

EU draft Constitution- Jurisdiction

I) GENERAL PRINCIPLES

- 1. Fundamental Principles*
- 2. Primacy of EU law*
- 3. Jurisdiction on competence*
- 4. Legal continuity*
- 5. Protocol subsidiarity*

II) JURISDICTION

- 1. The Court of Justice*
 - 1.1 Institution of the Union*
 - 1.2 Composition*
 - 1.2.1 European Court of Justice*
 - 1.2.2 The High Court*
 - 1.2.3 Specialised courts*
- 2. New areas of Jurisdiction*
 - 2.1 Common Foreign and Security Policy*
 - 2.2 Justice and Home Affairs*
 - 2.3 Access of natural or legal persons to the Court*
- 3. Procedures*
 - 3.1. Failure to fulfil*
 - 3.2 Annulment*
 - 3.3 Failure to act*
 - 3.4 Actions for damages*
 - 3.5 Appeals*
 - 3.6 Preliminary rulings*
- 4. Specific High Court procedures*
- 5. Derogations from the procedures*
 - 5.1 Illicit state aid*
 - 5.2 Restriction of internal market rules*
 - 5.3 Restrictions of freedom to provide services and of services of general interests*
- 6. Other Competence*
 - 6.1 Opinions on international agreements*
 - 6.2 Dismissal of ombudsman*
 - 6.3 Dismissal of members of the Commission*
 - 6.4 Activities of the European Investment Bank and of the national central banks*
 - 6.5 Dismissal of members of the Court of Auditors*

6.6 Suspension of enforcement of fines

6.7 Infringement of the subsidiarity principle

III) OTHER 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

5. EU Foreign Minister

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

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.

Require fulfilment of EU obligations by 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

4. LEGAL CONTINUITY

All rights and obligations continue unless they are in breach of this new all-prevailing Constitution

Case-law maintained

Article IV-3:

The European Union shall succeed to all the rights and obligations of the European Community and of the Union, whether internal or resulting from international agreements, which arose before the entry into force of the Treaty establishing the Constitution by virtue of previous treaties, protocols and acts, including all the assets and liabilities of the Community and of the Union, and their archives.

The provisions of the acts of the Institutions of the Union, adopted by virtue of the treaties and acts mentioned in the first paragraph, shall remain in force under the conditions laid down in Protocol ... annexed to the Treaty establishing the Constitution. **The case-law of the Court of Justice of the European Communities shall be maintained as a source of interpretation of Union law.**

5. COURT ALSO CONTROLS RESPECT OF SUBSIDIARITY

Member States can bring cases of infringement of the principle of subsidiarity before the Court

The Committee of Regions can do the same when it is consulted on legislative acts

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

7. The **Court of Justice** shall have jurisdiction to hear actions on grounds of **infringement of the principle of subsidiarity** by a legislative act, brought in accordance with the rules laid down in Article III-270 by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

II) JURISDICTION

1.1 THE COURT OF JUSTICE IS AN INSTITUTION OF THE UNION

A single institutional framework for all areas of cooperation (no more pillars)

The institutions of the Union

Article I-18

1. The Union shall be served by a single institutional framework which shall aim to: advance the objectives of the Union, promote the values of the Union, serve the interests of the Union, its citizens and its Member States, and ensure the consistency, effectiveness and continuity of the policies and actions which it undertakes in pursuit of its objectives.

2. This institutional framework comprises :
The European Parliament,
The European Council,
The Council of Ministers,
The European Commission,
The Court of Justice,

1.2 COMPOSITION OF THE COURT OF JUSTICE

The term "Court of Justice" comprises
- the European Court of Justice,
- the High Court,
- specialised courts.

European Court of Justice and the EU High Court (currently Court of First Instance)

Ensure right of appeal to EU

Competences of the Court of Justice

- ruling on actions
- preliminary rulings
- rulings on other cases

Article I-28

1. The **Court of Justice shall include the European Court of Justice, the High Court and specialised courts** It shall ensure respect for the law in the interpretation and application of the Constitution.

Member States shall provide rights of appeal sufficient to ensure effective legal protection in the field of Union law.

3. The Court of Justice shall:

rule on actions brought by a Member State, an institution or a natural or legal person in accordance with the provisions of Part III;

give preliminary rulings, at the request of Member State courts, on the interpretation of Union law or the validity of acts adopted by the institutions;

rule on the other cases provided for in the Constitution.

