

EU draft Constitution - Provisions governing environment policy

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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) ENVIRONMENT

Introduction:

Despite the increase in importance attached to environmental issues in recent years, damage to the environment continues to grow steadily worse. Quality of life in Europe has declined partly due to pollution. Protection of the environment has therefore become a major concern, yet, compared to the economic and market oriented policies, this has come about relatively late. The Community's recognition of the importance of environmental issues was shown by the introduction of a specific legal basis into the TEE through the European Single Act (ESA) in 1997. Until then, measures taken in the environment sphere were based on either (present) Article 94 TEC (common market) or on (present) Article 308 (flexibility clause), both requiring decision by unanimity in the Council.

Even after its introduction, decision taken on the basis of (present) articles 174-176 TEC required a unanimous vote in the Council and a mere consultation of the EP. Through Maastricht, qualified majority voting was introduced in the area of environment, and since Amsterdam, the EP can propose amendments through the co-decision procedure.

Underlining its importance, protection of environment has been laid one of the principles of the EU as stated in Article 2 TEC and as a general horizontal clause in Article 6 TEC through Amsterdam.

Environment policy is to be regarded as shared competence, which means that Member States lose their right to legislate if the Community does so. Although Union competence is subject to the limits of the principle of subsidiarity, the cross-border effect of pollution will almost always justify Community measures. Altogether, it can be stated that the Community has an important competence in the sphere of environmental protection.

1 Environment according to the present provisions

One topic, two legal bases:

Until now, measures taken in the area of environmental protection have been mainly based on two different legal bases: Article 95 and Article 175 TEC. Although both articles basically refer to the procedure of Article 251 (co-decision), the distinction between them is crucial, since they entail different rights of Member States to keep, or introduce, higher environmental standards.

In the so-called Titandioxid case (C-300/89) the EU Court made it clear that basing a measure on two different legal bases is to be considered illegal if these measures entail different procedures. Although - since Amsterdam - the procedure is the same for both legal bases (Article 251 TEC), falling back on both articles would have to be considered as being illegal since these articles provide for different individual Member states rights to keep or introduce different environmental standards:

The EU Court made clear that the choice between legal bases depends on the major aim of the measure taken by the Community. A choice must be based on "objective, judicially verifiable circumstances". Hence, if measures aim mainly at the harmonisation of laws for the establishment or the functioning of the internal market, Article 95 is the appropriate legal basis. If, however, a measure mainly aims at environmental protection, Article 175 serves as the proper legal basis. As mentioned above, the choice entails different rights of member states to introduce or maintain higher environmental standards:

Article 95.

Paragraphs 4 and 5 state that Member States may maintain or introduce national provisions relating to the protection of the environment, which may "de facto" thwart the harmonisation objectives of Article 95, even though paragraph 6 stipulates that those measures shall not represent an obstacle to the functioning of the internal market. The concerned Member State has to notify the Commission which has to either approve or reject the national provision. The introduction or maintenance of a measure is thus subject to the Commission's approval. Since the individual rights conferred on the Member States by Article 95 derogate from a harmonisation measure, they are to be considered as provisional measures, possibly subject to an adaptation of the entire Community measures. However, the Commission is very strict and usually does only permit derogations if they are justified on very specific national circumstances, which only exist in the respective Member State.

Articles 175, 176

As mentioned above, measures taken on the basis of article 174-175 TEC have as their main objectives the protection of the environment. In this case, Member States are allowed to keep or introduce more stringent rules. Article 176 requires the notification, but not the approval of the Commission. Furthermore, the provision of Article 176 aims at the maintenance or introduction of more permanent national provisions. Individual Member States rights are hence stronger than according to the provisions of Article 95.

Article 175 refers to the co-decision procedure of Article 251 TEC. However the following topics are to be decided by unanimity in the Council with the EU Parliament merely being consulted:

- *provisions primarily of a fiscal nature,*
- *measures affecting*
 - *town and country planning*
 - *quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,*
 - *land use with the exception of waste management*
- *measures significantly affecting a member state's choice between different energy sources and the general structure of its energy supply.*

Environmental criminal law

In the case of environmental criminal law, the legal basis has also been subject to major controversy. Whereas the European Commission considers Article 175 to be the proper legal

basis for requiring Member States to provide for criminal penalties for environmental offences, the Council favours the respective legal basis of the TEU (Article 34,31 TEU). Accordingly, the Framework Decision, 2003/80/JHA, originally presented as an initiative of the Kingdom of Denmark, is based on Title VI of the Treaty on European Union relating to judicial cooperation in criminal matters (the "third pillar"). It defines a number of environmental offences for which Member States are called on to provide for criminal penalties and contains provisions relating to judicial cooperation in criminal matters.

Objectives of the Community

- Market
- Monetary union
- Common policies
- Sustainable development
- Employment
- Social protection
- Equality
- Growth
- Environment
- Solidarity

ARTICLE 2 (ex Article 2) TEC

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing common policies or activities referred to in Articles 3 and 4, to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States.

