

# *EU draft Constitution- Provisions regarding Justice and Home Affairs*

## **I) GENERAL PRINCIPLES**

- 1. Fundamental Principles*
- 2. Primacy of EU law*
- 3. Jurisdiction on competence*

## **II) JUSTICE AND HOME AFFAIRS**

- 1. Definition of Justice and Home Affairs*
- 2. History of the European Justice and Home Affairs*
- 3. Schengen*
- 4. Structure of Justice and Home Affairs*
  - 4.1 Present structure of JHA*
  - 4.2 JHA according to the draft Constitution*
- 5. Decisions and procedure in the area of JHA*
  - 5.1 Decisions according to the present treaties*
    - 5.1.1 Judicial and police cooperation in criminal matters (TEU)*
    - 5.1.2 Visa, asylum, other policies related to free movement of persons, judicial cooperation in civil matters (TEC)*
  - 5.2 Decisions according to the new draft Constitution*
- 6. Jurisdiction of the EU Court*
  - 6.1 Jurisdiction according to the present treaties*
    - 6.1.1 Jurisdiction on judicial and police cooperation in criminal matters (TEU)*
    - 6.1.2 Jurisdiction on visa, asylum, other policies related to free movement of persons, judicial cooperation in civil matters (TEC)*
  - 6.2 Jurisdiction according to the new draft Constitution*

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

- 1. European Parliament*
  - 1.1 Composition at present*
  - 1.2 Composition 2004-2009*
  - 1.3 Composition from 2009 onwards*
- 2. European Council*
- 3. Council of Ministers*
  - 3.1 Voting at present*
  - 3.2 Voting 2004-2009*

**3.3. Voting from 2009 on  
4. European Commission**

## ***1) GENERAL PRINCIPLES OF EU LAW***

### ***1. FUNDAMENTAL PRINCIPLES***

#### **Article I-9**

*Principles governing  
EU Competence:*

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

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

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

*- Proportionality:  
“Not exceed what is  
necessary”*

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

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

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

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

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

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

### ***2. PRIMACY OF EU LAW***

#### **Article I-10**

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

*Require fulfilment of EU obligations by Member States*

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

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

### ***3. JURISDICTION ON QUESTIONS OF COMPETENCE***

***The EU Court has jurisdiction on questions of competence***

#### **Article III- 270**

*EU-Court reviews:*

*- legality of legal acts*

*- lack of competence and infringement of:*

*- procedural requirements*

*- the Constitution*

*- rule of law*

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

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

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

#### **Article III-281**

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

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

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

#### **Article III-284**

Member States undertake **not to submit a dispute** concerning the interpretation or

application of the Constitution to any method of settlement **other than those provided for therein.**

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

## **II) JUSTICE AND HOME AFFAIRS**

### **1. Definition of Justice and Home Affairs**

*The objective of the cooperation in the field of Justice and Home Affairs (JHA) is to create an area of freedom, security and justice as provided for in the Treaty of Amsterdam.*

*Area of freedom: this means not only ensuring the free movement of persons, according to the Schengen model, but also protecting fundamental rights and combating all forms of discrimination. Similarly, respect for private life and, in particular, the protection of personal data, must be guaranteed. As regards asylum and immigration, most of the instruments adopted in the past were not binding. Since these areas are now covered by the EC Treaty, Community instruments can be adopted and a European policy defined.*

*Area of security: this includes combating crime, in particular terrorism, the trade in human beings, crimes against children, drug trafficking, arms trafficking, corruption and fraud. A special action plan on crime was adopted in June 1997 at the Amsterdam European Council; another action plan against drugs is to be implemented in the period 2000-2004. The central role of Europol is emphasised as an essential instrument for increased cooperation between the Member States particularly at operational level.*

*Area of justice: despite differences between the Member States, the Union's objective is to guarantee European citizens equal access to justice and to promote cooperation between the judicial authorities. In civil matters, judicial cooperation is intended to simplify the environment of European citizens specifically with regard to cross-border disputes. In criminal matters, it should strengthen the coordination of prosecution and provide a common sense of justice by defining minimum common rules for criminal acts, procedures and penalties.*

### **2. History of EU Justice and Home Affairs**

*For a long time, issues relating to Justice and Home Affairs have been dealt with solely at intergovernmental level. Step by step however, the area of JHA has been integrated into the Treaties. First, the area of cooperation in Justice and Home Affairs was inserted into the TEU through the Treaty of Maastricht in 1993. In 1999, six of the nine areas of JHA affairs (visas, asylum, immigration, other policies related to the free movement of persons, the "Schengen acquis" and judicial cooperation in civil matters) were moved from the third to the first pillar through the Treaty of Amsterdam. However and according to article 69 TEC, Ireland, the UK and Denmark would not be bound by the provisions of Title VI TEC. These exceptions have been laid down in special protocols annexed to the treaty of Amsterdam. In 1996, Denmark joined Schengen (see below).*

