

**EU draft Constitution- Provisions governing research,
technological development and space policy**

I) GENERAL PRINCIPLES

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

II) RESEARCH AND TECHNOLOGICAL DEVELOPMENT

1. Research and technological development according to the present provisions in the TEC

- 1.1 Introduction**
- 1.2 Present legal basis**
 - 1.2.1 Decision-making**
 - 1.2.2 Instruments**
 - 1.2.3 The articles in the TEC**

2. Research, technological development and space according to the draft Constitution

- 2.1 Competence**
- 2.2 A new Union competence- Space policy**
- 2.3 Decision-making**

III) INSTITUTIONS OF THE UNION

- 1. European Parliament**
 - 1.1 Composition at present**
 - 1.2 Composition 2004-2009**
 - 1.3 Composition from 2009 onwards**
- 2. European Council**
- 3. Council of Ministers**
 - 3.1 Voting at present**
 - 3.2 Voting 2004-2009**
 - 3.3. Voting from 2009 on**
- 4. European Commission**
- 5. Union 's Foreign Minister**

I) GENERAL PRINCIPLES OF EU LAW

1. FUNDAMENTAL PRINCIPLES

Article I-9

Principles governing EU competence:

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

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

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

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

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

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

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

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

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

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

2. PRIMACY OF EU LAW

Article I-10

All EU law prevails over national laws and national constitutions

Requires fulfilment of EU obligations by Member States

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

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

3. JURISDICTION ON QUESTIONS OF COMPETENCE

The EU Court has jurisdiction on questions of competence

Article III- 270

EU-Court reviews:

- *legality of legal acts*

- *lack of competence and infringement of:*

- *procedural requirements*

- *the Constitution*

- *rule of law*

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

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

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

Article III-281

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

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

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

Article III-284

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

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

II) RESEARCH AND TECHNOLOGICAL DEVELOPMENT

1. Research and technological development according to the present provisions in the TEC

1.1 Introduction

The title on research has been inserted into the TEC through the Single European Act (SEA) and was amended last by the Treaty of Amsterdam. Accordingly, measures taken before the entry into force of the SEA, such as the first Framework Programme 1984-1987, were based on the flexibility clause (Article 308, ex Article 235). The second Framework Programme (1987-1991) was already based on the respective specific provisions of Article 166, ex Article 130 i. On 23 April 1990 the Council adopted the third Framework Programme for the period 1990-1994 which meant that for the years 1990 and 1991 two different Framework programmes were in force. The Fourth framework Programme covered the years 1994-1998, the Fifth the period 1998-2002 and the Sixth the years 2002-2006.

1.2 Legal bases

Besides Article 3.1n, which defines the promotion of research and technological development as an activity of the Community, the legal bases for the Communities activities in these spheres are to be found in the Article 163-173 TEC. As mentioned above, this title on research and technological development has been inserted through the Single European Act.

However, the TEC and the TEU also provide for more specific Articles designed to allow and coordinate research in specific fields, e.g. in relation to the fight against crime (Art. 30 TEU), to agriculture (Article 35a TEC), to public health (Article 152.1 TEC), to industry (Article 157.1 TEC).

Besides that, many provisions of the Treaty Establishing the European Atomic Energy Community (EURATOM), are designed to promote research in the nuclear area (e.g. Articles 4-11, 12-29, 45-51 EURATOM).

1.2.1 Decision-making

Following the entry into force of the Treaty of Amsterdam, decision were moved
- from unanimity to qualified majority (Art. 166 and 167 TEC),
- from the cooperation procedure to the co-decision procedure.
(since the draft Constitution does not propose any changes to decision-making, find more information below under II-2-2).

1.2.2 Instruments

The current Sixth Framework Programme FP6 is the Union's main instrument for funding research in Europe. Proposed by the European Commission and adopted on 3 June 2002 by the Council of Ministers and the European Parliament, it is open to public and private entities, large or small, for four years from the end of 2002 through to 2006.

The overall budget for FP6 is €17.5 billion, which is 17% more than the Fifth Framework Programme and represents 3.4% of the EU's total budget in 2002.

Within this total, €12 billion has been set aside for the seven key areas to achieve the objectives of the FP6: life sciences, genomics and biotechnology for health; information society technologies; nanotechnologies and nanosciences, knowledge-based multifunctional materials and new production processes and devices; aeronautics and space; food quality and safety; sustainable development, global change and ecosystems; and citizens and governance in a knowledge-based society.