1.2.1 THE EUROPEAN COURT OF JUSTICE

One Judge per Member State

Article I-28

One judge from each Member State, plus Advocates-General appointed by common accord by Member States governments

2. The European Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The High Court shall include at least one judge per Member State: the number shall be fixed by the Statute of the Court of Justice. The judges and the Advocates-General of the European Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article III-260 to III-261, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

Chambers

Article III-258

*Three formations:
- chambers
- Grand Chamber
- full Court*

The European Court of Justice shall sit in chambers, as a Grand Chamber or as a full Court, in accordance with the rules laid down for that purpose in the Statute of the Court of Justice.

8 Advocates General

Article III-259

*8 Advocates-General
Number can be increased by unanimity
- independent
- make submissions when his involvement is required*

The European Court of Justice shall be assisted by eight Advocates-General. Should the Court of Justice so request, the Council of Ministers may, acting unanimously, increase the number of Advocates-General.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice, require his or her involvement.

Qualifications

Article III-260

Shall have qualifications for the highest positions within their national legal systems

Chosen by common accord

A part replaced every third year

The Court elects its own President for three years, may re-elect

Council approves rules

The Judges and Advocates-General of the European Court of Justice shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States after consulting the panel provided for in Article III-262.

Every three years there shall be a partial replacement of the Judges and Advocates-General, in accordance with the conditions laid down in the Statute of the Court of Justice.

The Judges shall elect the President of the European Court of Justice from among their number for a term of three years. He may be re-elected.

The Court of Justice shall establish its Rules of Procedure. Those Rules shall require the

approval of the Council of Ministers.

1.2.2 THE HIGH COURT

***At least one judge
per Member State =
The High Court can
have more judges
than the European Court***

Article I-28

*Judges and Advocates-
General are appointed by
common accord by Member
States governments*

2. The European Court of Justice shall consist of one judge from each Member State, and shall be assisted by Advocates-General. The **High Court shall include at least one judge per Member State**: the number shall be fixed by the Statute of the Court of Justice. The judges and the Advocates-General of the European Court of Justice and the judges of the High Court, chosen from persons whose independence is beyond doubt and who satisfy the conditions set out at Article III-260 to III-261, shall be appointed by common accord of the governments of the Member States for a term of six years, renewable.

***Number of Judges
determined by the
Statute of the Court of
Justice***

*Former Court of First
Instance may have more
than one judge from each
country*

Article III-261

The number of Judges of the High Court shall be determined by the Statute of the Court of Justice. The Statute may provide for the High Court to be assisted by Advocates-General.

Members must be:
- independent
- able to have high legal
office
- six years renewable
- partial rotation every three
years

The members of the High Court shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to high legal office. They shall be appointed by common accord of the governments of the Member States for a term of six years after consulting the panel provided for in Article III-262.

The membership of the High Court shall be partially renewed every three years. Retiring members may be reappointed.

*President for three years,
may re-elect*

The Judges shall elect the President of the High Court from among their number for a term of three years. He may be re-elected.

*Rules approved by qualified
majority*

The High Court shall establish its Rules of Procedure in agreement with the European Court of Justice. It shall act after receiving the approval of the Council of Ministers.

Unless the Statute of the Court of Justice provides otherwise, the provisions of the Constitution relating to the European Court of Justice shall apply to the High Court.

1.2.3 SPECIALISED COURTS

Specialised courts attached to the High Court can be established by qualified majority

*Specialised Courts may be set up to determine cases at first instance or specific areas
Both Commission and Court of Justice can propose*

Rules laid down in law by legislative procedure

Appeals only on points of law, unless otherwise stated in the rules

Independent judges appointed unanimously by the Council

Rules of specialised courts adopted by Council

Unless otherwise stated, rules for Court of Justice also apply to specialised courts

Article III-264

1. European laws may establish specialised courts attached to the High Court to hear and determine at first instance certain classes of action or proceeding brought in specific areas. They shall be adopted either on a proposal from the Commission after consultation of the Court of Justice or at the request of the Court of Justice after consultation of the Commission.
2. The European law establishing a specialised court shall lay down the rules on the organisation of the court and the extent of the jurisdiction conferred upon it.
3. Decisions given by specialised courts may be subject to a right of appeal on points of law only or, when provided for in the European law establishing the specialised court, a right of appeal also on matters of fact, before the High Court.
4. The members of the specialised courts shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office. They shall be appointed by the Council, acting unanimously.
5. The specialised courts shall establish their Rules of Procedure in agreement with the Court of Justice. They shall act after receiving the approval of the Council of Ministers.
6. Unless the European law establishing the specialised court provides otherwise, the provisions of the Constitution relating to the Court of Justice and the provisions of the Statute of the Court of Justice shall apply to the specialised courts.