*The areas of judicial cooperation (Article 29.2 par. 2 and Article 31. a-d, Article 32 TEU) and police cooperation (Article 29.2 and Article 30, Article 32 TEU) in criminal matters and harmonisation of criminal law (Article 29.2 par. 2 and Article 31. e TEU) remain within the third pillar, hence subject to the intergovernmental method.*

### **3. Schengen**

*In 1985, France, Germany, Belgium, Luxembourg and the Netherlands decided to create a territory without internal borders. The first agreements were signed in Schengen, Luxembourg.*

*The Schengen area has been extended to include 13 Member States. Italy signed the agreement in 1990, Spain and Portugal joined in 1991, Greece followed in 1992, Austria in 1995 and finally Denmark, Finland and Sweden in 1996. The Schengen area does not include Ireland and the United Kingdom. Moreover, although Denmark has signed the Schengen agreement and is bound to it under the principles of international law, it can choose within the EU framework whether or not to apply any new decisions taken under the agreements.*

*The protocol number 2 attached to the Treaty of Amsterdam incorporates the developments brought about by the Schengen agreement into the European Community framework. The Schengen area, which is the first concrete example of enhanced cooperation between thirteen Member States, is now within the legal and institutional framework of the EU.*

*Measures adopted by Schengen group members*

*The main measures are:*

- the removal of checks at common borders, replacing them with external border checks;*
- a common definition of the rules for crossing external borders;*
- separation in air terminals and ports of people travelling within the Schengen area from those arriving from countries outwith the area;*
- harmonisation of the rules regarding conditions of entry and visas for short stays;*
- coordination between administrations on surveillance of borders (liaison officers, harmonisation of instructions and staff training);*
- the definition of the role of carriers in the fight against illegal immigration;*
- requirement for all non EU nationals moving from one country to another to lodge a declaration;*
- the drawing up of rules for asylum seekers (Dublin Convention);*
- the introduction of rights of surveillance, but not pursuit*
- the strengthening of legal cooperation through a faster extradition system and faster distribution of information about the implementation of criminal judgements;*
- the creation of the Schengen Information System (SIS).*

## **4. Structure of the JHA**

### **4.1 Present structure of the JHA**

*The provisions on Justice and Home Affairs have been divided as follows:*

*- Treaty on the European Union (TEU) Title VI (third pillar): police and judicial cooperation in criminal matters*

*- Treaty establishing the European Community (TEC), Title IV, articles 61-69 TEC (first pillar): Visa, asylum, immigration, free movement of persons, judicial cooperation in civil matters*

*Furthermore, a "passerelle" clause, article 42 TEU, allows the Council, which has to act unanimously, to move actions in areas of the police and judicial cooperation in criminal matters from the third to first pillar. If doing so, the Council also decides on the relevant voting conditions.*

## **4.2. JHA in the draft Constitution**

*Unlike the present structure, the provisions governing JHA are to be found in different sections of Chapter IV "Area of Freedom, Security and Justice".*

*- Section 1: General provisions*

*- Section 2: Policies on border checks, asylum and immigration*

*- Section 3: Judicial cooperation in civil matters*

*- Section 4: Judicial cooperation in criminal matters*

*Section 5: Police cooperation*

*The draft Constitution thus more clearly separates the actions taken in the framework of the different sections (at present judicial and police cooperation are dealt with in one single title VI of the TEU without any classification into sections and title IV of the TEC deals with asylum, immigration, other policies related to the free movement of persons and judicial cooperation in civil matters).*

*It also points out that according to the area, decisions are to be taken according to a different procedure. Thus, in some specific and sensitive areas, e.g. police cooperation, decisions are to be taken unanimously, with the European Parliament only being consulted. Most decisions will however be taken by qualified majority votes in the Council.*

*The area of JHA will be a shared competence where the Member States lose their competence to legislate when the Union exercises its own. This basically means that the Union only needs to adopt a piece of legislation in the area of JHA, to make the Member States lose their competence.*

*In general, the draft Constitution will make most relevant changes in the area of JHA, not least as a result of the removal of the distinction between measures covered by the EC Treaty and those covered by the 'third pillar', and the general application of codecision (ordinary legislative procedure) and qualified majority voting.*

*Measures relating to judicial cooperation in criminal matters will mainly be subject to qualified majority voting.*

*The draft Constitution calls for approximation of criminal legislation (descriptions of criminal offences and punishments), partly in the fight against crimes 'of European interest,' of which a list is given, and partly in ensuring the implementation of a Union legislation.*

*The Court of Justice will be given a more general role in the monitoring of the Union's activities in this area (see below).*

