

# *EU draft Constitution- Provisions governing social and employment policies*

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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) SOCIAL AND EMPLOYMENT POLICIES**

*The promotion of employment is set out in articles 136 and 140 TEC and can be considered as part of social policy.*

### **1. Social policy**

#### **1.1 History of EU's social policy**

*The Treaty of Rome from 1957 contained few articles on social policy. The provisions in this field essentially aimed at ensuring the free movement of workers (Articles 39 to 42 TEC, formerly Articles 48 to 51) and the freedom of establishment (Articles 43 to 48 TEC, formerly 52-58) in the context of the common market.*

*The Single European Act from 1986 gave new impetus to social policy, especially in the areas of health and safety at work, dialogue with the social partners and economic and social cohesion.*

*The Treaty of Maastricht from 1993 strengthened the legal basis of social policy with the adoption of the Protocol on Social Policy annexed to the Treaty, signed by all the twelve countries which were Member States at the time, but not covering the UK.*

*These provisions were not incorporated into the Treaty with effect for all because of UKs resistance. The Protocol authorised the Member States "to have recourse to the institutions, procedures and mechanisms of the Treaty for the purposes of taking among themselves and applying as far as they are concerned the acts and decisions required for giving effect to the abovementioned Agreement".*

*In 1999 British Labour won the elections and Blair decided to join the social protocol.*

*Thus there was no more obstacle to incorporate the Protocol into the Treaty which was done through the Treaty of Amsterdam in 1999. By doing so, it confirmed the recognition, already introduced by the Single Act, of the key role of the social partners.*

*Furthermore, it introduced the new Article 13 which refers to the adoption of provisions on non-discrimination, and which authorises the Council, acting unanimously, to take appropriate action to combat any discrimination based on sex, race, ethnic origin, religion or belief, disability, age or sexual orientation.*

*The Amsterdam Treaty has also added equality between men and women to the list of Community objectives (Article 2 TEC), explicitly providing that in all its activities the Community must aim to eliminate inequalities, and to promote equality, between men and women (Article 3(2) TEC).*

*The new wording of Article 141 and the introduction of its paragraph 3 meant a further explicit support to equal treatment of men and women and to equal opportunities in the frame of work relations and access to jobs, whereas the former Article 119 was confined to issues of equal pay for the two sexes for the same work.*

#### **1.2 Social policy at present**

*The Treaty of Nice, which entered into force in 2003, enlarged the scope of Article 137, adding the combating of social exclusion and the modernisation of social protection systems to the fields in which the Community can act to pursue the objectives of social policy.*

### **1.2.1 Objectives**

*The objectives of the social policy, set out in Article 136, follow the example of the European Social Charter of the Council of Europe from 1961 and of the Community Charter of the Fundamental Social Rights of Workers from 1989.*

*They are:*

- the promotion of employment (see below employment policy),*
- the improvement of living and working conditions,*
- proper social protection,*
- dialogue between management and labour,*
- the development of human resources with a view to lasting high employment and*
- the combating of exclusion (formerly Article 1 of the Agreement).*

### **1.2.2 Fields of activities**

*The fields in which the Community can act to pursue the objectives of social policy are set out in Article 137 TEC:*

- workers' health and safety;*
- working conditions;*
- social security and social protection of workers;*
- protection of workers when their contract is terminated;*
- representation and collective defence of the interests of workers;*
- conditions of employment for third-country nationals;*
- the integration of persons excluded from the labour market;*
- the information and consultation of workers;*
- equality between men and women with regard to labour market opportunities and treatment at work.*
- combating of social exclusions;*
- modernisation of social protection systems.*

### **1.2.3 Article 141- Gender equality**

*Amended by the Amsterdam Treaty, Article 141 (formerly 119) is to be considered as one of the most important social provision. Although the Member states are the addressees of this article, it is directly applicable - legally binding- to natural and legal persons in work relationships. It allows the Council, after consulting the Economic and Social Committee and under the codecision procedure, to take measures by qualified majority to ensure that the principle of equal treatment is applied.*

*However, Member States may maintain or adopt measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers. The Court of Justice had to deal with these questions in the famous Kalanke and Marhall cases.*

### ***1.2.4 The social dialogue:***

*The Treaty of Amsterdam from 1999 incorporated the Protocol on Social Policy. By doing so, it confirmed the recognition, already introduced by the Single Act, of the key role of the social partners. This recognition takes effect at two levels:*