2. NEW AREAS OF COMPETENCE FOR THE COURT OF JUSTICE

The Court of Justice's competence will be broadened, particularly in terms of

- *certain aspects of foreign policy,*
- *the area of freedom, security and justice,*
- *access of natural or legal persons to the Court,*
- *the area of industrial property rights.*

2.1 COMMON FOREIGN AND SECURITY POLICY

Basically, the term "Common Foreign and Security Policy is difficult to describe". It is part of the Union's external action, which also embraces the common commercial policy, the cooperation with third countries, humanitarian aid, international agreements, the Union's relations with international organisations and third countries, and finally the Union's delegations.

Since the Union is to become a single legal entity with a single legal personality covering the entire reach of external relations, the Court of Justice's competence in these areas has been broadened for it can decide on the legality of any Union act.

However, the Court of Justice will have no jurisdiction as to the implementation of a common foreign and security policy and of a common defence policy.

Article III-282

1. The Court of Justice shall not have jurisdiction with respect to Articles I-39 and I-40 and the provisions of Chapter II of Title V of Part III concerning the common foreign and security policy.

But the Court of Justice will have jurisdiction, when, in the area of foreign policy, the Council decides to interrupt or reduce economic and financial relations with natural or legal persons and non-State groups or bodies.

Article III-282

2. However, the Court of Justice shall have jurisdiction to rule on proceedings reviewing the legality of restrictive measures against natural or legal persons, adopted by the Council on the basis of Article III-224, and brought in accordance with the conditions laid down in Article III-270(4).

Furthermore, the Court of Justice has the competence to control whether the implementation of a common foreign and security policy complies with the other policies of the Union.

Article III-209

CFSP does not affect the Union's competence in other areas

The implementation of the common foreign and security policy shall not affect the competences listed in Articles I-12 to I-14, and I-16. Likewise, the implementation of the policies listed in those articles shall not affect the competence referred to in Article I-15.

The Court of Justice

The Court of Justice shall have jurisdiction to monitor compliance with this Article.

2.2 JUSTICE AND HOME AFFAIRS

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):

TEC: Visas, asylum, immigration, other policies related to free movement of persons, and judicial cooperation in civil matters:

The limitation of the present article 68 TEC, according to which the Court can

- only give preliminary rulings;*
- and only if no judicial remedy remains under national law is dropped.*

TEU: Police and judicial cooperation in criminal matters:

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 frame 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 effect 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 the Article III-283 of the draft Constitution only refer to the sections 4 and 5 (police and judicial cooperation in criminal matters), not to border checks, 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.

Article III-283

No jurisdiction over the control of national police and security where such action is a matter of national law

In exercising its competences regarding the provisions of Sections 4 and 5 of Chapter IV of Title III concerning the area of freedom, security and justice, **the Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law-enforcement services of a Member State** or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, where such action is a matter of national law.

2.3 ACCESS OF NATURAL OR LEGAL PERSONS TO THE COURT

The Constitution will give any natural or legal person the opportunity to institute proceedings against regulatory acts that are of direct concern to him or her and that do not entail implementing measures.

Legality of acts

EU-Court review:

- *legality of legal acts*

- *lack of competence and infringement of:*
- *procedural requirements*
- *the Constitution*
- *rule of law*

Court of Auditors, Central Bank and Committee of the Regions can protect prerogatives

Persons must be "directly and individually" concerned

Article III- 270

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.
3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. **Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.**

3. PROCEDURES

3.1 Actions for failure to fulfil an obligation

Such proceedings enable the Court of Justice to determine whether a Member State has fulfilled its obligations under Community law. An action may be brought by the Commission - as is mostly the case - or by another Member State.

Before a Member State can bring an action against another Member State, it has to submit the matter to the Commission. In both cases - actions brought by the Commission or by a Member State- , this proceeding provides for a reasoned opinion from the Commission.

Article III-265

Actions brought to the Court by the Commission:

1. Letter of formal notice to the Member State
2. Response by the Member State
3. Court decision

If the **Commission considers that a Member State has failed to fulfil an obligation** under the Constitution, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.

Failure to fulfil an obligation

Actions brought to the Court by another Member State:

1. Matter must be sent to Commission
2. Each State submits response
3. Reasoned opinion from Commission within three months
4. Court decides

Article III-266

A Member State which considers that another Member State has failed to fulfil an obligation under the Constitution may bring the matter before the Court of Justice.

Before a Member State brings an action against another Member State for an alleged infringement of an obligation under the Constitution, it shall bring the matter before the Commission.

The Commission shall deliver a reasoned opinion after each of the States concerned has been given the opportunity to submit its own case and its observations on the other party's case both orally and in writing.