*Some specific institutional characteristics will remain:*

*- the definition by the European Council (and therefore by consensus) of strategic guidelines for legislative and operational planning, without European Parliament involvement;*

*- sharing of the legislative initiative between the Commission and a quarter of Member States (Article III-165) in the area of judicial cooperation in criminal matters and police cooperation. However, one Member State will no longer be able to submit an initiative on its own (Article 34 TEU);*

*- unanimity will be retained in certain areas, particularly regarding cross-border aspects of family law (Article III-170) and all forms of police cooperation, except provisions concerning Europol which can be adopted by qualified majority (III-177);*

*- definition of a role for national parliaments, with particular regard to monitoring whether the principle of subsidiarity is being respected (Article III-160.1 and the Protocol on subsidiarity). However, these provisions do not give them any substantial powers because the national parliaments have only six weeks to complain, the Commission is free to reject the complaint, and the ultimate decision rests with the Court of Justice (which has a vested interest in centralisation).*

*- The possibility of subsequent developments is left open by transitional ('passerelle') measures regarding family law (Article III 170.3) and the list of serious crimes for which the consent of the European Parliament will be required (Article III-172.1, par. 3).*

## **5. Decisions and procedures in the area of Justice and Home Affairs**

### **5.1 Decisions according to the present treaties**

#### **5.1.1 Judicial and police cooperation in criminal matters (TEU)**

*The TEU provides for the following measures to be taken in the area of judicial and police cooperation in criminal matters:*

- common positions*
- framework decisions - legally binding*
- decisions - legally binding*

*Basically, the common positions, decisions and framework decisions need to be taken by unanimity. Exceptions are provided for in Art 34.2 TEU:*

- Measures to implement decisions: Qualified majority (Art. 34.2 c TEU)*
- Measures to implement conventions: Two-thirds of the contracting parties (Art.34.2 d, 2nd paragraph)*
- Procedural questions: simple majority (Art. 34.4 TEU)*

*Furthermore, according to Article 42 TEU, areas mentioned in Title VI of the TEU can be moved to the first pillar (see below), which would submit them to the regular procedure of community legislation.*



### 5.1.2 Visa, asylum, immigration and other policies related to the free movement of persons, judicial cooperation in civil matters (TEC)

*According to the provisions of Title IV TEC, the Council shall adopt "measures". Since these provisions have been introduced into the first pillar by the treaty of Amsterdam, measures can be directives, regulations, decisions, recommendations or opinions.*

*According to Art. 67.1 TEC, measures taken in the framework of Title IV of the TEC are to be decided by unanimity (with the European Parliament being consulted). This applies to the areas of visas, asylum, immigration, other policies related to the free movement of persons, but also to judicial cooperation in civil matters (Article 65.1 TEC)*

*However, the following exceptions apply:*

- Art. 64.2 TEC: for provisional measures for a period of a maximum six months when a Member State is confronted with an emergency situation characterised by a sudden flow of immigration*
- Art. 67. 2 TEC: After a period of five years following the entry into force of the Treaty of Amsterdam (1.5.2004), the Council may decide unanimously that the measures under this title are to be adopted according to the co-decision procedure.*
- Article 67.3 TEC: Measures establishing rules on visas for stays of no more than three months which lay down the list of third countries whose nationals must be in possession of a visa and which determine a uniform format for visas can be adopted by qualified majority.*
- Article 67.4 TEC: After five years following the entry into force of the Treaty of Amsterdam (1.5.2004) those measures can be adopted according to the co-decision procedure.*
- Article 67.5 TEC: If the Council has adopted by unanimity a law defining common rules and basic principles, measures on asylum and measures on refugees for giving them temporary protection can be decided by qualified majority.*
- Article 67.5 TEC: Measures concerning judicial cooperation in civil matters (except for family law) can be taken by qualified majority*

### 5.2 Decisions according to the draft Constitution

*According to the sections 2 (border checks, asylum and immigration), 3 (judicial cooperation in civil matters), 4 (judicial cooperation in criminal matters) and 5 (police cooperation) of Chapter IV of Title III 4 of the draft Constitution, the Union will be able to enact European laws and framework laws.*

*In general, European laws and framework laws are adopted within the framework of the general legislative procedure of Article III-302, which means by qualified majority within the Council with the co-decision of the European Parliament on a proposal from the Commission.*

*This means that, with the exception of measures concerning operational police cooperation (Article III-176.3), decisions in the area of JHA will be generally taken by qualified majority.*

