

# **EU draft Constitution - Provisions governing the regional policy**

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# I) GENERAL PRINCIPLES OF EU LAW

## 1. FUNDAMENTAL PRINCIPLES

### Article I-9

*Principles governing EU Competence:*

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

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

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

*- Proportionality:  
"Not exceed what is necessary"*

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

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

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

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

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

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

## 2. PRIMACY OF EU LAW

### Article I-10

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

*Require fulfilment of EU obligations by Member States*

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

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

### 3. JURISDICTION ON QUESTIONS OF COMPETENCE

*The EU Court has jurisdiction on questions of competence*

#### Article III- 270

*EU-Court reviews:*

*- legality of legal acts*

*- lack of competence and infringement of:*

*- procedural requirements*

*- the Constitution*

*- rule of law*

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

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

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

#### Article III-281

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

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

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

#### Article III-284

Member States undertake **not to submit a dispute** concerning the interpretation or application of the Constitution to any method of settlement **other than those provided for therein**.

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

## II) REGIONAL POLICY

### 1. INTRODUCTION

*The strengthening of social and economic cohesion has been inserted into the TEC as a specific Community policy through the Single European Act in 1987. Before that, no true legal base was available. Measures in the sphere of regional policy were thus based on the so-called "flexibility clause" (Article 308 TEC)*

### 2. REGIONAL POLICY ACCORDING TO THE CURRENT PROVISIONS OF THE TEC

#### 2.1 Competence

*According to Article 159.1 TEC and despite the fact that the Community shall develop and strengthen its social and economic cohesion, the Member States shall conduct their economic policies and coordinate them in a way that the Community's objectives are attained. This means that the Community has the so-called "parallel competence" in which both the community and the Member States can be active. However, and this is stipulated in Article 159.1 TEC and the general Article 10 TEC, the Member States' activities cannot take any measures that could jeopardise the attainment of the objectives of the TEC. Thus, although the Member States do not lose their competence, this competence is restricted by the measures taken and the aims set out at Community level.*

#### 2.2 Legal bases in the TEC

##### 2.2.1 General clauses: Articles 2 and 3 TEC

###### Objectives

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

###### ARTICLE 2 (ex Article 2) TEC

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

###### ARTICLE 3 (ex Article 3) TEC

###### Catalogue of competences

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

*Prohibition of barriers to trade*

*Trade policy*

*Internal market  
Free movement of goods,  
persons, services and capital  
= the "four freedoms"  
Immigration*

*Agriculture*

*Transport*

*Competition*

*approximation of laws*

*employment*

*social*

*cohesion*

*environment*

*competitiveness*

*research*

*networks*

*health*

*education*

*culture*

*development*

*associated countries and territories*

*consumers*

- a) the prohibition, as between Member States, of customs duties and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
- b) a common commercial policy;
- c) an internal market characterised by the abolition, as between Member States, of obstacles to the free movement of goods, persons, services and capital;
- d) measures concerning the entry and movement of persons as provided for in Title IV;
- e) a common policy in the sphere of agriculture and fisheries;
- f) a common policy in the sphere of transport;
- g) a system ensuring that competition in the internal market is not distorted;  
the approximation of the laws of Member States to the extent required for the functioning of the common market;
- h) the promotion of coordination between employment policies of the Member States with a view to enhancing their effectiveness by developing a coordinated strategy for employment;
- i) a policy in the social sphere comprising a European Social Fund;
- j) the strengthening of economic and social cohesion;
- k) a policy in the sphere of the environment;
- l) the strengthening of the competitiveness of Community industry;
- m) the promotion of research and technological development;
- n) encouragement for the establishment and development of trans-European networks;
- o) a contribution to the attainment of a high level of health protection;
- p) a contribution to education and training of quality and to the flowering of the cultures of the Member States;
- q) a policy in the sphere of development cooperation;
- r) the association of the overseas countries and territories in order to increase trade and promote jointly economic and social development;
- s) a contribution to the strengthening of consumer protection;

*energy, civil defence, tourism* | t) measures in the spheres of energy, civil protection and tourism.

*gender equality* | 2. In all the activities referred to in this Article, the Community shall aim to eliminate inequalities, and to promote equality, between men and women.

## 2.2.2 Main articles in the TEC 158-160

### TITLE XVII (ex Title XIV): ECONOMIC AND SOCIAL COHESION

#### ARTICLE 158 (ex Article 130a) TEC

*Objectives*

In order to promote its overall harmonious development, the Community shall develop and pursue its actions leading to the strengthening of its economic and social cohesion.