*at national level, since Member States may entrust management and labour with the implementation of the aforementioned directives (Article 137(4) of the EC Treaty);*

*at Community level, since the Commission has the task to promote the social dialogue (Article 138(1)) and since the social partners may negotiate and conclude agreements (Article 139 (1)).*

### ***1.2.5 Limits of competence***

*Article 137 sets out the limits of the competence of the Community in the area of social policy. Some areas can be decided by qualified majority, others by unanimity, and finally some are totally excluded from the Community's competence. When competent, the Community can either take measures or enact directives.*

*Hence and according to articles 137 and 141 TEC,*

- measures designed to encourage cooperation between Member states shall exclude any harmonisation of the national laws (137.2a);*
- directives are only setting up minimum standards (137.2b);*
- directives shall not hinder the development and the creation of SMEs (137.2b)*
- measures or directives shall not affect the right of Member States to define and shape their own social security systems (137.4);*
- measures or directives shall not hinder the Member States to maintain more stringent protective measures (137.4);*
- Member States may maintain or adopt specific advantages for the under-represented sex in work relations (141.4).*

*Hence, the Community competence in social policy is either to be considered as a*

- framework competence, when measures are setting up minimum standards, or*
- supporting and complementary competence, when measures designed to encourage cooperation between Member states shall exclude any harmonisation of the national laws.*

### ***1.2.6 Excluded areas***

*As for pay, the right of association, the right to strike and the right to impose lockouts, they do not fall under Community competence (137.5). However, the EU Court has for instance already decided, that strikes shall not disturb the principle of free movements in the Community. This shows that the Community has an influence on areas which are excluded from its competence.*

*N.B. The topics are now dealt with in part II of the Draft Constitution.*

### ***1.2.7. Decision making in the area of social policy:***

*In principle, the Council may adopt directives or take measures by qualified majority in codecision with Parliament and after consulting the Economic and Social Committee and the Committee of the Regions.*

*However, the Council has to act unanimously in the fields of*  
*- social security and social protection,*  
*- protection of workers when their contract is terminated,*  
*- representation and collective defence of the interests of the workers,*  
*- and conditions of employment of third-country citizens.*

**Passerelle-clause introduced by the Treaty of Nice:**

*Except for the field of social protection and social security, the present TEC provides for the possibility to submit areas decided by unanimity to the co-decision procedure. This would however require a unanimous decision by the Council.*

### ***1.2.8 Social Policy according to the new Draft Constitution***

*The provisions on the social policy remain practically unchanged. Attempts to limit the areas for which unanimity is still required, failed. In its deliberations, the Convention underlined that the passerelle clause (see above) introduced by the Treaty of Nice, can be used for this purpose and permit qualified majority at a later date.*

Social policy

*Objectives*

*Raising employment level and living and working conditions*

*Union's actions take account of diverse national practices*

*- contractual relations  
- competitiveness*

*Social harmonisation*

*EU supports and complements*

DRAFT CONSTITUTION

PART III

SECTION 2

SOCIAL POLICY

Article III-103

The Union and the Member States, having in mind fundamental social rights such as those set out in the European Social Charter signed at Turin on 18 October 1961 and in the 1989 Community Charter of the Fundamental Social Rights of Workers, shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

To this end the Union and the Member States shall act taking account of the diverse forms of national practices, in particular in the field of contractual relations, and the need to maintain the competitiveness of the Union economy.

They believe that such a development will ensue not only from the functioning of the internal market, which will favour the harmonisation of social systems, but also from the procedures provided for in the Constitution and from the approximation of provisions laid down by law, regulation or administrative action.

Article III-104

1. With a view to achieving the objectives of Article III-103, the Union shall support and complement the activities of the Member States in the following fields:

*legislative procedure,  
(QMV, EP veto)*

*legislative procedure,  
(QMV, EP veto)*

**Unanimity in Council,  
consult EP**

**Unanimity in Council,  
consult EP**  
*legislative procedure,  
(QMV, EP veto)*

**Unanimity in Council,  
consult EP**

**Unanimity in Council,  
consult EP**

*legislative procedure,  
(QMV, EP veto)*

*legislative procedure,  
(QMV, EP veto)*

*legislative procedure  
(QMV, EP veto)*

*legislative procedure  
(QMV, EP veto)*

*Measures to encourage  
cooperation through  
legislative procedure*

*Excluding harmonisation*

*- only minimum rules in  
point (a)-(i), see above*

*Social security by unanimity  
in Council, consult EP  
(Areas under unanimity)*

