

EU draft Constitution- Provisions governing health and foods

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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) HEALTH AND FOOD SAFETY

1. Health and food safety under to the present provisions in the TEC

1.1 Introduction:

"The Community has chosen a high level of health protection as appropriate in the development of food law, which it applies in a non-discriminatory manner whether food or feed is traded on the internal market or internationally"

"Food law shall pursue one or more of the general objectives of a high level of protection of human life and health and the protection of consumers' interests, including fair practices in food trade, taking account of, where appropriate, the protection of animal health and welfare, plant health and the environment".

Preamble of the regulation 178/2002

The principle of mutual recognition guarantees free movement of goods -and thus of food- without the need to harmonise Member States' national legislation. Food which is lawfully produced in one Member State cannot be banned from sale on the territory of another Member State, even if it is produced following technical or quality specifications different from those applied to its own products. The only exceptions allowed - overriding general interest such as health, consumer or environment protection- are subject to strict conditions.

This principle was laid down by the Court of Justice in the Cassis de Dijon judgement of 1979 (case 120/78). However, the recognition of food products in one state on a low level can lead to the so-called problematic "race to the bottom" in which safety and health standards are being lowered permanently.

Thus, the main objectives of high productivity in the agriculture and food industry have shifted more and more towards consumer protection and thus the safety and quality of products.

The food crises of the 1990s, such as Mad Cow Disease, marked a turning point in the policy on food safety.

In 1997, the European Commission published the Green Paper on the general principles of food law in the European Union, which led to the White Paper on food safety of 2000 proposing a complete review of legislation in this area.

The reform of the CAP within the framework of Agenda 2000 has also been an important development, making food safety and quality one of the main objectives of agricultural policy.

The adoption of regulation 178/2002 in 2002 marked the turning point of the new legislation governing food safety. The regulation stipulated

- *the establishment of the European Food Safety Authority along with a Standing Committee on the Food Chain and Animal Health to replace the eight existing committees,*
- *the rapid alert system for human food and animal feed is reinforced,*
- *emergency actions by the Commission when the Member States alone are unable to contain a serious risk to human or animal health, or the environment.*

1.2 Legal bases

To provide for the protection of human health through food safety, the European Union's activities are based on different key areas:

- *the Common Agricultural Policy (CAP)- Articles 32-38 TEC,*
- *the internal market (Article 95),*
- *the protection of consumers (Article 153 TEC)*
- *public health (Article 152 TEC).*

1.2.1 Article 32-38: Agriculture

Activities of the Community to protect human health through food safety can be based on the Articles 32-38 TEC according to which the Community has to set up a common organisation of agricultural markets. Although the CAP took effect from 1962 onwards with the primary objective of ensuring food self-sufficiency for Europe's citizens, its objectives shifted more and more towards food safety and health concerns (see introduction above). Accordingly, respective measures can be taken on the basis of Article 37.2 TEC by qualified majority with the EP being consulted.

1.2.2 Article 95: Internal market

Measures according to Article 95 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", shall also concern "health, safety, environmental protection and consumer protection" and will take as a base a "high", not the "highest" level of protection. They require the qualified majority in the council with the EP co-deciding for all measures involving closer alignment of Member States' legislation on completion of the single market where consumer protection is concerned. At the same time, Article 95 TEC stipulates that specific action supporting and supplementing the policy pursued by the Member States is to be adopted under the co-decision procedure, after consultation of the Economic and Social Committee.

Notes: Once the Community has legislated, it is very difficult for the Member States to keep or introduce better national rules (Article 95 paragraphs 4 and 5 TEC).

1.2.3 Article 153 TEC: Consumer protection

Food and health related measures can also be taken on the basis of article 153 TEC. Basically, it is intended to promote consumers' health, safety, economic and legal interests, and their right to information. Decisions are taken according to Article 251: qualified majority in the Council with the EP co-deciding.

1.2.4 Article 152 TEC: Public health

Finally, measures related to food safety and health can be based on Article 152 TEC, public health. This article aims to ensure a high level of human health protection in all EU policies and activities. Decisions are taken by qualified majority in the Council with the EP co-deciding.