If the Commission has not delivered an opinion within three months of the date on which the matter was brought before it, the absence of such opinion shall not prevent the matter from being brought before the Court of Justice.

If the Court finds that the obligation has not been fulfilled, the Member State concerned must comply without delay.

If the Court of Justice finds that the Member State concerned has not complied with its judgement, it may impose a fixed or a periodic penalty.

Member States must comply with court rulings

Commission can bring a Member State to the Court for non-compliance with Court decision

Penalty payment

Commission proposes fine, Court decides

Article III-267

1. If the Court of Justice finds that a Member State has failed to fulfil an obligation under the Constitution, the **State shall be required to take the necessary measures to comply with the judgement of the Court of Justice.**

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the Court's judgement, it may bring the case before the Court of Justice after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

If the Court of Justice finds that the Member State concerned has not complied with its judgement it may impose a lump sum or penalty payment on it.

This procedure shall be without prejudice to Article III-266

Member States can be fined for failure to transpose framework laws

3. When the Commission brings a case before the Court of Justice pursuant to Article III-265 on the grounds that the State concerned has failed to fulfil its obligations to notify measures transposing a framework law, it may, when it deems appropriate, request that, in the course of the same proceedings, the Court of Justice impose the payment of a lump sum or penalty if the Court finds that there has been such a failure. If the Court of Justice complies with the Commission's request, the payment in question shall take effect within the time limit laid down by the Court of Justice in its judgement.

3.2 Annulment

A Member State, the Council, the Commission and -since the treaty of Nice entered into force- without restrictions the Parliament, may apply to the Court of Justice for the annulment of all or part of an item of Community legislation, and individuals may seek the annulment of a legal measure which is of direct and individual concern to them.

The Court may thus review the legality of the acts of the Community institutions.

If the action is well-founded, the contested measure is declared void.

EU-Court review:

- legality of legal acts

*- lack of competence and infringement of:
- procedural requirements
- the Constitution
- rule of law*

Court of Auditors, Central Bank and Committee of the Regions can protect prerogatives

Persons must be "directly and individually" concerned

Special rules for agencies and bodies

*Deadline:
Cases shall be brought before the Court within two months*

Article III- 270

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.**
3. The Court of Justice shall have jurisdiction under the same conditions in actions brought by the Court of Auditors, by the European Central Bank and by the Committee of the Regions for the purpose of protecting their prerogatives.
4. **Any natural or legal person may, under the same conditions, institute proceedings against an act addressed to that person or which is of direct and individual concern to him, and against a regulatory act which is of direct concern to him without entailing implementing measures.**
5. Acts setting up agencies and bodies of the Union may lay down specific conditions and arrangements concerning actions brought by natural or legal persons against acts of these bodies or agencies intended to produce legal effects.
6. The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.

Court shall declare an act void if not legal

Can also declare that some parts remain valid

Article III-271

If the action is well founded the Court of Justice shall declare the act concerned to be void.

However, **the Court of Justice shall**, if it considers this necessary, **state which of the effects of the act which it has declared void shall be considered as definitive.**

3.3 Failure to act

The Court of Justice may also review the legality of a failure to act by a Community institution, and penalize silence or inaction.

The failure of an institution to act can be brought before the Court

Must be called upon to act

Failure to comply with the judgements of the Court

Obligation to comply with judgements

Article III-272

Should the European Parliament, the Council of Ministers or the Commission, or the European Central Bank in infringement of the Constitution, fail to act, the Member States and the other institutions of the Union may bring an action before the Court of Justice to have the infringement established. This provision shall apply, under the same conditions, to agencies and bodies of the Union which fail to act.

The action shall be admissible only if the institution, agency or body concerned has first been called upon to act. If, within two months of being so called upon, the institution, agency or body concerned has not defined its position, the action may be brought within a further period of two months.

Any natural or legal person may, under the conditions laid down in the preceding paragraphs, complain to the Court of Justice that an institution, agency or body of the Union has failed to address to that person any act other than a recommendation or an opinion.

Article III-273

The institution or institutions, agency or body whose act has been declared void, or whose failure to act has been declared contrary to the Constitution, shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

This obligation shall not affect any obligation which may result from the application of the second paragraph of Article III-337

3.4 Actions for damages

Compensation for damages

Article III-275

The Court of Justice shall have jurisdiction in disputes relating to compensation for damage provided for in the second paragraph of Article III-337.

Contractual and non contractual liability

Article III-337

The Union can be made responsible for damage and contractual liability

The Union's contractual liability shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the European Central Bank or by its servants in the performance of their duties.

The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

3.5 Appeals

Appeals on points of law only may be brought before the Court of Justice against judgments given by the High Court in cases falling within its jurisdiction.

