSTRUMENTS

Legal acts of the Union

Article I-32

Legally binding acts

Legislative acts: *Laws, framework laws,*

Non legislative acts
regulations, decisions

Non legally binding acts:

recommendations and opinions

Law:

- binding in its entirety, directly applicable

Framework law:

- binding as to the result, Member States transpose

Regulation now used for implementation of legislation. It is either binding in its entirety and directly applicable or binding as to the result to be achieved

Decision: also binding in its entirety, but only to the addressee

Recommendations and opinions: not binding
This is an exhaustive list of legal instruments

1. In exercising the competences conferred on it in the Constitution, the Union shall use as legal instruments, in accordance with the provisions of Part III, European laws, European framework laws, European regulations, European decisions, recommendations and opinions.

A European law shall be a legislative act of general application. It shall be binding in its entirety and directly applicable in all Member States.

A European framework law shall be a legislative act binding, as to the result to be achieved, on the Member States, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European regulation shall be a non-legislative act of general application for the implementation of legislative acts and of certain specific provisions of the Constitution. It may either be binding in its entirety and directly applicable in all Member States, or be binding, as regards the result to be achieved, on all Member States to which it is addressed, but leaving the national authorities entirely free to choose the form and means of achieving that result.

A European decision shall be a non-legislative act, binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions adopted by the institutions shall have no binding force.

2. When considering proposals for legislative acts, the European Parliament and the Council shall refrain from adopting acts not provided for by this Article in the area in question.

1.) LEGISLATIVE ACTS

- EUROPEAN LAW**
- EUROPEAN FRAMEWORK LAW**

The power of legislative initiative lies with the Commission, although this is shared with at least a quarter of Member States regarding certain aspects of the area of freedom, security and justice.

The draft Constitution states that, as a general rule, laws and framework laws are to be adopted by co-decision of the EP and by qualified majority in the Council.

Accordingly, the co-decision procedure will be applicable in 79 areas as opposed to the present 34.

In exceptional cases provided for by the Constitution, laws and framework laws can be adopted either

- by the Council (e.g., law on own resources, law on the multiannual financial framework, law on elections to the EP etc.) or

-by Parliament (three cases: law on the status of its members, law on the status of the Ombudsman and law on provisions governing the exercise of the right of inquiry),

but always with the participation of the other branch, which can range from simple consultation to approval (currently assent).

a) Ordinary legislative procedure = co-decision procedure

Article III-302

General legislative procedure

1) Commission submits a proposal to EP and Council

2) EP adopts a position, then sends to Council

3.a) Council approves = proposal is adopted

3.b) Council does not approve = makes own position, send it to EP

Commission informs EP of its position

If, within three months, the EP:

4.a) approves Council position = proposal is adopted

4.b) rejects Council position by an absolute majority of members = proposal is rejected

4.c) amends Council position by absolute majority = proposal is sent back to Council

Commission gives opinion on amendments

If, within three months, Council by qualified majority:

1. Where, pursuant to the Constitution, European laws or framework laws are adopted under the ordinary legislative procedure the following provisions shall apply.

2. **The Commission shall submit a proposal** to the European Parliament and the Council of Ministers.

First reading

3. The European Parliament shall adopt its position at first reading and communicate it to the Council of Ministers.

4. If the Council of Ministers approves the European Parliament's position, the proposed act shall be adopted.

5. If the Council of Ministers does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament

(a) approves the position of the Council position at first reading or has not taken a decision, the proposed act shall be deemed to have been adopted;

(b) rejects, by an absolute majority of its component members, the position of the Council of Ministers at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by an absolute majority of its component members, amendments to the position of the Council of Ministers at first reading, the text thus amended shall be forwarded to the Council of Ministers and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council of Ministers, acting by a qualified majority,

5.a) approves EP's position = proposal is adopted

5.b) rejects EP's position = Conciliation committee is convened

Unanimity is required for Council to amend if the Commission has given a negative opinion

6. Conciliation Committee

Composed of equal numbers from Council and EP

Agrees on joint text: Council with a qualified majority, EP with a majority of members
Time-limit: six weeks

Commission participates in conciliation meetings

If no approval at conciliation within six weeks after joint text is adopted the proposal is rejected

7. Joint text to Council and EP

Council approves by qualified majority, EP by majority of votes

Deadline: six weeks or else rejected

Deadlines can be extended

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council of Ministers, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council of Ministers shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

10. The Conciliation Committee, which shall be composed of the members of the Council of Ministers or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council of Ministers or their representatives and by a majority of the representatives of the European Parliament within six weeks of its being convened, on the basis of the positions of the Parliament and the Council of Ministers at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council of Ministers.