Article 152 TEC clearly stipulates that health policy is to be considered as complementary competence, hence neither exclusive, nor shared competence. The Community shall thus merely complement the Member States' health policies. Furthermore, the health policy of the Community is limited through Article 151 paragraph 5 according to which the delivery and organisation of health services remains in the responsibility of the Member States.

1.2.5 Conclusions

Consequently, a distinction must be made between the measures in the food and health sector, which are taken on the basis of the agriculture, internal market, health or consumer protection provisions.

The EU Court made clear that the choice between legal bases depends on the major aim of the measure taken. A choice must be based on "objective, judicially verifiable circumstances". Hence, if measures aim mainly at food as agricultural products, articles 32-38 TEC are to be considered as the proper bases. If however, the harmonisation of laws for the establishment or the functioning of the internal market is aimed at, Article 95 TEC is the appropriate legal base. If finally, a measure mainly aims at the consumer protection or the public health, Articles 152 or 153 TEC should be applied.

In theory, such a distinction is easy to make. In practice however, the definition of the proper legal basis seems much more difficult. Accordingly, the different measures taken in the food and health sector have been changeably based on the different above-mentioned articles.

Examples:

Directive 2000/16/EC on the circulation of feed materials is based on Article 152 TEC, whereas the earlier one is based on Article 37 TEC.

Directive 2003/43/EC laying down the animal health requirements applicable to intra-Community trade in and imports of semen of domestic animals of the bovine species has been based on Article 37 TEC.

Directive 2000/29/EC of 8 May 2000 on protective measures against the introduction into the Community of organisms harmful to plants or plant products and against their spread within the Community is based on Article 37 TEC.

Directive 2002/33/EC as regards health requirements for animal by-products is based on Article 152 TEC.

Directive 2000/15/EC on health problems affecting intra-Community trade in bovine animals and swine is based on Article 152 TEC.

Council Directive 92/46/EEC laying down the health rules for the production and placing on the market of raw milk, heat-treated milk and milk-based products is based on Article 37 TEC.

This shows that the legislator has vacillated as to the use of the proper legal base in the past. Accordingly, the legislator used several legal bases when legislating in the area of food safety and health. For example, regulation 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety is based on Articles 37 (agriculture), 95 (internal market) and 152 (public health).

1.3 Present legal bases in the TEC

1.3.1 General competence clause:

Catalogue of competence

health

ARTICLE 3 (ex Article 3) TEC

1. For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein:

p) a contribution to the attainment of a high level of health protection;

1.3.2 Competence in the area of food safety and health based on the provisions on agriculture:

Common Agricultural Policy at present

Decision making in the sphere of agriculture

ARTICLE 37 (ex Article 43) TEC

1. In order to evolve the broad lines of a common agricultural policy, the Commission shall, immediately this Treaty enters into force, convene a conference of the Member States with a view to making a comparison of their agricultural policies, in particular by producing a statement of their resources and needs.

2. Having taken into account the work of the Conference provided for in paragraph 1, after consulting the Economic and Social Committee and within two years of the entry into force of this Treaty, 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 34(1), and for implementing the measures specified in this Title.

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

*Qualified majority in the council
Parliament is consulted*

Common market organisation

The Council shall, on a proposal from the Commission and after consulting the European Parliament, acting by a qualified majority, make regulations, issue directives, or take decisions, without prejudice to any recommendations it may also make.

3. The Council may, acting by a qualified majority and in accordance with paragraph 2, replace the national market organisations by the common organisation provided for in Article 34(1) if:

- a) the common organisation offers Member States which are opposed to this measure and which have an organisation of their own for the production in question equivalent safeguards for the employment and standard of living of the producers concerned, account being taken of the adjustments that will be possible and the specialisation that will be needed with the passage of time;
- b) such an organisation ensures conditions for trade within the Community similar to those existing in a national market.

4. If a common organisation for certain raw materials is established before a common organisation exists for the corresponding processed products, such raw materials as are used for processed products intended for export to third countries may be imported from outside the Community.

1.3.3 Competence in the area of food safety and health based on the provisions on the internal market:

Laws of the Internal Market by qualified majority and conciliation procedure

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

Measures can concern health protection, safety, environment, consumer protection

***Keep** better national rules for*

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.