1.2.3: The articles in the TEC

*Catalogue of
competences

research*

ARTICLE 3 (ex Article 3) TEC

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

n) the promotion of research and technological development;

TITLE XVIII (ex Title XV): RESEARCH AND TECHNOLOGICAL DEVELOPMENT

ARTICLE 163 (ex Article 130f) TEC

*Objectives:
- Strengthen scientific
and technological
databases
- Promote research
activities*

1. The Community shall have the objective of strengthening the scientific and technological bases of Community industry and encouraging it to become more competitive at international level, while promoting all the research activities deemed necessary by virtue of other Chapters of this Treaty.

Means:
- Encourage undertakings, research centres and universities
- Support their cooperation

2. For this purpose the Community shall, throughout the Community, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All Community activities under this Treaty in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with the provisions of this Title.

ARTICLE 164 (ex Article 130g) TEC

Activities:

In pursuing these objectives, the Community shall carry out the following activities, complementing the activities carried out in the Member States:

- programmes

a) implementation of research, technological development and demonstration programmes, by promoting cooperation with and between undertakings, research centres and universities;

- promotion of cooperation

b) promotion of cooperation in the field of Community research, technological development and demonstration with third countries and international organisations;

- dissemination of research results

c) dissemination and optimisation of the results of activities in Community research, technological development and demonstration;

- stimulation of training and mobility of researchers

d) stimulation of the training and mobility of researchers in the Community.

ARTICLE 165 (ex Article 130h) TEC

Coordination of the Community's and Member States' activities

1. The Community and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Community policy are mutually consistent.

2. In close cooperation with the Member State, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1.

Multiannual Framework Programme

ARTICLE 166 (ex Article 130i) TEC

- adopted by qualified majority and co-decision procedure

- establishes the objectives to be achieved

- indicates broad guidelines

- fixes maximum amounts

Framework Programme must be flexible

Implementation of the Framework Programme through specific programmes

Specific programmes adopted by qualified majority and consultation procedure

Detailed rules determined by the Council

Supplementary programmes on the participation of certain Member States only

1. A multiannual framework programme, setting out all the activities of the Community, shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 after consulting the Economic and Social Committee.

The framework programme shall:

establish the scientific and technological objectives to be achieved by the activities provided for in Article 164 and fix the relevant priorities;

indicate the broad lines of such activities;

fix the maximum overall amount and the detailed rules for Community financial participation in the framework programme and the respective shares in each of the activities provided for.

2. The framework programme shall be adapted or supplemented as the situation changes.

3. The framework programme shall be implemented through specific programmes developed within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity.

4. The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the specific programmes.

ARTICLE 167 (ex Article 130j) TEC

For the implementation of the multiannual framework programme the Council shall:

determine the rules for the participation of undertakings, research centres and universities;

lay down the rules governing the dissemination of research results.

ARTICLE 168 (ex Article 130k) TEC

In implementing the multiannual framework programme, supplementary programmes may be decided on involving the participation of certain Member States only, which shall finance them subject to possible Community participation.

The Council shall adopt the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States.

ARTICLE 169 (ex Article 130l) TEC

Provisions concerning the participation in programmes

In implementing the multiannual framework programme the Community may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

ARTICLE 170 (ex Article 130m) TEC

International cooperation in the frame of the multiannual framework programme

In implementing the multiannual framework programme the Community may make provision for cooperation in Community research, technological development and demonstration with third countries or international organisations.
The detailed arrangements for such cooperation may be the subject of agreements between the Community and the third parties concerned, which shall be negotiated and concluded in accordance with Article 300.

To be agreed by qualified majority, unless internal rules require unanimity (Art. 300)

ARTICLE 171 (ex Article 130n) TEC

Joint undertakings.....

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

ARTICLE 172 (ex Article 130o) TEC

.... to be adopted by qualified majority and consultation procedure

The Council, acting by qualified majority on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt the provisions referred to in Article 171.

- Adoption of Framework Programme requires qualified majority and co-decision of EP (Art.166.1)

The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee, shall adopt the provisions referred to in Articles 167, 168 and 169. Adoption of the supplementary programmes shall require the agreement of the Member States concerned.

- Implementation of the Framework Programme also requires qualified majority but only consultation of EP

(Art. 166.4)

- The EP co-decides on detailed rules, supplementary programmes or provisions on the participation in programmes (art. 167, 168,169)

Annual report

ARTICLE 173 (ex Article 130p) TEC

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research and technological development activities and the dissemination of results during the previous year, and the work programme for the current year.