**Can be changed to  
qualified majority if  
Council decides by  
unanimity**

- (a) improvement in particular of the working environment to protect workers' health and safety;
- (b) working conditions;
- (c) social security and social protection of workers;
- (d) protection of workers where their employment contract is terminated;
- (e) the information and consultation of workers;
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 6;
- (g) conditions of employment for third-country nationals legally residing in Union territory;
- (h) the integration of persons excluded from the labour market, without prejudice to Article III-183;
- (i) equality between men and women with regard to labour market opportunities and treatment at work;
- (j) the combating of social exclusion;
- (k) the modernisation of social protection systems without prejudice to point (c).

2. To this end:

(a) European laws or framework laws may establish measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;

(b) in the fields referred to in paragraph 1(a) to (i), European framework laws may establish minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such European framework laws shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.

In all cases, such European laws or framework laws shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

3. By way of derogation from paragraph 2, in the fields referred to in paragraph 1(c), (d), (f), and (g) European laws or framework laws shall be adopted by the Council of Ministers acting unanimously after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

The Council of Ministers may, on a proposal from the Commission, adopt a European decision making the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g). It shall act unanimously after consulting the European Parliament.



*Management and labour can implement framework laws*

*But, the Member State must guarantee the same result*

*Union acts:*

*- may not affect fundamental principles of social systems*

*- may not prevent higher standards when compatible with Constitution*

*Pay, right of association, strike and lockout dealt with in part II and Art. III-107.g*

*Consultation of management and labour*

*- before submitting proposals*

*- on content of proposal when submitting*

*9 months to get agreements mentioned below*

*Management and labour can make Union level agreements*

*Implement agreements either through labour-management practice or regulations and decisions by a qualified majority in Council*

4. A Member State may entrust management and labour, at their joint request, with the implementation of European framework laws adopted pursuant to paragraph 2.

In this case, it shall ensure that, no later than the date on which a European framework law must be transposed, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that framework law.

5. The European laws and framework laws adopted pursuant to this Article:

(a) shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof;

(b) shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Constitution.

6. This Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

#### Article III-105

1. The Commission shall have the task of promoting the consultation of management and labour at Union level and shall adopt any relevant measure to facilitate their dialogue by ensuring balanced support for the parties.

2. To this end, before submitting proposals in the social policy field, the Commission shall consult management and labour on the possible direction of Union action.

3. If, after such consultation, the Commission considers Union action advisable, it shall consult management and labour on the content of the envisaged proposal. Management and labour shall forward to the Commission an opinion or, where appropriate, a recommendation.

4. On the occasion of such consultation, management and labour may inform the Commission of their wish to initiate the process provided for in Article III-106. The duration of the procedure shall not exceed nine months, unless the management and labour concerned and the Commission decide jointly to extend it.

#### Article III-106

1. Should management and labour so desire, the dialogue between them at Union level may lead to contractual relations, including agreements.

2. Agreements concluded at Union level shall be implemented either in accordance with the procedures and practices specific to management and labour and the Member States or, in matters covered by Article III-104, at the joint request of the signatory parties, by a European regulation or decision adopted by the Council of Ministers on a proposal from the Commission. The European Parliament shall be informed.

*Unanimity in some cases*

Where the agreement in question contains one or more provisions relating to one of the areas referred to in ex Article III-104, the Council of Ministers shall act unanimously.

*Commission shall encourage cooperation and coordination on:*

Article III-107

With a view to achieving the objectives of Article III-103 and without prejudice to the other provisions of the Constitution, the Commission shall encourage cooperation between the Member States and facilitate the coordination of their action in all social policy fields under [this Section], particularly in matters relating to:

- *employment*
- *labour law*
- *working conditions*
  
- *training*
  
- *social security*
  
- *accidents and diseases*
  
- *hygiene*
  
- *right of association and collective bargaining*

- (a) employment;
- (b) labour law and working conditions;
- (c) basic and advanced vocational training;
- (d) social security;
- (e) prevention of occupational accidents and diseases;
- (f) occupational hygiene;
- (g) the right of association and collective bargaining between employers and workers.