Environment and sustainable development

ARTICLE 6 (ex Article 3c) TEC

Environmental protection requirements must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Laws of the Internal Market by qualified majority and conciliation procedure

- excluding*
- taxation
- movement of persons
- employees' rights

ARTICLE 95 (ex Article 100a) TEC

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

2. Paragraph 1 shall not apply to fiscal provisions, to those relating to the free movement of persons nor to those relating to the rights and interests of employed persons.

High level of protection for health, safety, environment, consumer protection

Keep better rules
*-environment
-working environment*

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

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

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

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

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

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

TITLE XIX (ex Title XVI): ENVIRONMENT

ARTICLE 174 (ex Article 130r) TEC

1. **Error! Bookmark not defined.** Community policy on the environment shall contribute to pursuit of the following objectives:

preserving, protecting and improving the quality of the environment;

protecting human health;

prudent and rational utilisation of natural resources;

promoting measures at international level to deal with regional or worldwide environmental problems.

Environmental objectives

*High level of protection
Precautionary principle
Intervention at source
Polluter pays
Community inspection*

Protection clause

Take account of:

*Third countries and
international
organisations*

*International
agreements can also be
entered into by Member
States*

*Qualified majority and
conciliation procedure
Approve actions*

*Unanimity in the
Council and
consultation on:*

-fiscal provisions

*-town and country
planning
-quantitative
management of water
resources
-land use*

2. Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure.

3. In preparing its policy on the environment, the Community shall take account of:

available scientific and technical data;

environmental conditions in the various regions of the Community;

the potential benefits and costs of action or lack of action;

the economic and social development of the Community as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

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

ARTICLE 175 (ex Article 130s) TEC

1. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

a) provisions primarily of a fiscal nature;

b) measures affecting:

town and country planning;

quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;

land use, with the exception of waste management;

(waste = qualified majority)
-choice of energy supply

c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

ARTICLE 176 (ex Article 130t) TEC

Stricter national rules, if compatible with the Treaty
The Commission to be informed

The protective measures adopted pursuant to Article 175 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. They shall be notified to the Commission.

2 The Environment according to the draft Constitution

The provisions on environmental protection generally remain unchanged.

The present shared competence of the Community in the field of environmental protection is clarified in Article I-13 of the draft Constitution.

The high level of protection and improvement of the quality of the environment has been rewritten into the catalogue of the Union's objectives (Article I-3).

The horizontal clause of the present Article 6 TEC has been taken over in Article III-4. Accordingly, protection of the environment is explicitly mentioned as an objective in the frame of the newly inserted chapter on energy policy (III-157) and into the chapter on the Union's external action (III-193).

The present Article 95 TEC remains largely unchanged (Article III-65).

The present Articles 174-176 TEC remain practically unchanged (Article III-129-131).

However, underlining the importance of environmental protection, the principle that environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities has also been inserted into the Charter of Fundamental Rights (Article II-37). The real impact of this provision is difficult to evaluate, since the Constitution basically provides for fundamental rights.

It will hence be up to the jurisdiction of the EU Court of Justice to determine the real impact of the Charter's provision on environmental protection.

Objectives of the Union

Sustainable development, balanced growth, social progress, full employment, environmental protection, scientific and technological advances, combat social exclusion, promote social justice, equality between men and women, solidarity between generations, protect children, respect diversity and defend Europe's heritage.

Article I-3: The Union's objectives

3. The Union shall work for a Europe of sustainable development based on balanced economic growth, a social market economy, highly competitive and aiming at full employment and social progress, and with a **high level of protection and improvement of the quality of the environment**. It shall promote scientific and technological advance.

It shall combat social exclusion and discrimination, and shall promote social justice and protection, equality between women and men, solidarity between generations and protection of children's rights.

It shall promote economic, social and territorial cohesion, and solidarity among Member States.

The Union shall respect its rich cultural and linguistic diversity, and shall ensure that Europe's cultural heritage is safeguarded and enhanced.

Shared competence

General rule: when not an exclusive competence or a supportive action then a shared competence

Non-exhaustive list of shared competences (where an EU law suppresses national competence to legislate)

Article I-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.

2. Shared competence applies in the following principal areas:

internal market,
area of freedom, security and justice,
agriculture and fisheries, excluding the conservation of marine biological resources,
transport and trans-European networks,
energy,
social policy, for aspects defined in Part III,
economic, social and territorial cohesion,
environment,
consumer protection,
common safety concerns in public health matters.

Environment

High level of environmental protection, not the "highest" environmental protection

Article II-37: Environmental protection

A **high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union** and ensured in accordance with the principle of sustainable development.

Environment and sustainable development

Article III-4

Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities referred to in this Part, in particular with a view to promoting sustainable development.

Internal market rules

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

*Excluding:
-taxation
-movement of persons
-employees' rights*

High level of protection for health, safety, environment,

Article III-65

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

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

3. The Commission, in its proposals submitted under paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a

consumer protection, but not the "highest" level

Protection of the environment

Maintenance of better national rules or ...

