

EU draft Constitution- Provisions governing fisheries

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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

Requires 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) FISHERIES

1. THE COMMON FISHERIES POLICY (CFP) UNDER THE PRESENT TEC

1.1. Introduction:

A common fisheries policy was "de facto" introduced in 1970 with the adoption of common regulations, which laid down the rules on access to fishing zones, established a common organisation of the market and set up a framework for structural policy.

In 1973, with the accession of the traditional fisheries states, the UK, Ireland and Denmark, fisheries became a more important field in the Community activities. Accordingly, the legal framework of the CFP was strengthened, in particular by establishing the requirement to create a resource conservation policy.

This made it possible to strengthen the legal framework of the CFP, in particular by establishing the requirement to create a resource conservation policy and by introducing exclusive rights for inshore fishing inside the 12-mile limit (According to Article 55 of the UN Convention on maritime law, the Community has an own maritime economic zone of 200 sea miles which are reserved - with exceptions - to the Community's fleet).

On the basis of the Accession Act of 1973, the Community won exclusive competence for the conservation of marine biological resources under the Common Fisheries Policy in 1979 (e.g. the fixing of Total Allowance Catches, TACs).

In 1983, Regulation 170/83 on the introduction of common rules for the cultivation and preservation of fisheries resources was adopted. This regulation laid the foundation for an overall Community fisheries policy.

In 1986, the accession of Spain and Portugal, two countries with a considerable fishing tradition, was a further cornerstone for the development of the CFP. The economic importance of fisheries and aquaculture increased even more.

In 1992, the provisions of Regulation 170/83 were replaced with the adoption of Regulation 3760/92 establishing a Community system for fisheries and aquaculture, which provide in particular the basis for modernising policy on the conservation and management of fisheries resources.

New rules on conservation and the sustainable exploitation of fisheries resources entered into force on 1 January 2003 (Regulation (EC) No 2371/2002). The regulation aims to achieve a reduction in the fishing effort with a view to sustainable management. Complementary measures also encourage the reduction of the fishing fleet, including decommissioning vessels if appropriate, whilst neutralising the associated socio-economic effects.

1.2 Present legal basis

Although the two sectors are quite different, the Common Fisheries Policy has the same legal basis as the Common Agricultural Policy.

Accordingly, Articles 32 to 38 TEC, the agriculture chapter, apply. This is stipulated in Article 32 TEC according to which "'agricultural products" means the products of the soils, of stockfarming and of fisheries". Since the common market rules apply to agriculture (Article 32.2 TEC) the common market extends to fisheries products and must be accompanied by the establishment of a Common Fisheries Policy.

Article 33 lays down the objectives of the Common Agricultural Policy and hence the CFP:

- to increase productivity,*
- to ensure a fair standard of living for the fishing community,*
- to stabilise markets,*
- to assure the availability of supplies and*
- to ensure that supplies reach consumers at reasonable prices.*

The remaining articles under Title II establish a common organisation of the markets (Article 34), provide for coordination of efforts in the spheres of research and vocational training (Article 35) and lay down competition rules (Article 36). Articles 37 and 38 concern, among other things, the rules of procedure for the common organisation of the market.

Whereas fisheries is - like agriculture - a shared competence, the conservation of marine biological resource under the CFP has been an exclusive EC competence since 1979 (see above). This has been reaffirmed in the draft Constitution (Articles I-12 and I-13).

Since it is an integral part of the Common Agricultural Policy, the EC also has external competence concerning fisheries and the conclusion of international fisheries agreements is of great importance.

The activities in the CFP consist mainly in:

- the conservation and sustainable management of fishery resources;*
- the organisation of the markets;*
- the relations with non-member countries and international organisations.*

1.3 Decision making procedure under the present TEC

At present, decisions in the area of the CFP are adopted by the Council by qualified majority, acting on a Commission proposal and after consulting the European Parliament (Article 37.2 TEC).

Implementation of the legislation involves the Council and the Commission depending on the sphere of action. For example, the Council fixes the total allowable catches (TACs) and adopts the common market rules and the procedures for applying the price system. The Commission manages, in particular, the Community fisheries surveillance and inspection arrangements which, although limited in scope, play an important role in ensuring the fairness of the

various control and inspection activities undertaken by the Member States and equal treatment of Community fishermen in these checks.