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

- major needs (Art. 30 TEC),
-environment,
-working environment,
but for no any other purpose

Introduce better national
rules for
-environment
-working environment
but only when there is a
specific problem for a
Member State after the
adoption of the measure

Commission can forbid a
national law for being:
- discriminatory
- a hidden trade restrictions
- an obstruction of the
functioning of the Internal
Market

Propose adaptation for all

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

Role of the Court

Safeguard clause:
Member States can restrict
internal market rules on
grounds of public health if
the Commission approves

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.

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 to the Council.

9. By way of derogation from the procedure laid down in Articles 226 and 227, 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 above shall, in appropriate cases, include a safeguard clause authorising the Member States to take, for one or more of the non-economic reasons referred to in Article 30, provisional measures subject to a Community control procedure.

1.3.4 Competence in the area of food safety and health based on the provisions on consumer protection

ARTICLE 153 (ex Article 129a) TEC

High (not the highest) level of consumer protection

1. In order to promote the interests of consumers and to ensure a high level of consumer protection, the Community 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. Consumer protection requirements shall be taken into account in defining and implementing other Community policies and activities.

3. The Community shall contribute to the attainment of the objectives referred to in paragraph 1 through:

- a) measures adopted pursuant to Article 95 in the context of the completion of the internal market;
- b) measures which support, supplement and monitor the policy pursued by the Member States.

Measures by qualified majority and conciliation procedure

4. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the measures referred to in paragraph 3(b).

Stricter national rules, if compatible with the Treaty – but not for the Internal Market

5. Measures adopted pursuant to paragraph 4 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with this Treaty. The Commission shall be notified of them.

1.3.5 Competence in the area of food safety and health based on the provisions on public health

TITLE XIII (ex Title X): PUBLIC HEALTH

ARTICLE 152 (ex Article 129) TEC

Objective: high, not the highest, level of health
-complement
-improve
-prevent
-research
-inform

1. A high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities.

Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

-educate	The Community shall complement the Member States' action in reducing <u>drugs</u> -related health damage, including information and prevention.
- reduce drug-related health damage	
Coordination The Commission may take any initiative	2. The Community shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action. <u>Member States shall</u> , in liaison with the Commission, <u>coordinate</u> among themselves their policies and programmes in the areas referred to in paragraph 1. <u>The Commission</u> may, in close contact with the Member States, take <u>any useful initiative</u> to promote such coordination.
International cooperation	3. The Community and the Member States shall foster cooperation with third countries and the competent <u>international organisations</u> in the sphere of public health.
Qualified majority and conciliation procedure adopts measures	4. The Council, acting in accordance with the procedure referred to in <u>Article 251</u> and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting:
-stricter national rules	a) <u>measures</u> setting high standards of quality and safety of <u>organs and substances of human origin, blood</u> and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing <u>more stringent protective measures</u> ;
- rules in veterinary and phytosanitary fields	b) by way of <u>derogation</u> from Article 37, measures in the <u>veterinary</u> and <u>phytosanitary</u> fields which have as their direct objective the protection of public health;
-Incentive measures, excluding harmonisation	c) <u>incentive measures</u> designed to protect and improve human health, <u>excluding</u> any <u>harmonisation of the laws</u> and regulations of the Member States.
	The Council, acting by a qualified majority on a proposal from the Commission, may also adopt recommendations for the purposes set out in this Article.
Principle of subsidiarity	5. Community action in the field of public health shall fully respect the <u>responsibilities of the Member States for the organisation and delivery of health services and medical care</u> . In particular, measures referred to in paragraph 4(a) shall <u>not</u> affect national provisions on the <u>donation</u> or medical use <u>of organs and blood</u> .

1.4 Member States rights on grounds of food safety and public health

The Member States' rights to take protective measures can be based on:

- Article 30 TEC: Prohibitions or restrictions on imports, exports or goods in transit can be justified on grounds of the protection of health and life of humans, (hence applicable to provision on common market, internal market and agriculture);

- Article 39.3 TEC, Article 186: Free movement of workers can be limited on grounds of public health

- Article 46 TEC: Right of establishment can be limited on grounds of public health

- Articles 46 and 55 TEC: Freedom to provide services can be limited on grounds of public health.