In particular, the Community shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

#### ARTICLE 159 (ex Article 130b) TEC

*Means*

*Coordination*

Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 158. The formulation and implementation of the Community's policies and actions and the implementation of the internal market shall take into account the objectives set out in Article 158 and shall contribute to their achievement. The Community shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

*Report every 3 years*

The Commission shall submit a report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions every three years on the progress made towards achieving economic and social cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

*Nice: Qualified majority and conciliation procedure*

If specific actions prove necessary outside the Funds and without prejudice to the measures decided upon within the framework of the other Community policies, such actions may be adopted by the Council acting **in accordance with the procedure referred to in Article 251** and after consulting the Economic and Social Committee and the Committee of the Regions.

#### ARTICLE 160 (ex Article 130c) TEC

*The Regional Fund*

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Community through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

#### ARTICLE 161 (ex Article 130d) TEC

*Structural Funds, duties of the Member States*

Without prejudice to Article 162, the Council, acting unanimously on a proposal from the Commission and after obtaining the assent of the European Parliament and consulting the Economic and Social Committee and the Committee of the Regions,

*Cohesion Fund procedure*

*Nice: Qualified majority and assent by EP from 2007*

*Regional Fund  
Qualified majority and co-decision procedure*

shall define the tasks, priority objectives and the organisation of the Structural Funds, which may involve grouping the Funds. The Council, acting by the same procedure, shall also define the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by the Council in accordance with the same procedure shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission after obtaining the assent of the European Parliament and after consulting the Economic and Social Committee and the Committee of the Regions if, by that date, the multiannual financial perspective applicable from 1 January 2007 and the Inter-institutional Agreement relating thereto have been adopted. If such is not the case, the procedure laid down by this paragraph shall apply from the date of their adoption.

#### **ARTICLE 162 (ex Article 130e) TEC**

Implementing decisions relating to the European Regional Development Fund shall be taken by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles 37 and 148 respectively shall continue to apply.

### ***2.3 Instruments of the Community in the sphere of economic and social cohesion***

#### **Structural Funds:**

***Structural Funds are the main central instrument for the realisation of the aims set out in Article 158. They consist of:***

- The European Regional and Development Fund***
- The European Social Fund***
- European Agricultural Guidance and Guarantee Fund***
- Financial Instrument for Fisheries Guidance***

#### **Cohesion Fund:**

***The cohesion fund, a special solidarity fund, helps finance projects for the environment and transport networks in those countries in which the GDP is below 90% of the EU average and which have set up programmes to avoid excessive public deficits (Article 104 TEC) as part of the EMU. Currently, these countries are Spain, Greece, Ireland and Portugal. All new accession countries will meet the necessary criteria to obtain financial support from the cohesion fund.***

#### **Pre-accession instruments:**

***Based on the different Accession Partnerships and in accordance with the financial perspective 2000-2006, the EU is currently supporting the new Member States to prepare for membership through two funds:***

- the Instrument for Structural Policies for Pre-Accession (ISPA)***

- *the Special Accession Programme for Agricultural and Rural Development (SAPARD).*

**European Investment Bank:**

*Furthermore, the EU can use the European Investment Bank to "the balanced and steady development of the common market". To this aim, the EIB shall grant loans and give guarantees, among others, for projects for the development of less-developed regions.*

## **2.4 Decision making**

**Article 161: General rule**

*Under Article 161 TEC the Council is to act unanimously after obtaining the assent of the European Parliament to determine the following matters relating to both the Structural Funds (Social Fund, Regional Fund and the European Agricultural Guidance and Guarantee Fund, Financial Instrument for Fisheries Guidance) and the Cohesion fund:*

- *the tasks, priority objectives and the organisation of the Funds,*
- *the general rules applicable to them,*
- *the provisions necessary to ensure their effectiveness and the coordination of the funds with one another and with the other existing financial instruments.*

**Exceptions:**

- *Article 159.3 TEC: Measures taken outside the Funds, which are proven necessary, can be taken by qualified majority and the European Parliament co-deciding.*
- *Article 162.1 TEC: Implementing decisions relating to the European Regional Development Fund shall be taken by qualified majority in the Council with the European Parliament co-deciding.*
- *Article 162.2 TEC: For the Guidance Section of the European Agricultural Guidance and Guarantee Fund, Article 37 applies (qualified majority, with the European Parliament merely being consulted)*
- *Article 162.2: For the European Social Fund, the provisions of Article 137 apply (either unanimity, with the European Parliament being consulted, or qualified majority with the European Parliament co-deciding).*