2 Research and technological development according to the new draft Constitution

2.1 Competence

At present, research and technological development can be considered as a supporting and coordinating competence. This is underlined by the relevant provisions which state that the Union/Community shall complement and coordinate the Member States' activities. However, the draft Constitution proposes that these areas become areas of shared competence. Basically, this would mean that European law would suppress national law. Yet in the specific case of research, technological development and space the Union's competence is characterised by complementing, supporting and coordinating research programmes rather than the setting up of rules. That means that although the programmes per se are regulated by laws and framework laws, Article I-13.3 clearly states that the Union's competence does not prevent the Member States from exercising theirs.

Research, technological development and space are areas of shared competence

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

Non-exhaustive list of

Article I-13: Areas of shared competence

1. The Union shall share competence with the Member States where the Constitution confers on it a competence which does not relate to the areas referred to in Articles I-12 and I-16.

2. Shared competence applies in the following principal areas:

shared competence (where an EU law suppresses national competence to legislate)

Research, technological development and space =
Area where the Union cannot prevent Member States from legislating

Development cooperation and humanitarian aid

- a) internal market,
- b) social policy, for aspects defined in Part III,
- c) economic, social and territorial cohesion,
- d) agriculture and fisheries, excluding the conservation of marine biological resources,
- e) environment,
- f) consumer protection,
- g) transport,
- h) trans-European networks,
- i) energy,
- j) area of freedom, security and justice,
- k) common safety concerns in public health matters, for aspects defined in Part III.

3. In the areas of **research, technological development and space**, the Union shall have competence to carry out actions, in particular to define and implement programmes; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to take action and conduct a common policy; however, the exercise of that competence may not result in Member States being prevented from exercising theirs.

2.2 A new area of Union competence - Space policy

Finally, the draft Constitution inserted a new Article laying down the Union's competence in the field of "space". Accordingly, the Union shall draw up a European space policy, which shall consist of:

- the promotion of joint initiatives,***
- the support of research and technological development for the exploration and exploitation of space,***
- the coordination of the efforts required in the exploration and exploitation of space.***

Decisions are taken by qualified majority, with the European Parliament co-deciding (see also below).

2.3 Decision-making

Under the title of research, technological development and space, the decision-making procedure largely remains unchanged since the Treaty of Amsterdam, which basically abolished unanimity under this title, entered into force.

Accordingly, European laws and framework laws can be adopted by

- qualified majority in the Council and the European Parliament co-deciding for:***
 - the adoption of the framework programme (Articles III-149.1 and III-302),***
 - implementation measures for the framework programme (Articles III-***

150/151/152/153 par. 1 and III-302),

- supplementary programmes for the implementation of the framework programmes (III- Articles III-150/151/152/153 par.2 and III-302),

- provisions for the participation in programmes undertaken by several Member States (Articles III-150/151/152/153 par.3 and III-302),

- setting up the European space policy (III-155 and III-302) - see above.

- qualified majority, with the European Parliament simply being consulted for:

- joint undertakings for the efficient execution of the Union's programmes (III-154 and III-302)

- specific implementation programmes (III-149.4 and III-302).

2.2.3 The Chapter on research, technological development and space in the new draft Constitution

SECTION 9 RESEARCH AND TECHNOLOGICAL DEVELOPMENT, AND SPACE

Article III-146

1. The Union's action shall aim to strengthen its scientific and technological bases, by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encourage it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Constitution.

2. For this purpose the Union shall, throughout the Union, encourage undertakings, including small and medium-sized undertakings, research centres and universities in their research and technological development activities of high quality; it shall support their efforts to cooperate with one another, aiming, notably, at enabling researchers to cooperate freely across borders and undertakings to exploit the internal market potential to the full, in particular through the opening-up of national public contracts, the definition of common standards and the removal of legal and fiscal obstacles to that cooperation.

3. All the Union's activities in the area of research and technological development, including demonstration projects, shall be decided on and implemented in accordance with this Section.

Article III-147

In pursuing the objectives referred to in Article III-146, the Union shall carry out the following activities, complementing the activities carried out in the Member States:

Objectives:

- Strengthening scientific and technological bases
- Promoting research

Encourage and support:

- undertakings
- research centres
- universities
- free movement of researchers

Means:

- | | |
|---|--|
| - Programmes | (a) implementation of <u>research, technological development and demonstration programmes</u> , by promoting cooperation with and between undertakings, research centres and universities; |
| - Cooperation | (b) promotion of <u>cooperation</u> in the field of the Union's research, technological development and demonstration with third countries and international organisations; |
| - Information dissemination | (c) <u>dissemination</u> and optimisation of the results of activities in the Union's research, technological development and demonstration; |
| - Improved training and mobility of researchers | (d) stimulation of the <u>training and mobility of researchers</u> in the Union. |

