

**EU draft Constitution- Provisions regarding  
development policy**

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# ***1) 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*

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.

*Require fulfilment of EU obligations by 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) DEVELOPMENT POLICY**

### **1. Definition of EU development policy**

#### **Development policy agreements**

*Originally, the Treaty on the European Economic Community signed in Rome in 1957 did not have any specific provisions related to the development policy. The former TEEC only dealt with the specific issue of the overseas countries and territories.*

*In 1961, the Yaounde agreement laid down the basic principles of development cooperation. This agreement was followed by the Yaounde II agreement in 1971. In the same year, the Arusha agreement was signed between the EEC and Kenya, Uganda and Tanzania. Following the accession of the UK, Denmark and Ireland in 1973, the Community started negotiations with 20 Commonwealth states in the perspective of a specific association.*

*The negotiation with the parties of the Yaounde agreement, the Arusha agreement and the 20 Commonwealth states lead to the conclusion of the Lomé agreement in 1975 with the African, Caribbean and Pacific States (ACP).*

*Relations between the European Union and the ACP states have now been fixed in the Cotonou Agreement, signed in 2000 in the Capital of Benin. Following the Lomé V Convention, the Cotonou Agreement was renegotiated for 20 years.*

*The main innovation of Cotonou is the expansion of the EU co-operation into the political sphere.*

*The agreement now covers 78 ACP countries and the financial resources for 2000 to 2007 are set to 25 Billion Euro.*

*Although the Lomé-process represents the main area of development policy, the development policy also embraces other agreements such as cooperation agreements with other countries (e.g. Latin American countries (Rio-Group), Mediterranean countries (Euro-Mediterranean Partnership), Asian countries) and the association of the overseas territories and countries.*

*With the successive enlargements of the Union, cooperation has gradually extended to other countries, such as the African, Caribbean and Pacific countries (ACP) which have a particularly close and long-standing relationship with certain Member States. The Cotonou Agreement, signed in June 2000, has strengthened this partnership, which is to a large extent based on the various Lomé Conventions, the first of which was signed in 1975.*

*In addition to these initial agreements, other countries also benefit from the Community's development policy, such as the countries of Latin America and Asia.*

*The main objective of the European Community's development policy is to eradicate poverty. This policy is implemented not only through bilateral and regional agreements but also through specific programmes in certain sectors such as health, particularly with a view to combating communicable diseases, and education. The development policy also entails cooperation with international institutions and the participation of the Community and*

*Member States in initiatives implemented at global level such as the Initiative for Highly Indebted Poor Countries.*

*Today, the Union is the main partner of developing countries. The European Community and its Member States together provide 55% of international development assistance.*

#### *Humanitarian aid*

*The European Union as a whole (the Commission and the Member States) is currently one of the largest donors of humanitarian aid in the world.*

*The humanitarian aid dimension of the European Community's external action has become very important in recent years due to the increase in the number of crises throughout the world and the Community's willingness to take on a leading role in international humanitarian efforts.*

*Therefore, in 1992, the European Commission's Humanitarian Aid Office (ECHO) was established. ECHO's mandate is to provide emergency assistance and relief (in the form of goods and services) to victims of natural or man-made disasters or conflicts outside the Union. This aid is based on the principles of non-discrimination, impartiality and humanity. It is distributed by ECHO's partners, namely non-governmental organisations, humanitarian agencies of the United Nations and other international organisations.*

#### *Competence and Legal basis in the present Treaty:*

*Since Article 177 states the Community development policy shall "be complementary to those of the Member States", development policy is neither to be considered as exclusive nor shared competence, but as a "supporting, coordinating, and complementing policy".*

#### *a) Article 177 TEC:*

*Before the entry into force of the Treaty of Maastricht, measures taken in the area of development policy - except with regard to the association of overseas territories and countries- were mainly based on the so-called flexibility clause of Article 308 TEC. With the entry into force of the Treaty on European Union, development policy obtained a specific legal basis (Articles 177 to 181 of the EC Treaty).*

*Article 177 TEC, the main legal base, fixes the aims of the Community's development policy:*

- sustainable economic and social development of the developing countries*
- their smooth and gradual integration into the world economy*
- the fight against poverty*

*To further these objectives, measures can be taken by qualified majority and the EU Parliament's co-decision (Article 179 TEC with Article 251 TEC).*

*Basically, articles 177 and 179 TEC do not apply for the conclusion of (development policy) agreements with third countries, since the Treaty contains special provisions therefore. The application of articles 177ff is hence explicitly excluded for the relations between the EU and the ACP based on the Lomé/Cotonou agreement (Article 179.3 TEC) (The conclusion of this mixed agreement occurred on the basis of 310 TEC). Furthermore, the provisions of articles*

*177 and 179 TEC do not apply for the financial cooperation between the Community and the ACPs. Article 179.3 however, does not exclude the application of Article 177 for development policy relations between the Community and the ACP when measures are not taken in the frame of the Lomé/Cotonou agreements (f.i. humanitarian and food aid).*