The Commission is assisted by various committees. These are made up of representatives of the Member States and the fishing industry and scientific experts. They were set up to participate in implementing the CFP by giving opinions on the rules proposed under a management or consultation procedure (such as the Scientific, Technical and Economic Committee for Fisheries (STECF) which advises the Commission on all projects relating to fishing zones and resources). The Commission also consults the representatives of the fisheries and aquaculture sector, as well as those of other parties affected by the CFP, through the Advisory Committee on Fisheries and Aquaculture (ACFA).

Where international aspects are concerned, Parliament's assent is needed before the Community can accede to international fisheries conventions. The Commission represents the Community on the international scene, negotiating fisheries agreements and taking part in the work of regional fisheries organisations and other international bodies on behalf of the Community and the Member States, who are not entitled to negotiate themselves.

2. THE COMMON FISHERIES POLICY UNDER THE DRAFT CONSTITUTION

2.1. Introduction:

The draft Constitution now proposes a new chapter on "agriculture and fisheries", thereby upgrading the apparent importance of fisheries by virtue of its inclusion in the title. However, the provisions on agriculture and fisheries remain - except for the decision-making procedure and the EP's co-decision on agricultural and fisheries expenses - practically unchanged. This was regretted by many members of the Convention who wanted a general review of the basic principles of the CAP and CFP.

Currently (see above), decisions in the area of agriculture and fisheries are taken by qualified majority in the Council, with the European Parliament simply being consulted. The draft Constitution now distinguishes between the following types of decision:

- legislative acts (III-127.2, III-302) based on a European law or framework law, which therefore use the ordinary legislative procedure. These include the common organisation of agricultural markets as well as other provisions necessary to pursue the objectives of the common agricultural and fisheries policies.*
- non-legislative acts (III-127.3), such as fixing prices, levies, aid and quantitative limitations, as well as the allocation of fishing opportunities. These come under the heading of European regulations or decisions taken by the Council on the basis of the draft Constitution, and in this case the EP is not even consulted.*

In terms of budgetary implications, the EP's powers tangibly increase since the law determining the annual budget will be adopted jointly by the EP and the Council, with the former having the final say on ALL expenditure including those on fisheries in the event of

disagreement (see below). At present, the EP only has the final say on the spending of non-compulsory expenditures.

2.1. Definition of fisheries products as agricultural products

Article III-121

*Agricultural products
includes fisheries*

The Union shall define and implement a common agriculture and fisheries policy.

"Agricultural products" means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term "agricultural", shall be understood as **also referring to fisheries**.

2.2 Fisheries: Shared competence between the Union and the Member States

Fisheries remain a shared competence

Article I-13

*If the Union legislates,
EU law prevails over
national law, regardless
of whether or not the
Member State legislate*

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

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.

2.3) Fisheries: Part of agriculture and hence part of the Internal Market

2.3.1 Internal Market rules are applicable

Article III-122

Fisheries is part of the internal market

Therefore internal market rules apply to fisheries products

However, the application of Internal market rules for fisheries products is limited by the definition of a CAP and a CFP

1. The internal market shall extend to agriculture and trade in agricultural products.
2. Save as otherwise provided in Articles III-123 to III-128, the rules laid down for the establishment of the internal market shall apply to agricultural products.
3. The products listed in Annex I (This Annex, which corresponds to Annex I to the TEC, is to be drawn up) shall be subject to Articles III-123 to III-128.
4. The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.

2.3.2 Customs Union

Article III-36

Basic principles
- Ban on customs duties and all charges with equivalent effect on fisheries products

- Common external tariff for the import of fisheries products from third countries

1. The Union shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2.3.3 No customs duties on fisheries products

Article III-38

All customs duties between Member States on fisheries products are prohibited

Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.