**Changes from Nice:**

*The decision making procedure was changed by the Treaty of Nice: after 1 January 2007, the Council may act by qualified majority in matters relating to Structural Funds and the Cohesion Fund. This provides for the preceding adoption of the multiannual financial perspective and the interinstitutional agreement. This means that the Council will still have to adopt the next financial perspective unanimously. However, the draft Constitution proposes that it is adopted by a law of the Council acting by qualified majority, after obtaining the consent of the EP. Unanimity would still be required for the adoption of the first financial framework under the new Constitution (probably the financial perspective 2007-2013).*

### **3. REGIONAL POLICY ACCORDING TO THE PROVISIONS OF THE DRAFT CONSTITUTION**

#### **3.1 Competence**

*According to Article I-13, shared competence applies in the area of economic, social and territorial cohesion. This means that the Member States lose their competence to legislate if the Union exercises its rights. However, according to Article III-117 (which largely remains unchanged) the Member States shall act "in addition" to the activities of the Community. This means that - in principle - Member States do not lose their competence, even if the Union exercises its rights.*

*But, as at present, the Member States' activities cannot take any measures that could jeopardise the attainment of the objectives of the TEC, namely those of the economic, territorial and social cohesion (I-5 and III-117). Thus, although the Member States do not lose their competence, this competence is restricted by the measures taken and the aims set out at Union level.*

*Furthermore, the competence of the Union would slightly increase with the adoption of the draft Constitution: whereas current Article 159.3 TEC provides for the possibility of the Community to take specific actions outside the Funds if they are "proven necessary", the proposed Article III-117.3 provides for the possibility to adopt European laws and framework laws to establish "any" specific measure. Hence a measure taken outside the Funds would not have to be "necessary" any more.*

#### **3.2 Legal bases**

*In the draft Constitution, the provisions on economic, social and territorial cohesion remain largely unchanged. The general clause is set out in Article I-3: The Union's Objectives.*

*The more specific rules and the concrete legal basis of the Union's activities in the area of social and economic cohesion are set out in II-116-III-120.*

*The provisions on the economic, social and territorial cohesion remain largely unchanged. However, in addition to the changes that have been inserted through the Treaty of Nice and according to Article III-119.3, the Council may act by qualified majority from 1 January 2007 with the European Parliament co-deciding when adopting rules on the procedures on structural funds and the Cohesion Fund. At present, the TEC as amended by the Treaty of Nice, provides for the qualified majority of the Council from 2007 on, and the "assent" of the European Parliament.*

#### **3.3 The main articles in the draft Constitution**

##### **Objectives of the Union**

*Peace, values and well-*

##### **Article I-3: The Union's objectives**

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

being

*Area of freedom, security and justice without internal frontiers and a single market with free competition*

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

*Promotion of its values and interests in the wider world*

*The Constitution will outline limits to the Union's actions*

**Economic, social and territorial cohesion**

*Objectives:*

- reduce disparities
- develop least favoured regions, islands, or rural areas

*Means:*

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

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

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

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

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

4. In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's rights, as well as to strict observance and development of international law, including respect for the principles of the United Nations Charter.

5. These objectives shall be pursued by appropriate means, depending on the extent to which the relevant competences are attributed to the Union in this Constitution

**SECTION 3:**

**ECONOMIC, SOCIAL AND TERRITORIAL COHESION**

**Article III-116**

In order to promote its overall harmonious development, the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion.

In particular, the Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

**Article III-117**

Member States shall conduct their economic policies and shall coordinate them in such a

- coordinate Member States' economic policies  
- Structural Funds  
- European Investment Bank

*Commission report every third year*

*Specific measures can be established outside Funds by legislative procedure  
Regional Fund*

*Tasks of Structural Funds defined by legislative procedure, but Council decides by unanimity until 2007*

*Cohesion Fund*

*Regional Fund*

*Implementing measures adopted by a qualified majority in Council*

way as, in addition, to attain the objectives set out in Article III-116. The formulation and implementation of the Union's policies and actions and the implementation of the internal market shall take into account those objectives and shall contribute to their achievement. The Union shall also support the achievement of these objectives by the action it takes through the Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and the other existing financial instruments.

The Commission shall submit a report to the European Parliament, the Council of Ministers, the Committee of the Regions and the Economic and Social Committee every three years on the progress made towards achieving economic, social, and territorial cohesion and on the manner in which the various means provided for in this Article have contributed to it. This report shall, if necessary, be accompanied by appropriate proposals.

European laws or framework laws may establish any specific measure outside the Funds, without prejudice to measures adopted within the framework of the Union's other policies. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

### **Article III-118**

The European Regional Development Fund is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

### **Article III-119**

Without prejudice to Article III-120, European laws or framework laws shall define the tasks, priority objectives and the organisation of the Structural Funds – which may involve grouping the Funds – the general rules applicable to them and the provisions necessary to ensure their effectiveness and the coordination of the Funds with one another and with the other existing financial instruments.