12. If, within six weeks of its being convened, Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council of Ministers, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

14. The period of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council of Ministers.

Special provisions

Special rules when a group of states are proposing

Commission shall be informed and give opinion on its own initiative or on request

15. Where, in the case specifically provided for in the Constitution, a law or framework law is submitted to the ordinary legislative procedure on the initiative of a group of Member States or of the European Central Bank, paragraphs 2, 6 in fine and 9 shall not apply.

The European Parliament and the Council of Ministers shall communicate to the Commission the proposal of the group of Member States or of the European Central Bank and their positions at first and second readings.

The European Parliament or the Council of Ministers may request the opinion of the Commission throughout the procedure. The Commission may deliver an opinion on its own initiative. It may, if it deems it necessary, take part in the Conciliation Committee on the terms laid down in paragraph 11.

b) Cooperation Procedure

At present, this procedure only remains for EMU matters and will be given up entirely according to the draft Constitution.

c) Consent /Assent

In cases where the consent (present assent) of the EP is required, the Council cannot legislate/decide without the former's approval. The consent of the EP may be needed for legislative acts and non-legislative political "acts" (e.g. suspensions of membership rights).

The consent of the EP will be required for:

- the use of the flexibility clause (I-17),*
- the Council's decision on the composition of the EP from 2009 on (Art I-19),*
- the determination of the Union's resources (I-53),*
- the setting up of the multiannual framework (I-54),*
- the accession to the Union of a new member state (I-57),*
- the suspension of membership rights (I-58),*
- the conclusion of a withdrawal agreement (I-59),*
- the adoption of laws against discrimination (III-8),*
- the delivering of the report on development of EU-citizenship (III-13),*
- the conclusion of international agreements (III-227),*
- the setting of rules for European elections (III-232).*

d) Consultation

If none of the above mentioned procedures apply, the European Parliament is merely consulted. Neither the Council nor the Commission are obliged to consider the Parliament's opinion. The consultation procedure will thus still be used in cases of that are particularly sensitive for the member states (e.g. extension of qualified majority - Art I-24.4; determination of Union's resources - Art. I 53; flexibility clause for free movement and residence - Art. III-9; employment - Art. III 100 and 102; social policy Art. 104).

Altogether, the EP is merely to be consulted in 26 areas.

2.) NON LEGISLATIVE ACTS (DECISIONS AND REGULATIONS)

The draft distinguishes between delegated acts (new) and implementing acts.

The European Council shall adopt decisions whilst the European Commission shall adopt regulations OR decisions.

a) Delegated acts

Delegated regulations adopted by the Commission

The draft Constitution will also create delegated regulations, delegated to the Commission by the legislative authorities, the EP and the Council. There will be no regulations delegated to the Council.

The delegated regulations, which, according to the draft, shall amend or supplement certain aspects of laws or framework laws, but which shall not change their essential elements, will therefore require specific authorisation in the respective laws on which they are based.

They will be subject to a specific system of control exercised by the co-legislators. Each of the two branches can revoke the delegation, and the delegated regulation can only enter into force if neither of the branches of the legislative authority raises an objection within a period set down by the law. The European Parliament can only react by an absolute majority of its members and the Council by qualified majority.

b) Implementing acts

Regulations or decisions adopted by the Member States, the Commission and, in exceptional cases, by the Council

As far as implementing acts in the strict sense of the term are concerned, the Member States are mainly responsible to implement legally binding acts of the European institutions.

However, where uniform conditions for implementing acts are required, the draft Constitution gives the Commission the power to take the necessary implementing measures.

In exceptional cases the Council is empowered to take implementing measures.

- in "specific cases duly justified", which means in cases in which acts are based directly on the Constitution, not simply on European law or framework law (e.g. Art. III-126 = granting of aid in agriculture);

- in cases concerning the implementation of the CFSP (see below);

c) Decisions in Common Foreign and Security Policy

According to the new article I-40, the Council is empowered to take implementing measures in the area of Common Foreign and Security Policy (CFSP): "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."

d) Political Decisions

In general, it must also be pointed out that the term 'decision' covers both decisions in the sense of non-legislative (administrative) acts and decisions of a political nature (having legal effect): e.g. the Council decision regarding the suspension of the rights of a Member State related to membership of the Union, the use of the flexibility clause (I-17), the Council's decision on the composition of the EP from 2009 onwards (Art I-19).

B) NON-LEGALLY BINDING ACTS

- RECOMMENDATIONS

- OPINIONS

A recommendation is a non-binding decision, which only urges Member States to comply. A Member State cannot be fined for the breach of recommendations. This contrasts with opinions, which refer to an already existing document.

III) BUDGET PROCEDURE

The law determining the annual budget will be adopted jointly by the EP and the Council, with the European Parliament having the final say on all expenditures in the event of disagreement. Thus there will no longer be a distinction between compulsory and non-compulsory expenditures.

The budgetary procedure will have only one reading in each institution.