2.3.4 Free and undistorted competition for the fisheries sector

Article III-40

The Commission should:

- promote trade

- improve competitive capacity

- ensure supply

- avoid disturbing conditions

- avoid disturbances of economies

- increase consumption

In carrying out the tasks entrusted to it under [this ex-chapter] the Commission shall be guided by:

(a) the need to promote trade between Member States and third countries;

(b) developments in conditions of competition within the Union insofar as they lead to an improvement in the competitive capacity of undertakings;

(c) the requirements of the Union as regards the supply of raw materials and semi-finished goods; in this connection the Commission shall take care to **avoid** **distorting conditions of competition** between Member States in respect of finished goods;

(d) the need to avoid serious disturbances in the economies of Member States and to ensure rational development of production and an expansion of consumption within the Union.

2.3.5 Prohibition of quantitative restrictions on fisheries products

Article III-42

No quantitative restrictions or measures of equivalent effect on agricultural goods

Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States.

2.4. However, the application of internal market rules (customs union, no customs duties, free and undistorted competition, no quantitative restrictions) are limited by the objectives of the CFP (Art III- 123-128)

2.4.1 Restriction of the application of internal market rules for the fisheries sector through the definition of the objectives of the CFP

Article III-123

Objectives of the CFP:
- to increase productivity

- to ensure a fair standard of living for fisheries community
- to stabilise markets

- to assure supplies

- to ensure reasonable prices

CFP must take account of:

- the particular nature of fisheries activity

- gradual adjustment

- the close link with the economy

1. The objectives of the common agricultural policy shall be:
 - (a) to **increase agricultural productivity** by promoting technical progress and by ensuring the rational development of agricultural production and the optimum utilisation of the factors of production, in particular labour;
 - (b) thus to **ensure a fair standard of living for the agricultural community**, in particular by increasing the individual earnings of persons engaged in agriculture;
 - (c) to **stabilise markets**;
 - (d) to assure the **availability of supplies**;
 - (e) to ensure that supplies reach consumers at **reasonable prices**.

2. In working out the common agricultural policy and the special methods for its application, account shall be taken of:
 - (a) the **particular nature** of agricultural activity, which results from the social structure of agriculture and from structural and natural disparities between the various agricultural regions;
 - (b) the need to effect the **appropriate adjustments** by **degrees**;
 - (c) the fact that in the Member States agriculture constitutes a sector **closely linked** with the **economy** as a whole.

2.4.2 Restriction of the application of internal market rules for the fisheries sector through the Common market Organisation of the CFP

Article III-124-

Common organisation of fisheries market...

1. In order to attain the objectives set out in Article III-123, a **common organisation** of agricultural markets shall be established.

...through the following methods:

- *common competition rules*
- *compulsory coordination of national markets*
- ***European market organisation:***
- ***regulation of prices***
- ***aids***
- ***storage***
- ***stabilisation of imports and exports***
- No discrimination inside Union*
- Uniform price calculation methods*
- Guarantee funds*

This organisation shall take one of the following forms, depending on the product concerned:

- (a) common rules on competition;
- (b) compulsory coordination of the various national market organisations;
- (c) a European market organisation.

2. The common organisation established in accordance with paragraph 1 may include all measures required to attain the objectives set out in Article III-123, in particular **regulation of prices, aids for the production and marketing of the various products, storage and carryover arrangements and common machinery for stabilising imports or exports.**

The common organisation shall be limited to pursuit of the objectives set out in Article III-123 and shall exclude any discrimination between producers or consumers within the Union.

Any common price policy shall be based on common criteria and uniform methods of calculation.

3. In order to enable the common organisation referred to in paragraph 1 to attain its objectives, one or more agricultural guidance and guarantee funds may be set up.

2.4.3 Restriction of the application of competition rules for the fisheries sector

- Granting of aid

Article III-126

Limits to the application of competition rules, decided by co-decision

Since Council decides by regulation or decision (no European law or framework law) EP is not involved for the authorisation of aid

- for enterprises in less-favourable areas

1. The Section relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by a European law or framework law in accordance with Article III-127(2), having regard to the objectives set out in Article III-123.

2. The Council of Ministers, acting on a proposal from the Commission, may adopt a European regulation or decision authorising the granting of aid:

- (a) for the protection of enterprises handicapped by structural or natural conditions;

*-for economic
development programmes*

(b) within the framework of economic development programmes.