A Cohesion Fund set up by a European law shall provide a financial contribution to projects in the fields of environment and trans-European networks in the area of transport infrastructure.

In all cases, the European law or framework law shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee. The Council shall act unanimously until 1 January 2007.

### **Article III-120**

Implementing measures relating to the European Regional Development Fund shall be enacted in European laws. Such laws shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

With regard to the European Agricultural Guidance and Guarantee Fund, Guidance Section, and the European Social Fund, Articles III-127 and III-115 respectively shall apply.

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

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

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

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

*"Jointly with the Council" means that under Article III-302.7 the EP can reject legislative proposals or propose amendments to them, but only with the absolute majority of its members at 2nd reading.*

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

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

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

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

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

***The European Parliament***

- co-legislates with the Council*
- controls politically*
- approves the Commission President proposed by the prime ministers*

*Direct elections every 5*

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

2. The European Parliament shall be elected by directly universal suffrage of European

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

The remainder will be divided by degressive proportionality.

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

EP President

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

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

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

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

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

**Absolute Majority of Members = 314votes**

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

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54

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

*After having joined the EU, Romania will have 33, and Bulgaria 17 seats in the 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 of 4 MEPs per Member State.*

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

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

*The remainder will be divided by degressive proportionality. According to a proposal from the EP this could mean fewer members from the smaller states than at present.*

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

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

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## 2) EUROPEAN COUNCIL

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

### Article I-20

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

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

*Meets quarterly*

*President may convene  
additional meetings*

*Decisions by consensus*

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

## THE EUROPEAN COUNCIL CHAIR

### Article I-21

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

*Tasks of the President*

*Represents the EU  
in the wider world on*

1. The European Council shall elect its President, by qualified majority, for a term of two and a half years, renewable once. In the event of an impediment or serious misconduct, the European Council can end his mandate according to the same procedure.
2. The President of the European Council:  
  
shall chair it and drive forward its work,  
  
shall ensure proper preparation and continuity in cooperation with the President of the Commission, and on the basis of the work of the General Council,  
  
shall endeavour to facilitate cohesion and consensus within the European Council,

*CFSP issues*

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

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

*President cannot have a national mandate*

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

### 3) COUNCIL OF MINISTERS

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

#### Article I-22

**Council of Ministers:**

- legislates with EP
- carries out policy making
- coordinates

*Only ministers may commit their Member States and vote*

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

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

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

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

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

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

Belgium	12
Czech Republic	12
Denmark	7
Germany	29
Estonia	4
Greece	12
Spain	27
France	29
Ireland	7
Italy	29
Cyprus	4
Latvia	4
Lithuania	7
Luxembourg	4
Hungary	12
Malta	3
Netherlands	13
Austria	10
Poland	27
Portugal	12
Slovenia	4
Slovakia	7
Finland	7
Sweden	10
United Kingdom	29
<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 did not achieve consensus on changing over to qualified majority voting, a***

*transitional measure (known in French as ‘passerelle’) is planned. This means that the European Council will be able to decide unanimously that the Council would in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the need to amend the Constitution, which would in turn require ratification by each Member State.*

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

## Article I-24

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

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

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

### **Enlarged qualified majority**

1. 2/3 of Member States
2. 60% of the EU population

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

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

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

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

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.

*referendums*

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

## 4) EUROPEAN COMMISSION

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

### Article I-25

**EU-Commission**

**Role:**

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

**Monopoly of initiative:**  
*Only it can propose new laws*

**Composition:**  
*15 members, no longer one from each Member State*

*Rotate on equal basis*  
*- max one term between having a member*  
*- represent demographic and geographical range of the Union*

*Non-voting Commissioners from the other states*

*Effective from 2009*

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

### ***Independence***

*May not take instructions from government or other body*

### ***Censure***

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

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

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

## **COMMISSION PRESIDENT**

***The political power of the President of the Commission will be backed through his/her approval by the European Parliament and will include the appointment of Commissioners, allocation of portfolios and the right to request the resignation of a Commissioner without needing the approval of the College, as at present.***

### ***Commission President***

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

### ***Commission members***

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

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

### **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

*and dismisses members*

collegiate basis;

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

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

## **5) EU FOREIGN MINISTER**

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

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

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

### **Article I-27**

#### ***EU Foreign Minister***

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

#### ***Tasks of Foreign Minister***

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

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

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

*External service*  
*established in part III*

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

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