*Achieved through:*

- *studies*
- *opinions*
- *consultation*
- *guidelines*
- *best practice*
- *monitoring*
- *evaluation*

To this end, the Commission shall act in close contact with Member States by making studies, delivering opinions and arranging consultations both on problems arising at national level and on those of concern to international organisations, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

Before delivering the opinions provided for in this Article, the Commission shall consult the Economic and Social Committee.

*Equality at work*

Article III-108

*Equal pay for work of equal value*

1. Each Member State shall ensure that the principle of equal pay for male and female workers for equal work or work of equal value is applied.

*Pay defined broadly*

2. For the purpose of this Article, "pay" means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives directly or indirectly, in respect of his employment, from his employer.

Equal pay without discrimination based on sex means:

*Uniform calculation methods required*

- (a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;
- (b) that pay for work at time rates shall be the same for the same job.

*Law by legislative procedure, consult EcoSoc*

3. European laws or framework laws shall establish measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation, including the principle of equal pay

*Specific advantages for underrepresented sex allowed*

for equal work or work of equal value. It shall be adopted after consulting the Economic and Social Committee.

4. With a view to ensuring full equality in practice between men and women in working life, the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

Article III-109

*Paid holiday*

Member States shall endeavour to maintain the existing equivalence between paid holiday schemes.

Article III-110

*Annual Commission report on social situation*

The Commission shall draw up a report each year on progress in achieving the objectives of Article III-103, including the demographic situation in the Union. It shall forward the report to the European Parliament, the Council and the Economic and Social Committee.

Article III-111

*Social Protection Committee  
Council decide by simple majority, consult EP*

The Council of Ministers shall, by a simple majority, adopt a European decision establishing a Social Protection Committee with advisory status to promote cooperation on social protection policies between Member States and with the Commission. The Council of Ministers shall act after consulting the European Parliament.

*The Committee's tasks:*

The tasks of the Committee shall be:

*- to monitor social situation*

(a) to monitor the social situation and the development of social protection policies in the Member States and the Union;

*- to promote good practice*

(b) to promote exchanges of information, experience and good practice between Member States and with the Commission;

*- to make reports, opinions and undertake other work*

(c) without prejudice to Article III-247, to prepare reports, formulate opinions or undertake other work within its fields of competence, at the request of either the Council of Ministers or the Commission or on its own initiative.

*Consists of two members from each Member State and two from the Commission*

In fulfilling its mandate, the Committee shall establish appropriate contacts with management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

Article III-112

*Commission report to EP on social development  
EP may ask for more information*

The Commission shall include a separate chapter on social developments within the Union in its annual report to the European Parliament.

The European Parliament may invite the Commission to draw up reports on any particular problems concerning social conditions.

Subsection 1:

The European Social Fund

Article III-113

*The Social Fund is to promote:*  
*- easy employment of workers*  
*- mobility of workers*  
*- adaptation to industrial changes*

*Commission administer the Fund assisted by a Committee of Member States, trade unions and employers*

*Implementation through laws*

In order to improve employment opportunities for workers in the internal market and to contribute thereby to raising the standard of living, a European Social Fund is hereby established in accordance with this [Section]; it shall aim to render the employment of workers easier and to increase their geographical and occupational mobility within the Union, and to facilitate their adaptation to industrial changes and to changes in production systems, in particular through vocational training and retraining.

Article III-114

The Commission shall administer the Fund.

It shall be assisted in this task by a Committee presided over by a Member of the Commission and composed of representatives of Member States, trade unions and employers' organisations.

Article III-115

Implementing measures relating to the European Social Fund shall be enacted in European laws. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

**The Charter of the Fundamental Rights:**

***An important impact on the social rights in the future Union could be entailed by the social rights of the Charter of Fundamental Rights which has been inserted into the new Draft Constitution.***

***Hence, the Charter does not only confirm "classical" fundamental rights, but contains a number of rights and values having a more symbolic, ethical and political function. Those are for instance bio-ethical principles (II-3.2), services of general interest (II-36) and, last but not least, the social provisions (II-27ff.).***

***The real impact of the Charter is difficult to evaluate, since the Constitution also provides for rights in areas in which the Union has no competence. The Charter thus for instance guarantees the unconditional right to strike whereas Article III-104.6 and the present Article 137.6 TEC clearly deny any Community's/Union's competence in this area (N.B. The right to strike is usually subject to national provisions according to the European Convention on Human Rights (Art.10), the European Social Charter (Art. 6), and the Community Charter of the Fundamental Social Rights (Paragraph 13)).***

