

**EU draft Constitution- Provisions governing education,  
vocational training, youth and sports**

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# I) GENERAL PRINCIPLES OF EU LAW

## 1. FUNDAMENTAL PRINCIPLES

### Article I-9

*Principles governing EU Competence:*

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

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

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

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

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

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

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

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

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

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

## 2. PRIMACY OF EU LAW

### Article I-10

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

*Require fulfilment of EU obligations by Member States*

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

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

### 3. JURISDICTION ON QUESTIONS OF COMPETENCE

*The EU Court has jurisdiction on questions of competence*

#### Article III- 270

EU-Court reviews:

- *legality of legal acts*

- *lack of competence and infringement of:*

- *procedural requirements*

- *the Constitution*

- *rule of law*

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

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

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

#### Article III-281

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

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

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

#### Article III-284

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

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

## **II) EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT**

### ***Introduction:***

*Education, vocational training, youth and sport are mentioned as areas of supporting, coordinating and complementary action in Article I-16 of the new draft Constitution.*

*The area of sport is a new area, which has not been explicitly mentioned in the present treaties.*

*Supporting actions*

*Areas of supportive actions*

*No harmonisation under supportive actions*

### **Article I-16: Areas of supporting, coordinating or complementary action**

1. The Union may take supporting, coordinating or complementary action.
2. The areas for supporting, coordinating or complementary action shall be, at European level:
  - industry
  - protection and improvement of human health
  - education, vocational training, youth and sport**
  - culture
  - civil protection.
3. Legally binding acts adopted by the Union on the basis of the provisions specific to these areas in Part III may not entail harmonisation of Member States' laws or regulations.

## **1. EDUCATION, VOCATIONAL TRAINING AND YOUTH**

### ***1.1 Education, vocational training and youth according to the present provisions***

#### ***Education and youth:***

*According to the present Article 149 TEC, the Community has the task to "contribute to the development of quality education by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action".*

*According to article 149.2, the Community shall:*

- develop a European dimension of education,*
- encourage mobility of students and teachers,*
- encourage academic recognition of diplomas and periods of study,*
- promote cooperation between educational establishments,*

- promote information and experience exchange on the education systems of the MS,
- promote youth exchanges,  
encourage distant education.

*Article 149 hence represents the legal basis for actions in the area of education and youth. It thus constitutes the legal basis for cooperation at European level, allowing various Community actions which directly or indirectly concern young people. This has been possible in the fields of education, youth exchanges and mobility, employment and training, and, more recently, access to information technology.*

### ***Vocational training:***

*The Community's competence in the field of vocational training is laid down in Article 150 TEC. The more specific article 150 hence applies if the area clearly relates to vocational training. Article 150 gives more competence to the Community since it allows it - in opposition to article 149 - to implement an "own" vocational training policy which shall support and supplement the respective actions of the Member states.*

### ***Competence of the Community:***

*As the Community must also respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity, the area of education and vocational training can be considered as coordinating, supporting and complementing competences.*

*However, the "European dimension" of education (Article 149.2a TEC), which concerns ALL areas of education (including vocational training), de facto opens the door to the broadening of the Community's competence since it is conceived as the developing of educational standards to meet the (European) educational requirements of the 21st century.*

*Furthermore, even if the Community's competence is limited to coordinating, supporting and supplementing activities, the EU Court made clear, that the area of education is subject to the field of application of the TEC and hence also to Article's 12 prohibition of discrimination. The Community law hence limits the educational competence of the Member states through the enactment of legislation according to article 12.2 TEC. Furthermore, with the entry into force of the Treaty of Maastricht, the Community's competence has been broadened to the entire reach of education (before Maastricht it was limited to the area of vocational training). This has led to an important "negative" integration drive in this area since the obligation to recognise different training and education graduations, to admit citizens from other Member States to the education and training institutions etc, entailed tangible harmonisation efforts.*

### ***Further competence:***

*Furthermore, the Community has the competence to take supporting vocational training measures in different areas, e.g. agriculture (Art. 35.a TEC), research (Art. 164d TEC), social policy (137.1 h TEC).*

### ***Decision-making:***

*According to the present articles 149, 150, 251 the Council can adopt legislative acts (directives or regulations) by qualified majority with the European Parliament's co-decision in the areas of education, youth and vocational training. In the sphere of education and youth, it can furthermore adopt non-binding recommendations by qualified majority on a proposal from the Commission.*