...introduction of better national rules

The Commission decides whether a measure is:

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

Extend period by six months

If a national derogation from harmonisation has been proved being sensible, Commission shall propose adaptation for all

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

Directly to the Court

Safeguard clause under EU control

high level of protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective.

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

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

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

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

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

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

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

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

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

SECTION 5

ENVIRONMENT

Article III-129

Environmental objectives

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- (a) preserving, protecting and improving the quality of the environment;
- (b) protecting human health;
- (c) prudent and rational utilisation of natural resources;
- (d) promoting measures at international level to deal with regional or worldwide environmental problems.

*A high level of protection, not the "highest" level
Precautionary principle
Preventive principle
Polluter pays principle*

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

Safeguard clause

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional steps, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

Union takes account of:

3. In preparing its policy on the environment, the Union shall take account of:
- (a) available scientific and technical data;
 - (b) environmental conditions in the various regions of the Union;
 - (c) the potential benefits and costs of action or lack of action;
 - (d) the economic and social development of the Union as a whole and the balanced development of its regions.

Cooperation with third countries and international organisations

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for the Union's cooperation may be the subject of agreements between the Union and the third parties concerned, which shall be negotiated and concluded in accordance with Article III-272.

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

Article III-130

Legislative procedure and consultation of CoR and EcoSoc

1. European laws or framework laws shall establish what action is to be taken in order to achieve the objectives referred to in Article III-129. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

Unanimity and consultation procedure required for:

2. By way of derogation from paragraph 1 and without prejudice to Article III-65 the Council of Ministers shall adopt unanimously European laws or framework laws establishing:

- *fiscal provisions*

(a) measures primarily of a fiscal nature;

(b) measures affecting:

- *town and country planning*
- *management of water resources*

(i) town and country planning;

(ii) quantitative management of water resources or affecting, directly or indirectly, the availability of those resources;

- *land use*

(iii) land use, with the exception of waste management;

- *choice of energy sources and supply*

(c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

Council can decide by unanimity to extend the use of qualified majority through legislative procedure

The Council of Ministers may unanimously adopt a European decision making the ordinary legislative procedure applicable to the matters referred to in the first subparagraph of this paragraph.

In all cases, the Council of Ministers shall act after consulting the European Parliament, the Committee of the Regions and the Economic and Social Committee.

Action programmes: legislative procedure and consultation of CoR and EcoSoc

3. General action programmes which set out priority objectives to be attained shall be enacted by European laws. Such laws shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or paragraph 2, according to the case.

Member States must finance and implement

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

Temporary derogations when costs are too high

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall provide in appropriate form for:

- *temporary derogations*

(a) temporary derogations, and/or

- *financial support*

(b) financial support from the Cohesion Fund.

Article III-131

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

The protective provisions adopted pursuant to Article III-130 shall not prevent any Member State from maintaining or introducing more stringent protective provisions. Such provisions must be compatible with the Constitution. They shall be notified to the Commission.

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 under Article III-302.7 the EP can reject legislative proposals or propose amendments to them, but only with the absolute majority of its members at 2nd 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

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

years, max. 736, min. of 4 members per Member State

The remainder will be divided by degressive proportionality.

According to a proposal from the EP this could mean fewer members from the smaller states than at present

EP President

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
TOTAL	732

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

1.3 COMPOSITION OF THE EUROPEAN PARLIAMENT FROM 2009 ONWARDS

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

Article I-19

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

*The remainder will be divided by degressive proportionality
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.

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2) EUROPEAN COUNCIL

The European Council is formally to become an 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*

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

Only ministers may commit their Member States and vote

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

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

3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT:

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

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

3.2 WEIGHTING OF VOTES IN THE COUNCIL 2004-2009

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

Qualified majority:

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

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

3.3 VOTING IN THE COUNCIL FROM 2009 ON

Qualified majority will become the general rule for the adoption of decisions within the Council of Ministers and, from 1 November 2009, will be defined as consisting of a majority of states representing three fifths of the population of the Union. For cases in which the Convention did not achieve consensus on changing over to qualified majority voting, a transitional measure (known in French as a 'passerelle') is planned. This means that

European Council will be able 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 desired by 22 Member States)

Enlarged qualified majority

1. 2/3 of Member States

2. 60% of the EU population

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

NB: New deepening clause

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

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

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

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

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

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

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

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

4) EUROPEAN COMMISSION

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

Article I-25

EU-Commission

Role:

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

Monopoly of initiative:
Only it 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

Effective from 2009

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:

- (a) 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.
- (b) 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.

Independence

May not take instructions from government or other body

Censure

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

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.

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/her 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 at present.

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/she 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/she is a member of the Commission, it has still to be decided whether his/her nomination will be subject to the EP's approval of the Commission as a whole, and eventually to a vote of censure.

In this 'two-hatted' role (Commission-Council), the Minister will be responsible for carrying out the Union's external policy as a whole. The Minister will have the power of initiative (in the absence of which a decision 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. 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

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.

Double hat
Foreign Minister also
Vice-President of
Commission for external
relations

External service
established in part III

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.]