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

*Solidarity Title of the Charter*

DRAFT CONSTITUTION

PART II

TITLE IV: SOLIDARITY

Article II-27:

<i>Workers' right of information and consultation</i>	<p style="text-align: center;">Workers' right to <u>information</u> and <u>consultation</u> within the undertaking</p> <p>Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation <u>in good time</u> in the cases and under the conditions provided for by Union law and national laws and practices.</p>
<i>Collective bargaining Right to strike</i>	<p style="text-align: center;">Article II-28: Right of <u>collective bargaining</u> and <u>action</u></p> <p>Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude <u>collective agreements</u> at the appropriate levels and, in cases of conflicts of interest, to <u>take collective action</u> to <u>defend their interests</u>, including <u>strike</u> action.</p>
<i>Placement service</i>	<p style="text-align: center;">Article II-29: Right of <u>access to placement services</u></p> <p>Everyone has the right of access to a free placement service.</p>
<i>Protection against unjustified dismissal</i>	<p style="text-align: center;">Article II-30: Protection in the event of <u>unjustified dismissal</u></p> <p>Every worker has the right to <u>protection</u> against <u>unjustified dismissal</u>, in accordance with Union law and national laws and practices.</p>
<i>Working conditions Secure workers' health, safety and dignity</i>	<p style="text-align: center;">Article II-31: <u>Fair</u> and <u>just working conditions</u></p> <p>1. Every worker has the right to working conditions which respect his or her <u>health, safety and dignity</u>.</p>
<i>Rest periods and paid leave</i>	<p>2. Every worker has the right to limitation of maximum <u>working hours</u>, to daily and weekly rest periods and to an annual period of <u>paid leave</u>.</p>
<i>Child labour</i>	<p style="text-align: center;">Article II-32: Prohibition of <u>child labour</u> and protection of <u>young people at work</u></p>
<i>Minimum age of employment the same as the minimum school leaving age</i>	<p>The <u>employment</u> of <u>children</u> is <u>prohibited</u>. The <u>minimum age</u> of admission to employment may <u>not</u> be <u>lower</u> than the <u>minimum school-leaving age</u>, without prejudice to such rules as may be more favourable to young people and <u>except for limited derogation</u>.</p>
<i>Protection of children against exploitation</i>	<p>Young people admitted to work must have <u>working conditions appropriate</u> to their age and be <u>protected</u> against <u>economic exploitation</u> and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.</p>
<i>Protection of the family</i>	<p style="text-align: center;">Article II-33: <u>Family</u> and <u>professional life</u></p> <p>1. The family shall enjoy <u>legal, economic</u> and <u>social protection</u>.</p>
<ul style="list-style-type: none"> <li>- <i>protection from being fired when pregnant.</i></li> <li>- <i>paid maternity leave</i></li> <li>- <i>leave for both parents after birth or adoption</i></li> </ul>	<p>2. To reconcile family and professional life, everyone shall have the right to <u>protection from dismissal</u> for a reason connected with <u>maternity</u> and the right to <u>paid maternity leave</u> and to <u>parental leave</u> following the <u>birth</u> or <u>adoption of a child</u>.</p>
<i>Social systems within the</i>	<p style="text-align: center;">Article II-34: <u>Social security</u> and <u>social assistance</u></p> <p>1. The Union <u>recognises</u> and respects the <u>entitlement</u> to social security <u>benefits</u> and social</p>

*limits of Union law*

services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Union law and national laws and practices.

*Right to social security*

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Union law and national laws and practices.

*Right to social and housing assistance for those who lack sufficient resources*

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Union law and national laws and practices.