Article III-148

- | | |
|---|---|
| Coordination of Member States' activities | 1. The Union and the <u>Member States shall coordinate</u> their research and technological development activities so as to ensure that national policies and the Union's policy are mutually consistent. |
| - guidelines
- best practice
- monitoring
- evaluation | 2. In close cooperation with the Member States, the Commission may take any useful initiative to promote the coordination referred to in paragraph 1 in particular initiatives aiming at the establishment of <u>guidelines and indicators</u> , the organisation of exchange of <u>best practice</u> , and the preparation of the necessary elements for <u>periodic monitoring and evaluation</u> . The European Parliament shall be kept fully informed. |

Article III-149

- | | |
|--|--|
| Multi-annual framework programme, legislative procedure and consultation of EcoSoc | 1. A multiannual framework programme, setting out all the activities financed by the Union, shall be enacted by European laws. Such laws shall be adopted after consultation of the Economic and Social Committee. |
| | The framework programme shall: |
| | (a) <u>establish the scientific and technological objectives</u> to be achieved by the activities provided for in Article III-147 and fix the relevant priorities; |
| | (b) indicate the broad lines of such activities; |
| Maximum amount | (c) <u>fix</u> the maximum overall amount and the detailed rules for the <u>Union's financial participation</u> in the <u>framework programme</u> and the respective shares in each of the activities provided for. |
| | 2. The framework programme shall be adapted or supplemented as the situation changes. |
| Specific programmes | 3. A European law of the Council shall establish specific programmes to implement the framework programme within each activity. Each specific programme shall define the detailed rules for implementing it, fix its duration and provide for the means deemed necessary. The sum of the amounts deemed necessary, fixed in the specific programmes, may not exceed the overall maximum amount fixed for the framework programme and each activity. Such a law shall be adopted after consultation of the European Parliament and the Economic and Social Committee. |

Detailed rules fixed by Council on a proposal from the Commission

Implementation based on European law or framework law, establishing:

- participation rules

- dissemination rules

Ordinary legislative procedure and consultation of CoR

Supplementary programmes for certain Member States only...

... by ordinary legislative procedure, EcoSoc consulted

The EU can participate in special programmes undertaken by member states

International cooperation

Detailed rules adopted by Council

European Space Policy - new competence

4. As a complement to the activities planned in the multiannual framework programme, a European law of the Council shall establish the measures necessary for the implementation of the European research area. Such a law shall be adopted after consultation of the European Parliament and the Economic and Social Committee.

Article III-150/151/152/153

1. For the implementation of the multiannual framework programme, European laws or framework laws shall establish:

- (a) the rules for the participation of undertakings, research centres and universities;
- (b) the rules governing the dissemination of research results.

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

2. In implementing the multiannual framework programme, European laws may establish supplementary programmes involving the participation of certain Member States only, which shall finance them subject to possible participation by the Union.

Such laws shall determine the rules applicable to supplementary programmes, particularly as regards the dissemination of knowledge and access by other Member States. They shall be adopted after consultation of the Economic and Social Committee and with the agreement of the Member States concerned.

3. In implementing the multiannual framework programme, European laws may make provision, in agreement with the Member States concerned, for participation in research and development programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes.

Such European laws shall be adopted after consulting the Economic and Social Committee.

4. In implementing the multiannual framework programme the Union may make provision for cooperation in the Union's research, technological development and demonstration with third countries or international organisations.

The detailed arrangements for such cooperation may be the subject of agreements between the Union and the third parties concerned.

Article III-154

The Council, on a proposal from the Commission may adopt European regulations or decisions to set up joint undertakings or any other structure necessary for the efficient execution of the Union's research, technological development and demonstration programmes. It shall act after consulting the European Parliament and the Economic and Social Committee.

Article III-155

- promotes joint initiatives
- supports research
- coordinates efforts

European law and
framework law, by
legislative procedure

Relations with the European
Space Agency

Annual report from the
Commission

1. To promote scientific and technical progress, industrial competitiveness and the implementation of its policies, the Union shall draw up a European space policy. To this end, it may promote joint initiatives, support research and technological development and coordinate the efforts needed for the exploration and exploitation of space.

2. To contribute to attaining the objectives referred to in paragraph 1, European laws or framework laws shall establish the necessary measures, which may take the form of a European space programme.

3. The Union shall establish any appropriate relations with the European Space Agency.

Article III-156

At the beginning of each year the Commission shall send a report to the European Parliament and the Council. The report shall include information on research, technological development and the dissemination of results during the previous year, and the work programme for the current year.