*Competence of the High Court
May be extended by the Statute of the Court of Justice*

Article III-263

1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles III-270, III -272, n III-275, III-277 and III-279, with the exception of those assigned to a judicial panel and those reserved in the Statute for the European Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

Appeal only on points of law

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

3.6 Preliminary rulings

The Court of Justice also has jurisdiction to give the very important preliminary rulings. Although the Court of Justice is the supreme guardian of Community legality, the courts of each of the Member States are also European courts insofar as:

- they have jurisdiction to review the implementation of Union law, for which the authorities of the Member States are essentially responsible; and*
- many provisions of the Treaties and of secondary legislation - regulations, directives and decisions - directly confer individual rights on nationals of Member States which national courts must uphold.*

In cases involving Union law, national courts, if in doubt as to the interpretation or validity of that law, may, and in some cases must, seek a preliminary ruling from the Court of Justice on the relevant questions.

A preliminary ruling is also the form of procedure by which any European citizen may seek clarification of the Union acts which concern him.

Article III-274

Areas of preliminary rulings:

- the Constitution*
- acts of the institutions*

Any court can ask for preliminary rulings

If the national right of appeal has been exhausted the matter must be brought before the Court

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of the Constitution;
- (b) the validity and interpretation of acts of the institutions of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice shall act with the minimum of delay.

3.7 Disputes between Union and its staff

Article III-277

Dispute between Union and servants

The Court of Justice shall have jurisdiction in any dispute between the Union and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of Employment.

4. SPECIFIC HIGH COURT PROCEDURES

According to the new draft Constitution, the High Court (the former Court of First Instance) will represent a true first instance court to which actions may be brought for -

- *annulment,*
- *failure to act,*
- *compensation for damages,*
- *contractual and non-contractual liability,*
- *disputes between Union and its staff.*

However, the High Court will in general not be a court of first instance for preliminary rulings since Article III-263.3 states that it shall be competent for preliminary rulings only in specific areas and that its decisions may exceptionally be subject to review by the European Court.

Furthermore, the High Court shall have no competence on actions for failure to fulfil an obligation.

Jurisdiction of High Court

*Competence of the High Court
May be extended by the Statute of the Court of Justice*

Appeal only on points of law

Decisions by the specialised courts can be appealed to the High Court

Exceptionally, High Court rulings are reviewed by the Court of Justice

Preliminary rulings

If there is a risk of the unity and consistency of Union law being affected the Court of Justice can review the High Court's decision

Article III-263

1. The High Court shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Articles III-270, III -272, n III-275, III-277 and III-279, with the exception of those assigned to a judicial panel and those reserved in the Statute for the European Court of Justice. The Statute may provide for the High Court to have jurisdiction for other classes of action or proceeding.

Decisions given by the High Court under this paragraph may be subject to a right of appeal to the Court of Justice on points of law only, under the conditions and within the limits laid down by the Statute.

2. The High Court shall have jurisdiction to hear and determine actions or proceedings brought against decisions of the judicial panels set up under Article III-264.

Decisions given by the High Court under this paragraph may exceptionally be subject to review by the European Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law being affected.

3. The High Court shall have jurisdiction to hear and determine questions referred for a preliminary ruling under Article III -274, in specific areas laid down by the Statute of the Court of Justice.

Where the High Court considers that the case requires a decision of principle likely to affect the unity or consistency of Union law, it may refer the case to the European Court of Justice for a ruling.

Decisions given by the High Court on questions referred for a preliminary ruling may exceptionally be subject to review by the European Court of Justice, under the conditions and within the limits laid down by the Statute, where there is a serious risk of

the unity or consistency of Union law being affected.

5. DEROGATIONS FROM THE PROCEDURES

5.1 Illicit state aid

Commission shall constantly review Member States' aid

Commission can adopt a decision requiring the abolition of aid

Cases can be brought before the Court

States can ask Council to declare its aid legal

This request suspends the above mentioned procedure for three months

*The Commission has to be informed of and to give its approval of intended aid
The member state shall await final decision*

Commission adopts regulations

Article III-57

1. The Commission, in cooperation with Member States, shall keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the internal market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a Member State or through State resources is not compatible with the internal market having regard to Article III-56, or that such aid is being misused, it shall adopt a European decision requiring the State concerned to abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this European decision within the prescribed time, the Commission or any other interested Member State may, in derogation from Articles III-265 and 267, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may adopt unanimously a European decision that aid which that State is granting or intends to grant shall be considered to be compatible with the internal market, in derogation from Article III-56 or from European regulations provided for in Article III-58, if such a decision is justified by exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. The Commission shall be informed by the Member States, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the internal market having regard to Article III-56, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.