Article 310

The new budget procedure

Budget established by law = co-decision

Difference between compulsory and non-compulsory expenditures ceases to exist:

The EP can thus co-decide on ALL expenditures

1. Each institution draws up an estimate

2. Commission makes a draft budget

3. Commission submits the draft budget before 1st September to Council and EP

4. Council sends an opinion to Parliament before 1st October

5.a If EP approves = budget adopted

5.b If EP amends by majority of its members = Conciliation Committee

A European law shall establish the Union's annual budget in accordance with the following provisions:

1. Each Institution shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a draft budget. It shall attach thereto an opinion which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5 below, is convened.

2. **The Commission shall submit the draft budget to the European Parliament and the Council of Ministers not later than 1 September of the year preceding that in which the budget is to be implemented.**

3. The Council of Ministers shall **adopt its position** on the draft budget law and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position.

4. If, within 40 days of such communication, **the European Parliament:**

(a) **approves** the Council of Ministers position or has not taken a decision, the budget law shall be deemed to have been adopted;

(b) **proposes amendments** to the Council of Ministers position by a majority of its component members, the amended text shall be forwarded to the Council of Ministers and to the Commission. The President of the European Parliament, in agreement with the

is convened, unless Council approves all EP amendments

6. Council and EP agree on a joint text within 21 days

Commission takes part in Conciliation committee meetings

7.a) Joint text approved within 21 days
Council: qualified majority
EP: majority of votes cast

7.b) If Conciliation committee does not approve joint text within 21 days or Council rejects the text = EP may confirm, by absolute majority and 60% of the votes cast, its amendments

If EP does not confirm = Council's position adopted

If EP rejects the joint text by absolute majority and 60% of the votes cast it may ask the Commission for a new proposal

8. When the procedure is finalised EP president declares it law

President of the Council, shall immediately convene a meeting of the **Conciliation Committee**.

If, within ten days, the **Council of Ministers** informs the European Parliament that it has **approved** all its amendments, the **Conciliation Committee shall not meet**.

5. The **Conciliation Committee**, which shall be composed of the members of the **Council** of Ministers or their representatives and an equal number of representatives of the European **Parliament**, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council of Ministers or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council of Ministers.

6. The **Commission** shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council of Ministers.

7. If, within twenty-one days of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council of Ministers, acting by a qualified majority, shall each have a period of fourteen days from that approval in which to adopt the joint text.

8. If, within twenty-one days, the Conciliation Committee does not approve a joint text or if the **Council** of Ministers rejects the joint text, the **Parliament** may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, confirm its amendments.

Where the Parliament amendment is not confirmed, the Council of Ministers position on the budget item which is the subject of the amendment shall be deemed to be adopted.

However, if the **Parliament**, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text, it may ask for a new draft to be submitted.

9. When the procedure provided for in this Article has been completed, the **President** of the European **Parliament** shall declare that the budget law has been finally adopted.

Article III-311

If no budget adopted 1/12 of last years budget may be spent each month, but this cannot be more than the amount under consideration

1. If no European budget law has been adopted at the beginning of a financial year, a sum equivalent to not more than one twelfth of the budget appropriations entered in the budget law for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the European law referred to in Article III-318; this arrangement shall not, however, have the effect of placing at the disposal of the **Commission** appropriations in excess of one twelfth of those provided for in the draft budget under consideration.

Expenditure can go above 1/12 if Council adopts a decision on a proposal from Commission and EP does not decide, by majority of its members, to reduce expenditure

2. The Council of Ministers, on a proposal by the Commission and in compliance with the other conditions laid down in the first paragraph, may adopt a European decision authorising expenditure in excess of one twelfth. The Council of Ministers shall forward the decision immediately to the European Parliament.

The European decision shall lay down the necessary measures relating to resources to ensure application of this Article.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

Article III-312

Carry forward expenditures

In accordance with conditions laid down by the European law referred to in Article III-318, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the European law referred to in Article III-318.

EP, Council, Commission and Court in separate parts of the budget

The expenditure of the European Parliament, the Council of Ministers, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

VI) 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 determined by degressive proportionality. 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.

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 / EU PRESIDENT

Article I-21

*Prime Ministers will
appoint for 2 ½ years –
renewable once*

Tasks of the President

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,

*Represents the EU
in the wider world on
CFSP issues*

shall endeavour to facilitate cohesion and consensus within the European Council,

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 1980s*

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 also require 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. From 1 November 2009, qualified majority 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 by the the French word 'passerelle') is planned. According to that clause, the European Council will have the opportunity to decide unanimously that the Council will act by qualified majority in those areas mentioned in Part III for which unanimity is still required. This would not need an amendment of the Constitution, which would in turn require ratification by each Member State.

Where a Commission proposal is not required or where 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 its 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:
Generally it alone can propose new laws

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

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

Non-voting Commissioners from the other states

Effect from 2009

Independence
May not take instructions

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.

from anyone

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 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 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 the absence of which, a decision for which qualified majority in the Council is foreseen 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 and 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.]