2.5 Further restrictions for the application of the internal market rules on grounds of major needs
- Art. III 43 with Article III 65

Basic principle of internal market and thus agricultural and fisheries products:
No quantitative restrictions

Article III-42

No quantitative restrictions or measures of equivalent effect for the free movement of agricultural and fisheries goods

Quantitative restrictions on imports and exports and all measures having equivalent effect shall be prohibited between Member States.

However...

Article III-43

.... the free movement of agricultural and fisheries goods can be restricted on grounds of:
- morality
- public policy
- public security
- protection of health and life of humans, animals or plants
- national treasures
- industrial and commercial property

Article III-42 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

2.6 Objectives of the Union which have to be taken into account by the CFP

Objectives of the Union:

Article I-3

*Peace, values and well-being
Area of freedom, security and justice without internal frontiers and a single market with free competition*

Sustainable development, and the quality of the environment are to be considered within the CAP

However, environmental interest will always "follow" internal market (and therefore CFP) rules because they are "integrated part" of the latter

1. The Union's aim is to promote peace, its values and the well-being of its peoples.

2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, and a single market where competition is free and undistorted.

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.

2.6.1 Environmental issues which have to be taken into account

CFP has to take into account the environmental protection (e.g. Total Allowance Catches, TAC):

Article II-37

High level of environmental protection has to be integral part of the CFP.

However, environmental interest will always

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.

*"follow" internal market
(and therefore CFP)
rules because they are
"integrated part" of the
latter*

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.

2.6.2 Consumer protection rules which have to be taken into account

CFP has to take into account the consumer protection:

Article II-38

High level of consumer protection is to be ensured by the CFP

Union policies shall ensure a high level of consumer protection.

Article III-5

Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

Article III-132

Objective: a high level of protection, not the "highest" level

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Union shall contribute to protecting the health, safety and economic interests of consumers, as well as to promoting their right to information, education and to organise themselves in order to safeguard their interests.

2. The Union shall contribute to the attainment of the objectives referred to in paragraph 1 through:

(a) measures adopted pursuant to Article III-65 in the context of the completion of the internal market;

(b) measures which support, supplement and monitor the policy pursued by the Member States.

3. The measures referred to in paragraph 2(b) shall be enacted by European laws. Such laws shall be adopted after consultation of the Economic and Social Committee.

4. Measures adopted pursuant to paragraph 3 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.

Legislative procedure and consultation of EcoSoc

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

III) Legislative procedure

Notes:

The draft Constitution distinguishes between

- legally binding acts (laws, framework laws, regulations and decisions) and*
- non-binding acts (opinions and recommendations);*

In terms of legally binding acts, it distinguishes between legislative acts (laws and framework laws) and non-legislative acts (regulations and decisions).

Currently, decisions in the area of agriculture/fisheries are taken by qualified majority in the Council, with the European Parliament simply being consulted. The draft Constitution now distinguishes between the following types of decision:

- legislative acts based on a European law or framework law, which therefore use the ordinary legislative procedure. These include the common organisation of agricultural markets as well as other provisions necessary to pursue the objectives of the common agricultural and fisheries policies.*
- non-legislative acts such as fixing prices, levies, aid and quantitative limitations, as well as the allocation of fishing opportunities. These come under the heading of European regulations or decisions taken by the Council on the basis of the draft Constitution, and in this case the EP is not consulted.*

Article III-127:

Commission proposes

The Commission shall submit proposals for **working out and implementing the common agricultural policy**, including the replacement of the national organisations by one of the forms of common organisation provided for in Article III-124(1), and for implementing the measures referred to in this Section.

These proposals shall take account of the interdependence of the agricultural matters mentioned in this Section.

Council and EP adopt laws or framework laws by co-decision

2. **European laws or framework laws** shall establish the common organisation of the market provided for in Article III-124(1)] and the other provisions necessary for the achievement of the objectives of the common agricultural policy and the common fisheries policy.

Since Council decides by regulation or decision (not European law or framework law) EP is not involved in
- fixing prices, levies and aid

3. The Council of Ministers, acting on a proposal from the Commission, shall adopt the European regulations or decisions on fixing prices, levies, aid and quantitative limitations and on the fixing and allocation of fishing opportunities.