4. The Commission may adopt European regulations relating to the categories of State aid that the Council has, pursuant to Article III-58, determined may be exempted from the procedure provided for by paragraph 3.

5.2 Restriction of internal market rules

Internal market

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

Excluding:

- taxation
- movement of persons
- employees' rights

High level of protection for health, safety, environment, consumer protection, but not the "highest" level

Protection of the environment

Keep better rules for the:

- environment
- working environment

Introduce better rules for the:

- environment
- working environment
- specific problems arising for a State after harmonisation

The Commission decides whether a measure is:

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

Extend period by six months

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

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

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.

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

Directly to the Court

Safeguard clause under EU control

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.

5.3 Restrictions on freedom to provide services and on services of general interests

If competition is distorted, the Commission and the Member State shall examine measures

Abuse referred directly to Court

Article III-17

If steps taken in the circumstances referred to in Articles III-6 and III-34 have the effect of distorting the conditions of competition in the internal market, the Commission shall, together with the State concerned, examine how these steps can be adjusted to the rules laid down in the Constitution.

By way of derogation from the procedure laid down in Articles III-265 and III-266, the Commission or 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 Articles III-6 and III-34. The Court of Justice shall give its ruling in camera.

6. OTHER COMPETENCE

6.1 Court's opinion on international agreements

Procedure for conclusion of agreements:

Council authorises and concludes

Commission and Foreign Minister shall submit recommendations

Council nominates a negotiator...

Article III-227

1. Without prejudice to the specific provisions laid down in Article III-217, agreements between the Union and third States or international organisations shall be negotiated and concluded in accordance with the following procedure.

2. The Council of Ministers shall authorise negotiations to be opened, adopt negotiating directives and conclude agreements.

3. The Commission, or the Union Minister for Foreign Affairs where the agreement exclusively or principally relates to the common foreign and security policy, shall submit recommendations to the Council of Ministers, which shall authorise the opening of negotiations.

4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council of Ministers shall nominate the negotiator

and give negotiating directives

Special committee designated

EP must be consulted, unless the agreement only covers CFSP issues

*EP assent required for:
- Association agreements
- Accession of the Union to ECHR*

*- Agreements establishing a specific institutional framework
- Agreements with important budgetary implications
- Areas where the legislative procedure apply*

Delegation of powers to amend agreements

General rule: qualified majority in Council

*Unanimity:
- if internal rules require unanimity
- for Union's accession to ECHR*

Suspension by qualified majority

or leader of the Union's negotiating team.

5. The Council of Ministers may address negotiating directives to the Union's negotiator and may designate a special committee in consultation with which the negotiations must be conducted.

6. On a proposal from the negotiator, the Council of Ministers shall adopt a European decision authorising the signing of the agreement and, if necessary, its provisional application.

7. The Council of Ministers shall adopt a European decision concluding the agreement on a proposal by the agreement negotiator.

Except where agreements relate exclusively to the common foreign and security policy, the Council of Ministers shall adopt the decision referred to in the first subparagraph after consulting the European Parliament. The European Parliament shall deliver its opinion within a time-limit which the Council of Ministers may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council of Ministers may act.

The European Parliament's consent shall be required for:

(a) association agreements;

(b) Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms;

(c) agreements establishing a specific institutional framework by organising cooperation procedures;

(d) agreements with important budgetary implications for the Union;

(e) agreements covering fields to which the legislative procedure applies.

The European Parliament and the Council of Ministers may, in an urgent situation, agree upon a time-limit for consent.

8. When concluding an agreement, the Council of Ministers may, by way of derogation from paragraph 6, 7 and 10, authorise the negotiator to approve modifications on the Union's behalf where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; the Council of Ministers may attach specific conditions to such authorisation.

9. The Council of Ministers shall act by a qualified majority throughout the procedure. It shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of a Union act as well as for association agreements and for Union accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

10. The Council of Ministers, on a proposal from the Union Minister for Foreign Affairs or the Commission, shall adopt a European decision to suspend the

application of an agreement and shall establish the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

EP to be informed at all stages

11. The European Parliament shall be immediately and fully informed at all stages of the procedure.

Opinion of the Court may be requested

12. **A Member State, the European Parliament, the Council of Ministers or the Commission may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of the Constitution. Where the opinion of the Court of Justice is adverse, the agreement envisaged may not enter into force unless the Constitution is revised in accordance with the procedure laid down in Article IV-6.**

6.2 Dismissal of the Ombudsman

Ombudsman

EP appoint an Ombudsman

Ombudsman receives complaints on maladministration

Own initiative

Report to EP on findings

Annual report to EP

Appointed after each EP-election

Reappointable

Court can dismiss at EP request

Completely independent

Article III-237

1. The European Parliament shall appoint a European Ombudsman on its own initiative. The European Ombudsman shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing or having its registered office in a Member State concerning instances of maladministration in the activities of the Union's institutions or bodies, with the exception of the Court of Justice acting in its judicial role.