Furthermore, the Member States can maintain or introduce more stringent rules for the protection of the consumer health (article 153.5 TEC) and for health protecting measures in the frame of the establishment and functioning of the internal market (Articles 95.4-5 and 30 TEC). Whereas Article 153.5 TEC does not require the approval of the Commission, measures taken in accordance with Article 95, 30 TEC require such an approval.

2. The provisions of food safety and health under the draft Constitution

2.1 Shared competence of the Union in the spheres of food safety and health care

According to the draft Constitution most of the areas in which measures can be taken for food safety and health are to be considered as shared competence. Subject to the Member States' very limited rights to keep certain competence to take protective measures or to keep or introduce more stringent rules in the areas of internal market and consumer protection, the Member States lose their competence to legislate if the Union does so.

The Union shall share competence with the Member States in the spheres of

- Internal market (III-65)*
- Agriculture (III-127)*
- Consumer protection (III-132)*

Although Article I-13 mentions "common safety concerns in public health matters" as one of the areas of shared competence, Article III-16 considers the "protection and improvement of human health" as an area of supporting, coordinating and complementing action". Accordingly, the Section on "public health" (Articles III-179) has been placed under Chapter V of the draft Constitution, which lays down the areas where the Union may take coordinating, supplementing or supporting action.

Shared competence

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

Non-exhaustive list of shared competence (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,

<p><i>Areas where the Union cannot prevent Member States from legislating</i></p>	<p>energy, social policy, for aspects defined in Part III, economic, social and territorial cohesion, environment, consumer protection, common safety concerns in public health matters.</p> <p>3. In the areas of <u>research, technological development and space</u>, the Union shall have competence to carry out actions, in particular to <u>define and implement programmes</u>; however, the exercise of that competence <u>may not</u> result in <u>Member States</u> being <u>prevented</u> from exercising theirs.</p>
<p><i>Development cooperation and humanitarian aid</i></p>	<p>4. In the areas of <u>development cooperation and humanitarian aid</u>, the Union shall have competence to <u>take action and conduct a common policy</u>; however, the exercise of that competence <u>may not</u> result in Member States being <u>prevented from exercising theirs</u>.</p>

The protection and improvement of human health falls into an area of supporting, coordinating and complementary action. Measures taken in this area shall NOT entail harmonisation of national laws and are meant to complement Member States' activities.

<p><i>Supporting actions</i></p>	<p>Article I-16: Areas of <u>supporting, coordinating or complementary action</u></p> <p><u>action</u></p> <p>1. The Union may take supporting, coordinating or complementary action.</p>
<p><i>Areas of supportive actions</i></p>	<p>2. The areas for supporting, coordinating or complementary action shall be, at European level:</p> <ul style="list-style-type: none"> industry protection and improvement of human health education, vocational training, youth and sport culture civil protection.
<p><i>No harmonisation under supportive actions</i></p>	<p>3. <u>Legally binding acts</u> adopted by the Union on the basis of the provisions specific to these areas in Part III <u>may not entail harmonisation</u> of Member States' laws or regulations.</p>

2.2 Provisions on agriculture according to the new draft Constitution

Currently, decisions in the area of agriculture are taken by qualified majority in the Council, with the European Parliament simply being consulted. The draft Constitution now proposes the use of the ordinary legislative procedure (qualified majority in the Council and the European Parliament co-deciding).

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.

2.3 Provisions governing the internal market according to the draft Constitution

Measures which aim at the establishment or the functioning of the internal market can concern health, safety, environmental protection and consumer protection. In Article III-65, the provisions of present Article 95 TEC remain largely unchanged. As at present, the ordinary legislative procedure (Qualified majority in the Council and the European Parliament co-deciding) would apply.

Internal market rules

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

Excluding:

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

Proposals shall aim at a high level of protection for health, safety, environment, consumer protection (High but not the "highest" level)

Protection of human health (III-65 and III-43) can justify

- maintenance of better*

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 **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.

national rules (III-43)

- introduction of better national rules

Commission can forbid a national law for being:

- discriminatory

- a hidden trade restrictions

- an obstruction of the functioning of the Internal Market

National measures may be extended period by six months

If a national derogation from harmonisation is approved, 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

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.