- quantitative limitations
- allocation of fishing opportunities

The legislative procedure (co-decision procedure)

Article III-302

General legislative procedure rule that applies also to CAP

1) Commission submits a proposal to EP and Council

2) EP adopts a position, then sends to Council

3.a) Council approves = proposal is adopted

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

Commission informs EP of its position

If, within three months, the EP:

4.a) approves Council position = proposal is adopted

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

4.c) amends Council position by absolute majority = sends it back to Council

Commission gives

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

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

First reading

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

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

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

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

Second reading

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

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

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

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

opinion on amendments

If, within three months, Council by qualified majority:

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

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

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

6. Conciliation Committee

Composed of equal numbers from Council and EP

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

Commission observes conciliation meetings

If no approval of Conciliation Committee within six weeks after joint text is adopted the proposal is rejected

7. Joint text to Council and EP

Council approves by qualified majority, EP by majority of votes cast

Deadline: six weeks or

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

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

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

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

Conciliation

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

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

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

Third reading

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

else rejected

Deadlines can be extended

Special rules when a group of States are proposing

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

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

Special provisions

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

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

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

VI) BUDGETARY RULES

GENERAL NOTES:

Own resources

Only the Council, acting unanimously after consultation of the EP, will decide on the Union's own resources. This law will not enter into force until approved by the Member States in accordance with their respective constitutional requirements. However, more detailed rules will be determined by a law, adopted by a qualified majority in the Council after having obtained the consent of the EP.

Multiannual financial framework

The proposed multiannual financial framework will replace the current financial perspective. It will - within the own resources limits - determine the ceilings of the Union's expenditures over a period of five years. It will be adopted by a law of the Council acting by qualified majority, after obtaining the consent of the EP. Unanimity will still be required for the adoption of the first financial framework under the new Constitution.

Annual budget

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

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

Financial Regulation

The Financial Regulation will be fixed by a law adopted under the ordinary legislative procedure. Until 2007 the Council will decide unanimously.

Article 310

The new budget procedure

Budget established by law = co-decision

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

The EP can thus also co-decide on expenditures related to CAP

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

1. Each Institution shall, before 1 July, draw up estimates of its expenditure. The

up an estimate

2. Commission makes a draft budget

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

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

5.a If EP approves = budget adopted

5.b If EP amends by majority of its members = Conciliation Committee is convened, unless Council approves all EP amendments

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

Commission takes part in Conciliation committee meetings

7.a) If joint text approved by Conciliation Committee within 21 days:

*- Council adopts by qualified majority
- EP adopts by majority of votes cast*

7.b) If Conciliation committee does not reach

Commission shall consolidate these estimates in a draft budget. It shall attach thereto an opinion which may contain different estimates.

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

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

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

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

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

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

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

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

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

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

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

8. **If, within twenty-one days, the Conciliation Committee does not approve a joint text or if the Council of Ministers rejects the joint text, the Parliament may,**

agreement on a joint text within 21 days or if such an agreement is rejected by the Council = position of the Council is adopted,

unless the EP re-confirms its amendments by absolute majority and three fifths of the votes cast, its amendments

or unless the EP rejects the whole joint text by absolute majority and three fifths of the votes cast the Commission submits a new proposal

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

within fourteen days, acting by a majority of its component members and three fifths of the votes cast, **confirm its amendments**.

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

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

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

V) THE INSTITUTIONS OF THE UNION

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 legislative proposals or propose amendments to them, but only with an 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 2009 elections 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 4 per Member State, the remainder seats being divided by degressive proportionality.
According to a proposal from the EP this could mean fewer members from the smaller states than at present*

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 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.

EP President

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

When they join, Romania will have 33, and Bulgaria 17 seats

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 remainder being 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.

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 PRESIDENT

Article I-21

*Prime Ministers will
appoint for 2½ 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 a minister may commit his/her Member State 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 reach consensus on changing over to qualified majority voting, a transitional measure known as a 'passerelle' is planned, through 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 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:
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

Effective from 2009

Independence
May not take instructions

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

4. In carrying out its responsibilities, the Commission shall be completely independent. In the discharge of their duties the European Commissioners and Commissioners shall neither

from any one

Censure

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

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 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 currently 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 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. His or her 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 Council 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.]