In accordance with his duties, the European Ombudsman shall conduct inquiries for which he finds grounds, either on his own initiative or on the basis of complaints submitted to him direct or through a Member of the European Parliament, except where the alleged facts are or have been the subject of legal proceedings. Where the European Ombudsman establishes an instance of maladministration, he shall refer the matter to the institution concerned, which shall have a period of three months in which to inform him of its views. The European Ombudsman shall then forward a report to the European Parliament and the institution concerned. The person lodging the complaint shall be informed of the outcome of such inquiries.

The European Ombudsman shall submit an annual report to the European Parliament on the outcome of his inquiries.

2. The European Ombudsman shall be appointed after each election of the European Parliament for the duration of its term of office.

The European Ombudsman shall be eligible for reappointment.

The **European Ombudsman may be dismissed by the Court of Justice** at the request of the European Parliament if he no longer fulfils the conditions required for the performance of his duties or if he is guilty of serious misconduct.

3. The European Ombudsman shall be completely independent in the performance of his duties. In the performance of those duties he shall neither seek nor take instructions from any body. The European Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not.

EP decide law, Council approves

4. A European law of the European Parliament shall lay down the regulations and general conditions governing the performance of the European Ombudsman's duties. The European Parliament act on its own initiative after seeking an opinion from the Commission and with the approval of the Council of Ministers.

6.3 Dismissal of a Commissioner

If a member does not fulfil duties or is guilty of serious misconduct the Court can retire

Article III-253

If any European Commissioner or Commissioner no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct, the Court of Justice may, on application by the Council of Ministers, acting by a simple majority, or by the Commission, compulsorily retire him.

Commission to be completely independent

Article III-251

European Commissioners and Commissioners shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence European Commissioners and Commissioners in the performance of their tasks.

No other occupation

European Commissioners and Commissioners may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. **In the event of any breach of these obligations, the Court of Justice may, on application by the Council, acting by a simple majority, or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article III-253 or deprived of his right to a pension or other benefits in its stead.**

Must behave with integrity towards the office...

...if not Court can compulsorily retire Members or deprive them of a pension

Article III-252

President can fire other members

1. Apart from normal replacement, or death, the duties of a European Commissioner or Commissioner shall end when he resigns or is compulsorily retired. A European Commissioner or Commissioner shall resign if the President so requests.

Vacancy shall be filled by same procedure

2. A vacancy caused by resignation, compulsory retirement or death shall be filled for the remainder of the European Commissioner or Commissioner's term of office by a new European Commissioner or Commissioner appointed by the President of the Commission in accordance with Article I-25 and Article I-26.

Procedure for replacing the President

3. In the event of resignation, compulsory retirement or death, the President shall be replaced for the remainder of his or her term of office in accordance with Article I-26(1).

If the whole Commission

4. In the case of the resignation of all European Commissioners and

steps down it shall remain in office until replaced

Commissioners, they shall remain in office until they have been replaced, for the remainder of their term of office, in accordance with the procedures laid down in Articles I-25 and I-26.

6.4 Jurisdiction on activities of the European Investment Bank and of national central banks

Article III-278

The Court can rule on:

The Court of Justice shall, within the limits hereinafter laid down, have jurisdiction in disputes concerning:

- the Statute of EIB

(a) the fulfilment by Member States of obligations under the Statute of the European Investment Bank. In this connection, the Board of Directors of the Bank shall enjoy the powers conferred upon the Commission by Article III-265;

- measures adopted by EIB

(b) measures adopted by the Board of Governors of the European Investment Bank. In this connection, any Member State, the Commission or the Board of Directors of the Bank may institute proceedings under the conditions laid down in Article III-270;

- fulfilment of obligations by national central banks

(c) measures adopted by the Board of Directors of the European Investment Bank. Proceedings against such measures may be instituted only by Member States or by the Commission, under the conditions laid down in Article III-270, and solely on the grounds of non-compliance with the procedure provided for in Article 21(2), (5), (6) and (7) of the Statute of the Bank;

(d) the fulfilment by national central banks of obligations under the Constitution and the Statute of the European System of Central Banks. In this connection, the powers of the Council of the European Central Bank in respect of national central banks shall be the same as those conferred upon the Commission in respect of Member States by Article III-265. If the Court of Justice finds that a national central bank has failed to fulfil an obligation under the Constitution, that bank shall be required to take the necessary measures to comply with the judgement of the Court of Justice.