### ***Actions taken by the Community:***

*According to the above mentioned competence, the EU provides for:*

*multinational education, training and youth partnerships;  
exchange schemes and opportunities to learn abroad;  
innovative teaching and learning projects;  
networks of academic and professional expertise;  
a framework to address across-the-board issues, such as new technologies in education and the international recognition of qualifications;  
a platform for dialogue and consultation with a view to comparisons, benchmarking and policy-making.*

*In the frame of its competence, the Community has launched many initiatives, for instance:*

#### ***Education***

*Socrates*

*Tempus*

#### ***Vocational training***

*Leonardo da Vinci*

#### ***Youth***

*Youth for Europe*

*European Voluntary Service*

*Youth programme 2000-2006*

#### ***Exchange of information and experiences on issues common to the education systems of the Member States***

*Eurydice information network (e.g. on lifelong learning, on evaluating the quality of school and university education or on cooperation with non-Community countries)*

#### ***Recognition of diplomas***

*Professional recognition in the regulated professions is covered by a set of directives*

#### ***Encouragement of learning in the field of new technologies***

*The Commission launched the so-called eLearning in the frame of the eEurope action plan*

## ***1.2 Education, vocational training and youth according to the draft Constitution***

*The provisions related to education and vocational training remain largely unchanged. Measures can be taken through European laws or framework laws according to the ordinary legislative procedure (Article I-300) with the Council acting by qualified majority and the European Parliament co-deciding. The Council can adopt non-binding recommendations by qualified majority on a proposal from the Commission in the sphere of education, youth and - which is new - sports.*

*However, some provisions in the Part II (Charter of the Fundamental Rights) refer to education (II-14, the Right to Education and II-32, no admitted young people's work shall interfere with their education).*

*Hence, the Charter confirms "classical" fundamental rights in areas where it has no, or only limited, competence. The real impact of these provisions is difficult to evaluate, since the Constitution basically provides for fundamental rights.*

*It will thus be up to the jurisdiction of the EU Court of Justice to determine the real impact of the Charter's provisions on education.*

### SECTION 4 EDUCATION, VOCATIONAL TRAINING, YOUTH AND SPORT

#### **Article III-182**

1. The Union shall contribute to the development of **quality education** by encouraging cooperation between Member States and, if necessary, by supporting and supplementing their action. It shall fully respect the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity.

The Union shall contribute to the promotion of European sporting issues, given the social and educational function of **sport**.

2. Union action shall be aimed at:

- (a) developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States;
- (b) encouraging mobility of students and teachers, inter alia by encouraging the academic recognition of diplomas and periods of study;
- (c) promoting cooperation between educational establishments;
- (d) developing exchanges of information and experience on issues common to the

#### **Education**

*Objective: to develop  
quality education  
Full respect for national  
competence*

#### **Sports**

*European dimension of  
education*

*Mobility*

*Cooperation*

*Exchange*

*Youth exchange and participation in democratic life*

*Distance education*

***European dimension of sports - promoting fairness and integrity***

*Cooperation with 3<sup>rd</sup> countries and international organisations*

*Means:*

*- Incentive measures through legislative procedure without harmonisation*

*- Council Recommendations*

### **Vocational training**

*Full respect of national responsibilities*

*Aims:*

*- industrial change*

*- vocational training*

*- mobility*

*- cooperation*

*- exchanges*

*- international cooperation*

*Objectives achieved through legislative procedure without*

education systems of the Member States;

(e) encouraging the development of youth exchanges and of exchanges of socio-educational instructors, and encouraging the participation of young people in democratic life in Europe.

(f) encouraging the development of distance education;

(g) developing the European dimension in sport, by promoting fairness in competitions and cooperation between sporting bodies and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the field of education, in particular the Council of Europe.

4. In order to contribute to the achievement of the objectives referred to in this Article,

(a) European laws or framework laws shall establish incentive actions, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

(b) the Council of Ministers, acting on a proposal from the Commission, shall adopt recommendations.

### **Article III-183**

1. The Union shall implement a vocational training policy which shall support and supplement the action of the Member States, while fully respecting the responsibility of the Member States for the content and organisation of vocational training.

2. Union action shall aim to:

(a) facilitate adaptation to industrial change, in particular through vocational training and retraining;

(b) improve initial and continuing vocational training in order to facilitate vocational integration and reintegration into the labour market;

(c) facilitate access to vocational training and encourage mobility of instructors and trainees and particularly young people;

(d) stimulate cooperation on training between educational or training establishments and firms;

(e) develop exchanges of information and experience on issues common to the training systems of the Member States.