**b) Article 181a TEC:**

*Introduced by the Treaty of Nice, Article 181a TEC provides a legal base for the economic, financial and technical cooperation of the Community with third countries. In the past, this cooperation mainly occurred on the basis of Article 308 TEC (flexibility clause). However, Article 181a does in principle not apply to development policies since they are being ruled by the more specific 177-181 TEC.*

**c) International agreements in the sphere of development policies:**

*As mentioned above, the Community can conclude agreements with third countries related to development aid. As long as these agreements only cover the area of development policies, Article 300 represents the legal basis, providing for the adoption of an agreement by qualified majority (Article 300.3, 179.3, 177 TEC)*

*However, unanimity is required, if such a (development policy) agreement*

- also covers an area for which unanimity is required for the adoption of internal rules,*
- represents an "association" agreement according to article 310 TEC.*

*Article 310 provides the legal basis for the conclusion of "association agreements" involving reciprocal rights and obligations, common action and special procedures. These agreements are in principle concluded for a longer term and are supposed to lead to a more intensive and far-reaching cooperation than those concluded according to the articles 133 or 300 TEC.*

*Accordingly, they are typically concluded with*

- other European countries, in preparation of their accession,*
- non-European countries, to build up long term trade and development cooperations.*

*Note: The "mixed" Lomé/Cotounou Agreement has been concluded on the basis of Article 310.*

*The procedures are different according to the legal basis:*

***Decisions in the Council:***

- qualified majority general rule (Article 300.1 TEC),*
- unanimity if agreement covers a field for which unanimity is required for the adoption of internal rules,*
- unanimity if the application of an agreement is suspended or if a position of the Community in a body is decided, when that body can adopt legally binding decisions (Article 300.3 2nd paragraph),*
- unanimity for the conclusion of association agreements according to Article 310 with Article 300.2 1st paragraph:*

***Involvement of the EU Parliament:***

- Consultation of the EU parliament is the general rule (Article 300.3 1st subparagraph TEC)*

- Assent of the EU parliament is required
  - for association agreements concluded on the basis of article 310 TEC,
  - for agreements that establish a specific institutional framework by organising cooperation procedures (Article 300.3 2nd subparagraph TEC),
  - for agreement that have important budgetary implications (Article 300.3 2nd subparagraph TEC),
- No formal involvement of the EU Parliament is required for the conclusion of pure trade agreements according to Article 133.

**Article 133 TEC.**

*Simple trade agreements are concluded on the basis of article 133 TEC. As soon as they cover elements of development policies, they are to be concluded either according to Article 300 or to Article 310 TEC.*

*Article 308 TEC: The importance of the so-called flexibility clause has been decreasing with the introduction of the Articles 177-181 TEC. However it is still being used for instance for the urgent financial aid. However, the draft Constitution now provides for article III-222 (see below) in cases of urgent financial aid.*

**European Development Fund**

*The European Development Fund (EDF) is the main instrument for Community aid for development cooperation in the ACP countries and the Overseas Countries and Territories (OCT).*

*The EDF does not come under the general Community budget. It is funded by the Member States, covered by its own financial rules and managed by a specific committee. The Member States set the EDF budget in the Council via agreements that are subsequently ratified by the national parliament of each Member State.*

*At present it is being discussed if the European Development Fund should be integral part of the EU budgt. This would provide a unanimous decision of the Council according to Article 269.2 TEC.*

**3. Development policy according to the new Draft Constitution**

**Competence and Legal basis in the present Treaty:**

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### III-117

Development

Shared competence

Objective: to limit poverty

Respect of UN commitments

Legislative procedure

Agreements with 3<sup>rd</sup> countries

European Investment Bank

Coordination of Union and Member States' policies in international organisations

#### CHAPTER IV

#### COOPERATION WITH THIRD COUNTRIES AND HUMANITARIAN AID

#### SECTION 1

#### DEVELOPMENT COOPERATION

#### Article III-218

1. Union policy in the sphere of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action as set out in [Article 1] of this Title. The Union's development cooperation policy and that of the Member States complement and reinforce each other.

Union development cooperation policy shall have as its primary objective the reduction and, in the long term, the eradication of poverty. The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries.

2. The Union and the Member States shall comply with the commitments and take account of the objectives they have approved in the context of the United Nations and other competent international organisations.

#### Article III-219

1. European laws or framework laws shall establish the measures necessary for the implementation of development cooperation policy, which may relate to multiannual cooperation programmes with developing countries or programmes with a thematic approach.

2. The Union may conclude with third countries and competent international organisations any agreement helping to achieve the objectives referred to in Article III-193. Such agreements shall be negotiated and concluded in accordance with Article III-227.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

3. The European Investment Bank shall contribute, under the terms laid down in its Statute, to the implementation of the measures referred to in paragraph 1.

#### Article III-220

1. The Union and the Member States shall coordinate their policies on development cooperation and shall consult each other on their aid programmes, including in international organisations and during international conferences, in order to promote the complementarity and efficiency of their action. They may undertake joint

Commission promotes coordination

Cooperation with 3<sup>rd</sup> countries

Means:  
- financial, technical and economic cooperation  
- financial aid

Legislative procedure

Agreements

Unanimity in Council for association and Europe agreements

Urgent financial aid - by decision in Council

Humanitarian aid

Help and protection for people in 3<sup>rd</sup> countries and for victims of disasters

action. Member States shall contribute if necessary to the implementation of Union aid programmes.