III) THE INSTITUTIONS OF THE UNION

1) EUROPEAN PARLIAMENT

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

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

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

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

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

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

Article I-19

The European Parliament

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

Direct elections every 5 years, max. 736, min 4 per Member State, the remainder will be divided by degressive proportionality
 According to a proposal from the EP this could mean fewer members from the smaller states than at present

EP President

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

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

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

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

1.1 COMPOSITION OF THE EUROPEAN PARLIAMENT AT PRESENT:

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

Absolute Majority of Members= 314votes

1.2 COMPOSITION OF THE EUROPEAN PARLIAMENT 2004-2009

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13
Luxembourg	6
Hungary	24
Malta	5
Hungary	27
Austria	18
Poland	54
Portugal	24
Slovenia	7
Slovakia	14
Finland	14
Sweden	19
United Kingdom	78
TOTAL	732

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

From the date of Romania's and Bulgaria's accession and until 2009, the European Parliament will therefore be composed of up to 782 MEPs. From 2009 onwards, the number of MEPs will be limited to 736 (see below).

1.3 COMPOSITION OF THE EUROPEAN PARLIAMENT FROM 2009 ONWARDS

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

Article I-19

Direct elections every 5 years, max. 736, min 4

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

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.

seven hundred and thirty-six in number. Representation of European citizens shall be degressively proportional, with a minimum threshold of four members per Member State.

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

2) EUROPEAN COUNCIL

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

Article I-20

European Council

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

*The European Council
meets quarterly*

*President may convene
additional meetings*

Decisions by consensus

1. The European Council shall provide the Union with the necessary impetus for its development, and shall define its general political directions and priorities. It does not exercise legislative function.

2. The European Council shall consist of the Heads of State or Government of the Member States, together with its President and the President of the Commission. The Union Minister for Foreign Affairs shall take part in its work.

3. The European Council shall meet quarterly, convened by its President. When the agenda so requires, its members may decide to be assisted by a minister, and, in the case of the President of the Commission, a European Commissioner. When the situation so requires, the President shall convene an special meeting of the European Council.

4. Except where the Constitution provides otherwise, decisions of the European Council shall be taken by consensus.

THE EUROPEAN COUNCIL PRESIDENT

Article I-21

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

of the President

represents the EU

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

2. The President of the European Council:

shall chair it and drive forward its work,

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

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

wider world on CFSP

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

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

*ent cannot have a national
te*

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

3) COUNCIL OF MINISTERS

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

Article I-22

Council of Ministers:

- legislates with EP
- carries out policy making
- coordinates

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

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

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

3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT:

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

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

3.2 WEIGHTING OF VOTES IN THE COUNCIL 2004-2009

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

Qualified majority:

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

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

3.3 VOTING IN THE COUNCIL FROM 2009 ON

Qualified majority will become the general rule for the adoption of decisions within the Council of Ministers and, from 1 November 2009, will be defined as consisting of a majority of states representing three-fifths of the population of the Union. For cases in which the Convention has not achieved consensus on changing over to qualified majority voting, a

transitional measure - a 'passerelle' - is planned, by which the European Council will have the opportunity to decide unanimously that the Council will in future act by qualified majority and, as the case may be, by the ordinary legislative procedure, without the need to amend the Constitution, which would in turn require ratification by each Member State.

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

Article I-24

1. Majority of Member States

2. 60% of the EU population

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

Enlarged qualified majority

1. 2/3 of Member States

2. 60% of the EU population

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

NB: New deepening clause

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

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

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

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

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

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

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

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

4) EUROPEAN COMMISSION

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

Article I-25

EU-Commission

Role:

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

Monopoly of initiative:
No one else can propose new laws

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

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

Non-voting Commissioners from the other states

Effective from 2009

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

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

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

(a) Member States shall be treated on a strictly equal footing as regard determination of the sequence of, and the time spent by, their nationals as Members of the College; consequently, the difference between the total number of terms of office held by nationals of any given pair of Member States may never be more than one.

(b) subject to point (a), each successive college shall be so composed as to reflect satisfactorily the demographic and geographical range of all Member States of the Union

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

These arrangements will take effect on 1 November 2009.

Independence

May not take outside instructions

Censure

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

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

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

COMMISSION PRESIDENT

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

Commission President

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

Commission members

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

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

Article I-26

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

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

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

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

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

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

5) EU FOREIGN MINISTER

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

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

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

Article I-27

EU Foreign Minister

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

Tasks of Foreign Minister

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.]