*However, the draft Constitution also provides for exceptions:*

- *When enacting regulations to ensure administrative cooperation between the member states, the Council shall act on a proposal from the Commission with the European Parliament being consulted (Article III-164).*
- *Acts adopted in the framework of police or judicial cooperation shall be adopted on a proposal of the Commission or on the initiative of a quarter of the Member States (Article III-165)*
- *The Member States' right to determine the volume of admission of immigrants remains formally untouched (Article III-168).*
- *Measures within the field of judicial cooperation in civil matters referring to family law require unanimity within the Council, the European Parliament only being consulted (Article 170.3.1st alternative). However, the Council may determine by unanimity those aspects of family law, which may be adopted by the ordinary legislative procedure (Article III 170. 3 2nd alternative).*
- *To define other crime areas which may be subject to common definition and sanctions, unanimity is required within the Council, with the approval of the European Parliament (Article III-172.1)*
- *A Public Prosecutor's Office may be established by unanimity in the Council and the European Parliament's approval (Article III-175.1).*
- *Finally, as mentioned above, the operational cooperation of police customs and other law enforcement services would require unanimity with the European Parliament being consulted (Article III-176.3)*

## **6 Jurisdiction of the EU Court**

### **6.1 Jurisdiction according to the present treaties**

#### **6.1.1 Jurisdiction for judicial and police cooperation in criminal matters (TEU)**

*According to the present Articles 46 and 35 TEU, the Court's competence to give preliminary rulings is subject to a declaration by a Member State to submit itself to the jurisdiction of the Court. This limitation would be given up according to the new draft Constitution.*

*However, the Court would have no jurisdiction to review the legality of Member States' law enforcement services (Article III-283) (see below).*

#### **6.1.2 Jurisdiction for visa, asylum, immigration and other policies related to the free movement of persons, judicial cooperation in civil matters (TEC)**

*In principle, the articles 220-245 TEC apply which means that the ECJ has full jurisdiction in the area of JHA which are being dealt with under the TEC (visa, asylum, immigration and other policies related to the free movement of persons, judicial cooperation in civil matters).*

*However, article 68.1 TEC limits the use of preliminary rulings to the decisions of Member States courts against which there is no judicial remedy*

*Finally, under Art. 68.2 TEC, the Court has no competence for controls at the internal borders which aim at the maintenance of law and order and safeguarding internal security. This provision mainly protects the Schengen Implementation Agreement according to which Member States can proceed to border controls in exceptional cases.*

## **6.2 Jurisdiction under the new draft Constitution**

*The Court of Justice will be given a much more important role in the monitoring of the Union's activities in the area of Justice and Home Affairs. The Court's competence will hence not be subject to the present limitations of the TEU (Articles 46 and 35) and TEC (Article 68):*

*According to sections 2 (border checks, asylum and immigration) section 3 (judicial cooperation in civil matters), section 4 (judicial cooperation in criminal matters) and section 5 (police cooperation in criminal matters) of Chapter IV of Title III 4 of the draft Constitution, the Union will be able to enact European laws and framework laws.*

*This means, that the Court of Justice would have jurisdiction*

- for all measures taken in the framework of judicial and police cooperation in criminal matters;*
- for all actions and procedures, not only preliminary rulings.*

*However, the Court's competence would be limited by the following: According to Article III-163, which corresponds to the present Articles 64 TEC and 33 TEU, the constitution does not affect the right of member states to take measures to maintain law and order and to safeguard the internal security. Accordingly, Article III-283 states that the Court shall have no jurisdiction to review the validity or proportionality of operations carried out by a Member State's police force or other law enforcement services to maintain law and order and to safeguard internal security.*

*In opposition to the present TEC however, the restrictions of Article III-283 of the draft Constitution only refer to the sections 4 and 5 (police and judicial cooperation in criminal matters) and not to border checks and asylum and immigration, whereas the present restrictions of the TEU and TEC not only apply to judicial and police cooperation (article 35.5 TEU), but also to measures taken in the framework of internal border control (articles 68.2 TEC and 62.1 TEC). This means that the EU Court will have jurisdiction to review the validity or proportionality of operations carried out by a Member State's police or other law enforcement service to maintain law and order and to safeguard internal security when controlling the Union's internal borders.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*EP President*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 2) EUROPEAN COUNCIL

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

### Article I-20

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

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

*Meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus,  
not unanimity as at  
present*

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

## THE EUROPEAN COUNCIL CHAIR

### Article I-21

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

*Tasks of the President*

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,

*Represents the EU  
in the wider world on  
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

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

#### Article I-22

**Council of Ministers:**

- legislates with EP
- carries out policy making
- coordinates

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Article I-24

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

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

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

### **Super qualified majority**

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

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

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

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

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

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

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

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

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

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

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

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

## 4) EU 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*

*Effect from 2009*

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

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

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

### **Censure**

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

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

## **COMMISSION PRESIDENT**

*The political power of the President of the Commission will be backed through his election 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. FOREIGN AFFAIRS MINISTER**

*The Minister for Foreign Affairs will be appointed by the European Council by 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. As such his nomination will be subject to the EP's approval of the Commission as a whole, and eventually to a vote of censure.*

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

*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.]