2.4. Provisions governing the protection of consumers according to the draft Constitution

In principle, the area of Consumer protection remains largely unchanged. A decision could be taken by qualified majority in the Council with the European Parliament co-deciding.

However according to Article I-13 of the draft Constitution the shared competence applies to the area of consumer protection. At present, consumer protection is an area in which the Community only has a "framework" competence.

The Union has to ensure a high, but not the highest, level of consumer protection within all its policies.

Furthermore, consumer protection has to be considered as a horizontal task of the Union. A high level of consumer protection must be taken into account in ALL Union policies. This principle is highlighted through the insertion of Articles III-5 and II-38.

Article III-132

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

Ordinary legislative procedure and consultation of EcoSoc

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

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.

2.5 Provisions governing public health according to the draft Constitution

The Section on "public health" (Articles III-179) has been placed under the Chapter V of the draft Constitution, which lays down the areas where the Union may take coordinating, supplementing or supporting action.

As at present, measures in the sphere of public health can be taken by qualified majority with the European Parliament co-deciding.

Public health

A high level of health protection:

- *preventing illness and diseases*
- *fighting against health scourges*
- *promoting research*
- *fighting against drugs*
- *information and education*

Actions by the Union shall only complement Member States' policies...

.... and encourage co-operation between Member States

- *guidelines*
- *best practice*
- *monitoring*
- *evaluation*

Co-operation with 3rd countries

European law or framework law shall establish certain measures

Legislative procedure

The quality and safety of organs and blood can be increased by member states

SECTION 1 PUBLIC HEALTH

Article III-179

1. A high level of human health protection shall be ensured in the definition and implementation of all the Union's policies and activities.

Action by the Union, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to physical and mental health. Such action shall cover the fight against the major health scourges, by promoting research into their causes, their transmission and their prevention, as well as health information and education.

The Union shall complement the Member States' action in reducing drugs-related health damage, including information and prevention.

2. The Union shall encourage cooperation between the Member States in the areas referred to in this Article and, if necessary, lend support to their action.

Member States shall, in liaison with the Commission, coordinate among themselves their policies and programmes in the areas referred to in paragraph 1. The Commission may, in close contact with the Member States, take any useful initiative to promote such coordination, in particular initiatives aiming at the establishment of guidelines and indicators, the organisation of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation. The European Parliament shall be kept fully informed.

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

4. European laws or framework laws shall contribute to the achievement of the objectives referred to in this Article by establishing the following measures in order to meet common safety concerns:

(a) measures setting high standards of quality and safety of organs and substances of human origin, blood and blood derivatives; these measures shall not prevent any Member State from maintaining or introducing more stringent protective measures;

Veterinary and phytosanitary fields

Legislative procedure

*Incentive measures for human health
Cross border health scourges*

Legislative procedure

Council may adopt recommendations

Respect for national responsibilities

(b) by way of derogation from [ex Article 37], measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

European laws or framework laws shall be adopted after consulting the Economic and Social Committee and the Committee of the Regions.

5. European laws or framework laws may also establish incentive measures designed to protect and improve human health and to combat the major cross-border health scourges, excluding any harmonisation of the laws and regulations of the Member States. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

6. For the purposes set out in this Article, the Council of Ministers, on a proposal from the Commission, may also adopt recommendations.

7. Union action in the field of public health shall fully respect the responsibilities of the Member States for the organisation and delivery of health services and medical care. In particular, measures referred to in paragraph 4(a) shall not affect national provisions on the donation or medical use of organs and blood.

2.6 The Charter

Finally, the Charter has been inserted into the Constitution and provides for a high level of human health protection (II-35) and a high level of consumer protection which has to be ensured by all union policies.

Hence, the Charter confirms a fundamental right on the one hand (right to health care), and a general principle on the other hand (insurance of consumer protection). The real impact of these provisions is difficult to evaluate, since the Constitution herewith rather lays down general principles than traditional fundamental rights, although article II-35 also stipulates the fundamental right to health care.