6.5 Dismissal of members of the Court of Auditors

Terms of employment:

Article III-291

Especially qualified

1. The Members of the Court of Auditors shall be chosen from among persons who belong or have belonged in their respective countries to external audit bodies or who are especially qualified for this office. Their independence must be beyond doubt.

Term of six years, renewable

2. The Members of the Court of Auditors shall be appointed for a term of six years. Their term of office shall be renewable. The Council shall adopt on its own initiative the list of Members drawn up in accordance with the proposals made by each Member State. It shall act after consulting the European Parliament.

President for three years

The Members of the Court of Auditors shall elect their President from among their number for a term of three years. He may be re-elected.

Completely independent

3. The Members of the Court of Auditors shall, in the Union's general interest, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties.

No other occupation

4. The Members of the Court of Auditors may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Behave with integrity towards the office

Court of Justice can retire auditors

5. Apart from normal replacement, or death, the duties of a Member of the Court of Auditors shall end when he resigns, or is compulsorily retired by a ruling of the Court of Justice pursuant to paragraph 6.

The vacancy thus caused shall be filled for the remainder of the Member's term of office.

Save in the case of compulsory retirement, Members of the Court of Auditors shall remain in office until they have been replaced.

At the request of Court of Auditors the Court of Justice can remove a member

6. A Member of the Court of Auditors may be deprived of his office or of his right to a pension or other benefits in its stead only if the Court of Justice, at the request of the Court of Auditors, finds that he no longer fulfils the requisite conditions or meets the obligations arising from his office.

6.6 Suspension of enforcement of fines

Fines

Acts imposing fines are enforceable but not on States

Article III –307

Acts of the Council of Ministers, of the Commission or of the European Central Bank which impose a pecuniary obligation on persons other than States shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the Member State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement by bringing the matter directly before the competent authority in accordance with the national law.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

6.7 Infringement of the subsidiarity principle

Subsidiarity

Proportionality

Member States can bring cases of infringement of the principle of subsidiarity before the Court

The Committee of Regions can do the same when it is consulted on legislative acts

The Commission shall submit an annual report on the application of subsidiarity

PROTOCOL ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY AND PROPORTIONALITY

7. The Court of Justice shall have jurisdiction to hear actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article III-270 by Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber of it.

In accordance with the same Article of the Constitution, the Committee of the Regions may also bring such actions as regards legislative acts for the adoption of which the Constitution provides that it be consulted.

8. The Commission shall submit each year to the European Council, the European Parliament, the Council of Ministers and the national Parliaments of the Member States a report on the application of Article I-9 of the Constitution. This annual report shall also be forwarded to the Committee of the Regions and to the Economic and Social Committee.

VI) 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 State, the remaining seats

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.

*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

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

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

1.1) COMPOSITION OF THE EUROPEAN PARLIAMENT AT PRESENT:

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

Absolute Majority of Members= 314votes

1.2 COMPOSITION OF THE EUROPEAN PARLIAMENT 2004-2009

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

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

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

1.3 COMPOSITION OF THE EUROPEAN PARLIAMENT FROM 2009 ONWARDS

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

Article I-19

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

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

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

2) EUROPEAN COUNCIL

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

Article I-20

European Council

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

*The European Council
meets quarterly*

*President may convene
additional meetings*

Decisions by consensus

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

THE EUROPEAN COUNCIL CHAIR

Article I-21

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

Tasks of the President

*Represents the EU
in the wider world on*

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his mandate according to the same procedure.
2. The President of the European Council:

shall chair it and drive forward its work,

shall ensure proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Council,

shall endeavour to facilitate cohesion and consensus within the European Council,

CFSP issues

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

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

President cannot have a national mandate

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

3) COUNCIL OF MINISTERS

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

Article I-22

Council of Ministers:

- legislates with EP
- carries out policy making
- coordinates

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

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

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

3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT:

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

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

3.2 WEIGHTING OF VOTES IN THE COUNCIL 2004-2009

Belgium	12
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29
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 (known in French as a 'passerelle') is planned, by which the European Council will have the opportunity to decide unanimously that the Council will in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the

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

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

Article I-24

1. Majority of Member States

2. 60 % of the EU population

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

Enlarged qualified majority

1. 2/3 of Member States

2. 60% of the EU population

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

NB: New deepening clause

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

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

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

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

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

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

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

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

4) The 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 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 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.]