2. The Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations.

## SECTION 2

### ECONOMIC, FINANCIAL AND TECHNICAL COOPERATION

#### WITH THIRD COUNTRIES

##### Article III-221

1. Without prejudice to the other provisions of this Treaty, and in particular those of Articles III-218 to III-220 the Union shall carry out economic, financial and technical cooperation measures, including financial aid in particular, with third countries other than developing countries. Such measures shall be consistent with the development policy of the Union and shall be carried out within the framework of the principles and objectives of its external action. The Union's measures and those of the Member States shall complement and reinforce each other.

2. European laws or framework laws shall establish the measures necessary for the implementation of paragraph 1.

3. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded pursuant to Article III-227. The Council of Ministers shall act unanimously for the association agreements referred to in Article III-226(2) and for the agreements to be concluded with the States which are candidates for accession to the Union.

The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

##### Article III-222

When the situation in a third country requires urgent financial aid from the Union, the Council of Ministers shall adopt the necessary European decision, on a proposal from the Commission.

## SECTION 3

### HUMANITARIAN AID

##### Article III-223

1. The Union's operations in the field of humanitarian aid shall be conducted within the framework of the principles and objectives of the external action of the Union. Such operations shall be intended to provide ad hoc assistance, relief and protection for people in third countries and victims of man-made and natural disasters, in order to meet the humanitarian needs resulting from these different situations. The Union's actions and those of the Member States shall complement and reinforce each

	other.
Respect of impartiality and non-discrimination	2. Humanitarian aid operations shall be conducted in compliance with the principles of international humanitarian law, in particular the principles of <u>impartiality</u> and <u>non-discrimination</u> .
Legislative procedure	3. European <u>laws</u> or <u>framework laws</u> shall establish the necessary measures defining the framework within which the Union's humanitarian aid operations shall be <u>implemented</u> .
International agreements	4. The <u>Union</u> may conclude with <u>third countries</u> and competent <u>international organisations</u> any <u>agreement</u> helping to achieve the objectives referred to in Article III-193. Such agreements shall be negotiated and concluded pursuant to Article III-227.  The first subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.
European Voluntary Humanitarian Aid Corps, legislative procedure	5. In order to establish a framework for joint contributions from young Europeans to the humanitarian actions of the Union, a <u>European Voluntary Humanitarian Aid Corps</u> shall be set up. The European Parliament and the Council, in accordance with the <u>legislative procedure</u> , shall adopt a European <u>law</u> determining the rules and operation of the Corps.
Coordination of Union and Member States actions	6. The Commission may take any useful initiative to promote <u>coordination</u> between actions of the Union and those of the Member States, in order to enhance the efficiency and complementarity of Union and national humanitarian aid measures.
United Nations	7. The Union shall ensure that its <u>humanitarian operations</u> are <u>coordinated</u> and consistent with those of international organisations and bodies, in particular those forming part of the <u>United Nations</u> system.
<u>Boycott actions</u>	
	<b>CHAPTER V</b> <b>RESTRICTIVE MEASURES</b> Article III-224
Interruption of relations with other countries	1. Where a decision on a Union position or action adopted in accordance with the provisions on the common foreign and security policy in Chapter II of this Title provides for the <u>interruption or reduction</u> , in part or completely, <u>of economic and financial relations</u> with one or more third countries, the <u>Council</u> of Ministers, acting by a <u>qualified majority</u> on a <u>joint proposal from</u> the Union <u>Minister for Foreign Affairs</u> and the <u>Commission</u> , shall take the necessary measures. It shall <u>inform</u> the European <u>Parliament</u> thereof.
Qualified majority after joint proposal from Commission and Foreign Minister	2. In the areas referred to in paragraph 1, the <u>Council</u> of Ministers may adopt <u>restrictive measures</u> under the same procedure against natural or legal persons and non-State groups or bodies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*EP President*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## 2) EUROPEAN COUNCIL

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

### Article I-20

#### **European Council**

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

*Meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus,  
not unanimity as at  
present*

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*

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,

*Represents the EU  
in the wider world on  
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

*A Legislative and General Affairs Council will be set up 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

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

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

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

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

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

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

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

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

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

## Article I-24

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

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

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

### ***Super 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) EU COMMISSION

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

### Article I-25

#### **EU-Commission**

##### **Role:**

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

##### **Monopoly of initiative:**

*No one else can propose new laws*

##### **Composition:**

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

##### *Rotate on equal basis*

- max one term between having a member
- represent demographic and geographical range of the Union

##### *Non-voting*

*Commissioners from the other states*

*Effect from 2009*

##### **Independence**

*May not take instructions from any one*

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

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

### **Censure**

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

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

## **COMMISSION PRESIDENT**

*The political power of the President of the Commission will be backed through his election 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. FOREIGN AFFAIRS MINISTER

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

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

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

### Article I-27

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

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

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

***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.]