It will thus be up to the EU Court of Justice to determine the true significance of the Charter's provisions on health and consumer protection.

Right to health care

High level of health protection

Article II-35: Health care

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

High level of consumer

Article II-38: Consumer protection

Union policies shall ensure a **high level of consumer protection**.

protection

1.4 Member States rights on grounds of food safety and public health

As at present, the Member States' rights to take protective measures can be based on:

- Article III-43: Prohibitions or restrictions on imports, exports or goods in transit can be justified on grounds of the protection of health and life of humans, (hence applicable to provision on common market, internal market and agriculture);*
- Article III-18.3, Article III-190: Free movement of workers can be limited on grounds of public health*
- Article III-25.1: Right of establishment can be limited on grounds of public health*
- Articles II-35 and III 25.1 TEC: Freedom to provide services can be limited on grounds of public health.*

Furthermore, the Member States can maintain or introduce more stringent rules for the protection of consumer health (Article III-132.4) and for health protecting measures in the framework of the establishment and the functioning of the internal market (Articles III-65.4-5 and III-43). Whereas Article 132.4 does not require the approval of the Commission, measures taken in accordance with Articles III-65.4 and III-43 require such an approval.

Exceptions:

- morality*
- public policy*
- public security*
- protection of:*
 - * plants*
 - * animals*
 - * national treasures*
 - * industrial and commercial property*

Article III-43

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.

Internal market

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

Excluding:

- taxation*
- movement of persons*

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.

-employees' rights

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

Protection of the environment

Keep better rules for the:

- environment*
- working environment*
- or on grounds of major needs*

Introduce better rules for the:

- environment*
- working environment where there are specific problems arising for a State after harmonisation*

The Commission decides whether a measure is:
-discriminatory treatment
-a hidden trade restriction
-an obstruction to the functioning of the Internal Market

The measure may be extend by six months

If a national derogation from harmonisation is approved, Commission shall propose adaptation for all

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

Directly to the Court

3. The Commission, in its proposals submitted under 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 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.

*Safeguard clause under
EU control*

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.

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 health and food are taken

- *on the basis of Article 37.2 TEC by qualified majority with the EP being consulted,*
- *on the basis of Article 95 TEC by qualified majority in the council with the EP co-deciding,*
- *on the basis of Article 153 TEC by qualified majority in the Council with the EP co-deciding and*
- *on the basis of Article 152 TEC by qualified majority in the Council with the EP co-deciding.*

In the future, all measures in the sphere of food safety and health can be taken within the ordinary legislative procedure, which means by qualified majority in the Council with the EP co-deciding.

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 for
- 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 by qualified majority, EP with a majority of members
Time-limit: six weeks*

Commission observes conciliation meetings

If no approval of either Council or EP 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

Deadline: six weeks or else rejected

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.

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 word 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

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 the absolute majority of its members in second reading.

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

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

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

The number of MEPs will be limited to 736. The allocation of seats before the 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 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*

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 4 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.

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

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

of the President

represents the EU

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,

wider world on CFSP

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.

*ent cannot have a national
te*

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

3) COUNCIL OF MINISTERS

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

Article I-22

Council of Ministers:

- legislates with EP
- carries out policy making
- coordinates

Status as minister, the only one to commit the 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 has not achieved consensus on changing over to qualified majority voting, a transitional measure - a 'passerelle' - is planned, by which the European Council will have the

opportunity to decide unanimously that the Council will in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the need to amend the Constitution, which would in turn require ratification by each Member State.

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

Article I-24

1. Majority of Member States

2. 60% of the EU population

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

Enlarged qualified majority

1. 2/3 of Member States

2. 60% of the EU population

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

NB: New deepening clause

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

Can change unanimity to qualified majority on 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

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 outside instructions

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 it is actually the case.

Commission President

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

Commission members

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

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

Article I-26

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

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

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

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

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

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

5) EU FOREIGN MINISTER

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

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

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

Article I-27

EU Foreign Minister

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

Tasks of Foreign Minister

Double hat

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

*External service
established in part III*

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

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

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

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