#### Article II-35: Health care

*Right to health care*

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

*High level of health protection*

## ***2. Employment policy***

*The promotion of employment is part of the list of Community objectives, becoming a "matter of common concern" (Article 2 of the EC Treaty). The objective consists in reaching a "high level of employment". In order to attain this objective, the Community has been given a new area of responsibility to complement the activities of the Member States, involving the development of a "coordinated strategy" for employment. The main element of this strategy is formed by common guidelines. The Title VIII on employment (new Articles 125 to 130), specifies what the objectives are and how to attain them. It also provides for the establishment of an Employment Committee.*

### ***2.1 Development of a European Employment Strategy (EES)***

*A new employment title was introduced by the Amsterdam Treaty, according to which promotion of employment is a "matter of common concern" of the Member States and one of the Community's goals. In order to make the most of these new provisions, the Heads of State and Government decided to immediately apply the new provisions introduced by the Treaty, without awaiting their entry into force (1 May 1999). With the new Chapter on employment in the Treaty of Amsterdam the Community got a legal instrument to introduce a co-ordinated strategy for employment.*

*Following the Amsterdam Summit, The Luxembourg Jobs Summit (November 1997) launched the European Employment Strategy (EES) on the basis of the new provisions in the Employment title.*

*Hence, along with the activities of the Member States, the Community has developed a coordinated strategy for employment.*

*The EES consists in the following components:*

- Employment Guidelines: following a proposal from the Commission, the European Council shall agree every year on a series of guidelines setting out common priorities for Member States' employment policies (Article 128.2).*
- National Action Plans (NAP): every Member State shall draw up an annual National Action Plan which describes how these Guidelines are put into practice nationally (Article 128.3)*
- Joint Employment Report: The Commission and the Council shall jointly examine each National Action Plan and present a Joint Employment Report. The Commission shall present a new proposal to revise the Employment Guidelines accordingly for the following year (Article 128.4).*
- Recommendations: The Council may decide, by qualified majority, to issue country-specific Recommendations upon a proposal by the Commission (Article 128.5).*

*The Member States, which maintain their exclusive competence in the field, must make their employment policies consistent with the - however non-binding - broad guidelines of the*

*economic policies of the Member States and of the Community, whilst considering the promotion of employment as a matter of common concern.*

*The guidelines set up for the year 2003, are the following:*

*active and preventative measures for the unemployed and inactive;  
job creation and entrepreneurship;  
adaptability and mobility in the labour market;  
development of human capital and lifelong learning;  
increase labour supply and promote active ageing;  
gender equality  
integration and combat discrimination of disadvantaged persons;  
make work pay more attractive;  
fight against undeclared work;  
reduce regional employment disparities.*

*At the Lisbon European Council (March 2000), the European Union set itself a new strategic goal for the next decade: to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion. The strategy was designed to enable the Union to regain the conditions for full employment and to strengthen cohesion by 2010. The Council also considered that the overall aim of these measures should be to raise the overall EU employment rate to 70% and to increase the number of women in employment from an average to more than 60% by 2010.*

*The Stockholm Council (March 2001) added two intermediate and one additional target: the employment rate should be raised to 67% overall by 2005, 57% for women by 2005 and 50% for older workers by 2010.*

*The Barcelona (March 2002) confirmed that full employment was the overarching goal of the EU and called for a reinforced Employment Strategy to underpin the Lisbon strategy in an enlarged EU.*

## ***2.3 Employment policy according to the new Draft Constitution***

*The provisions on the Union's employment policy remain practically unchanged:*

**DRAFT CONSTITUTION  
PART III  
CHAPTER III  
POLICIES IN OTHER SPECIFIC AREAS**



Employment chapter  
introduced by the Treaty of  
Amsterdam

*Coordinated strategy for  
employment*

*Objective: A high level of  
employment through  
promoting a skilled, trained  
and adaptable workforce*

*Member States are  
competent but must pursue  
Union's objectives*

*Promotion of employment to  
be coordinated*

*Supporting Member States  
in achieving a high level of  
employment*

*Other Union policies shall  
take employment into  
consideration*

*Employment guidelines for  
the Member States*

*European Council, by  
qualified majority, draws up  
non binding employment  
guidelines in line with  
economic guidelines*

*Annual reports from each  
Member State*

*Council, on a  
recommendation from the  
Commission, issues non-  
binding recommendations to  
the Member States by*

## SECTION 1 EMPLOYMENT

### Article III-97

The Union and the Member States shall, in accordance with this Section, work towards developing a coordinated strategy for employment and particularly for promoting a skilled, trained and adaptable workforce and labour markets responsive to economic change with a view to achieving the objectives defined in Article I-3.

### Article III-98

1. Member States, through their employment policies, shall contribute to the achievement of the objectives referred to in Article III-97 in a way consistent with the broad guidelines of the economic policies of the Member States and of the Union adopted pursuant to Article III-71(2).
2. Member States, having regard to national practices related to the responsibilities of management and labour, shall regard promoting employment as a matter of common concern and shall coordinate their action in this respect within the Council, in accordance with Article III-100.