3. The Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of vocational training.

4. European laws or framework laws shall contribute to the achievement of the objectives referred to in this Article, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of

harmonisation

the Regions and the Economic and Social Committee.

## 2) SPORTS

*The Convention has inserted the area of sports into the list of supporting, coordinating and complementary action (Article I-16.2). So far, the area of sports has not been explicitly mentioned in the treaties. The community hence only has the possibility to take measures related to sports when those also concerned other areas, such as the free movement of workers, the protection of health, or the support of education.*

*According to the new draft Constitution, the Union would be able to develop a European sports dimension. Measures could then be taken in the frame of the ordinary legislative procedure of Article III-300.*

*In accordance with article III-182, the Union shall:*

- contribute to the promotion of European sporting issues,*
- develop the European dimension in sport,*
- promote fairness in competitions and cooperation between sporting bodies,*
- protect the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.*

*Since the new draft Constitution underlines that "given the social and educational function of sport" and that "especially young sportsmen and sportswomen" should be protected, sport is to be considered as being part of the education and youth policy of the Union.*

### Education and sport

#### Sports

*European dimension of sports - promoting fairness and integrity*

*Means:*

*- Incentive measures through legislative procedure without harmonisation*

*- Council Recommendations*

### Article III-182

The Union shall contribute to the promotion of European sporting issues, given the social and educational function of sport.

2. Union action shall be aimed at:

(g) **developing the European dimension in sport**, by promoting fairness in competitions and cooperation between sporting bodies and by protecting the physical and moral integrity of sportsmen and sportswomen, especially young sportsmen and sportswomen.

4. In order to contribute to the achievement of the objectives referred to in this Article,

(a) European laws or framework laws shall establish incentive actions, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

(b) the Council of Ministers, acting on a proposal from the Commission, shall adopt recommendations.

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

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

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

*The European Parliament shall, 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. All laws are initially proposed by the Commission.*

*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

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.

*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*

*EP President*

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.

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

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

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

**Absolute Majority of Members= 314votes**

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

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24

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

*After having joined the EU, Romania will have 33, and Bulgaria 17 seats in EP.*

*From the date of Romania's and Bulgaria's accession and until 2009, the European Parliament will therefore be composed of up to 782 MEPs. From 2009 onwards, the number of MEPs will be limited to 736 (see below).*

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

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

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

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

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

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



## 2) EUROPEAN COUNCIL

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

### Article I-20

#### *European Council*

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

*The European Council  
meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus*

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

## THE EUROPEAN COUNCIL CHAIR

### Article I-21

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

*Tasks of the President*

*Represents the EU  
in the wider world on*

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

*CFSP issues*

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

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

*President cannot have a national mandate*

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

### 3) COUNCIL OF MINISTERS

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

#### Article I-22

**Council of Ministers:**

- legislates with EP
- carries out policy making
- coordinates

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

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

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

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

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

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

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

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

*Qualified majority: 1. 232 out of 321, 2. majority of Member States, 3. 62% of the population  
Weighting of votes of Romania: 14, of Bulgaria: 10*

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

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

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

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

## Article I-24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 4) EUROPEAN COMMISSION

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

### Article I-25

#### **EU-Commission**

##### **Role:**

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

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

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

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

*Non-voting Commissioners from the other states*

*Effect from 2009*

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

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

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

### **Censure**

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

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

## **COMMISSION PRESIDENT**

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

### **Commission President**

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

### **Commission members**

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

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

### **Article I-26**

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

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

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

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

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

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

## 5) EU FOREIGN MINISTER

*The Minister for Foreign Affairs will be appointed by the European Council by an extended qualified majority with the agreement of the President of the Commission. He will conduct the Union's common foreign and security policy, chair the Foreign Affairs Council and will also serve as Vice-President of the Commission. Although he is a member of the Commission, it is still being discussed whether his nomination will be subject to the EP's approval of the Commission as a whole, and eventually to a vote of censure.*

*In this 'two-hatted' role (Commission-Council), the Minister will be responsible for carrying out the Union's external policy as a whole. The Minister will have the power of initiative (in whose 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 Minister's representation of the Union will be limited through the competence of the President of the Union who will represent the Union at "his or her level".*

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