### Article III-99

1. The Union shall contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. In doing so, the competences of the Member States shall be respected.
2. The objective of a high level of employment shall be taken into consideration in the formulation and implementation of Union policies and activities.

### Article III-100

1. The European Council shall each year consider the employment situation in the Union and adopt conclusions thereon, on the basis of a joint annual report by the Council of Ministers and the Commission.
2. On the basis of the conclusions of the European Council, the Council of Ministers, on a proposal from the Commission, shall each year adopt guidelines which the Member States shall take into account in their employment policies. It shall act after consulting the European Parliament, the Committee of the Regions, the Economic and Social Committee and the Employment Committee.

These guidelines shall be consistent with the broad guidelines adopted pursuant to Article III-71(2).

3. Each Member State shall provide the Council of Ministers and the Commission with an annual report on the principal steps taken to implement its employment policy in the light of the guidelines for employment as referred to in paragraph 2.
4. The Council of Ministers, on the basis of the reports referred to in paragraph 3 and having received the views of the Employment Committee, shall each year carry out an examination of the implementation of the employment policies of the Member States in the light of the guidelines for employment. The Council of Ministers, on a recommendation from the Commission, may adopt recommendations which it shall

*qualified majority*

address to Member States.

*Joint annual report*

5. On the basis of the results of that examination, the Council of Ministers and the Commission shall make a joint annual report to the European Council on the employment situation in the Union and on the implementation of the guidelines for employment.

#### Article III-101

*Incentive measures established by qualified majority and after consultation of CoR and ESC*

European laws or framework laws may establish incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment through initiatives aimed at developing exchanges of information and best practices, providing comparative analysis and advice as well as promoting innovative approaches and evaluating experiences, in particular by recourse to pilot projects. It shall be adopted after consultation with the Committee of the Regions and the Economic and Social Committee.

*No harmonisation*

The European law or framework law shall not include harmonisation of the laws and regulations of the Member States.

#### Article III-102

*Employment Committee*

The Council of Ministers, on its own initiative, shall establish by simple majority an Employment Committee with advisory status to promote coordination between Member States on employment and labour market policies. It shall act after consulting the European Parliament.

*- to monitor*

The tasks of the Committee shall be:

(a) to monitor the employment situation and employment policies in the Member States and the Union;

*- to deliver opinions*

(b) without prejudice to Article III-247, to formulate opinions at the request of either the Council of Ministers or the Commission or on its own initiative, and to contribute to the preparation of the Council of Ministers proceedings referred to in Article III-100.

*- to consult social partners*

In fulfilling its mandate, the Committee shall consult management and labour.

Each Member State and the Commission shall appoint two members of the Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*EP President*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2) EUROPEAN COUNCIL

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

### Article I-20

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

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

*The European Council  
meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus*

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

## THE EUROPEAN COUNCIL CHAIR

### Article I-21

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

*Tasks of the President*

*Represents the EU  
in the wider world on*

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

*CFSP issues*

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

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

*President cannot have a national mandate*

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

### 3) COUNCIL OF MINISTERS

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

#### Article I-22

**Council of Ministers:**

- legislates with EP
- carries out policy making
- coordinates

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

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

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

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

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



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

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

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

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

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

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

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

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

## Article I-24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 4) EUORPEAN COMMISSION

*The Commission's monopoly of legislative initiative is clearly restated. From 2009, it may be made up of 15 "full" Commissioners and 15 "non-voting" Commissioners on the basis of equal rotation between the Member States.*

### Article I-25

#### **EU-Commission**

#### **Role:**

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

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

*No one else can propose new laws*

#### **Composition:**

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

#### **Rotate on equal basis**

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

#### **Non-voting**

*Commissioners from the other states*

*Effect from 2009*

#### **Independence**

*May not take instructions from any one*

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

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

### **Censure**

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

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

## **COMMISSION PRESIDENT**

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

### **Commission President**

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

### **Commission members**

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

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

### **Article I-26**

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

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

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

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

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

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

## 5) EU FOREIGN MINISTER

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

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

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

### Article I-27

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

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

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

#### ***Double hat***

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

*External service  
established in part III*

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

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

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

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