

# **EU draft Constitution - Provisions governing external trade**

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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) TRADE POLICY**

### **1. Trade policy according to the present provision in the TEC**

#### **1.1 Introduction:**

*The external trade/common commercial policy is subject to the Community's exclusive competence. According to Article 133 TEC, the common commercial policy "shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies".*

#### **1.2 Legal bases**

*In order to achieve the objectives of the Community set out in Article 2 TEC, the activities of the Community shall include a common commercial policy. This aim is set out in the general clause of article 3 lit b TEC.*

*The more specific Title IX of the TEC (Articles 131-134 TEC) serves as a legal base for the activities of the Community in the sphere of external trade. In the frame of external trade, the negotiation and conclusion of agreements with third countries is a key issue.*

##### **1.2.1 The scope of Article 133 TEC:**

*The scope of the common commercial policy, as defined by Article 133 TEC, has been interpreted very broadly by the Court of Justice (see opinion 1/94). According to the Court, Article 133 TEC does not exclude the trade with services from its scope. However, the common commercial policy does not cover those international negotiations and agreements relating to services and intellectual property which are subject to the GATS and TRIPS agreements. This is insofar relevant as, until now, the Member states have to (co-)sign agreements related to the trade in services and intellectual property. If these areas were to be considered as belonging to the common commercial policy, the Community would have the exclusive competence to negotiate and to sign these agreements (although the current Article 133 paragraph 5, subparagraph 4 stipulates that the Member states rights shall not be affected).*

*Since Amsterdam, the Council can nevertheless extend the scope of Article 133 to include the negotiation and agreements on services and intellectual property by unanimous agreement following consultation of the European Parliament (former Article 133.5 TEC).*

*The Treaty of Nice also amended Article 133 to allow such agreements (of trade in services and the commercial aspects of intellectual property) to be concluded by qualified majority voting (present Article 133 paragraph 5, 1st subparagraph, and paragraph 4 TEC). The Treaty of Nice also allows the Council to extend the scope of Article 133 to include the negotiation and agreements on the whole reach of intellectual property by unanimous agreement following consultation of the European Parliament (present Article 133.7 TEC).*

### 1.2.2 Decision making:

*As a general rule, the Council shall act by qualified majority (Article 133.4 TEC). There are, however, exceptions concerning agreements in sectors for which unanimity is required for the adoption of internal rules or for areas for which the competence is shared between the Member States and the Community. Those remain subject to unanimity or to "common accord". Such exceptions include trade in cultural and audiovisual services, educational services, and social and human health services.*

*Basically, Article 133 TEC does not provide for any kind of involvement of the EP, not even its consultation. The exception concerns the above-mentioned extension of the scope of article 133 TEC to the negotiation and conclusion of agreements for which the EP needs to be consulted. In this case, the EP would have to be consulted for both the mandating of the Commission to negotiate and the final conclusion of the agreement.*

### 1.3 The articles in the TEC

*The general clause: Activities to attain the Community's objectives:*

	<b>ARTICLE 3 (ex Article 3) TEC</b>
<i>Catalogue of competences</i>	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:
<i>Prohibition of barriers to trade</i>	a) the <u>prohibition</u> , as between Member States, of <u>customs duties</u> and quantitative restrictions on the import and export of goods, and of all other measures having equivalent effect;
<i>Trade policy</i>	b) a common <u>commercial</u> policy;

*The Chapter on external trade:*

	<b>TITLE IX (ex Title VII): COMMON COMMERCIAL POLICY</b>
	<b>ARTICLE 131 (ex Article 110) TEC</b>
<i>Customs union and common commercial policy</i>	By establishing a <u>customs union</u> between themselves Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive <u>abolition of restrictions</u> on international trade and the <u>lowering of customs barriers</u> . The <u>common commercial policy</u> shall take into account the favourable effect which the <u>abolition of customs duties</u> between Member States may have on the increase in the competitive strength of undertakings in those States.
	<b>ARTICLE 132 (ex Article 112) TEC</b>

*Export from the EU*

*Aid systems to be harmonised by qualified majority*

*-but not if the aid is only equivalent to internal taxation*

**The main article on external trade in the TEC**

*Common commercial policy built on uniform principles*

*Proposals from the Commission*

*1. step:  
The Council, acting by qualified majority, authorises the Commission to negotiate*

*EP s consultation NOT required (Art.300.3)*

*§133 Committee to be regularly informed*

*2nd step: The Council, acting by qualified majority, concludes an agreement by qualified majority (300.3 TEC)*

*Qualified majority is the general rule*

*Agreements on services and intellectual property rights: introduced through the Treaty of Nice*

1. Without prejudice to obligations undertaken by them within the framework of other international organisations, Member States shall progressively harmonise the systems whereby they grant aid for exports to third countries, to the extent necessary to ensure that competition between undertakings of the Community is not distorted.

On a proposal from the Commission, the Council shall, acting by a qualified majority, issue any directives needed for this purpose.

2. The preceding provisions shall not apply to such a drawback of customs duties or charges having equivalent effect nor to such a repayment of indirect taxation including turnover taxes, excise duties and other indirect taxes as is allowed when goods are exported from a Member State to a third country, insofar as such a drawback or repayment does not exceed the amount imposed, directly or indirectly, on the products exported.

**ARTICLE 133 (ex Article 113) TEC**

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with one or more States or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.

The relevant provisions of Article 300 shall apply.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, insofar as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.

*Unanimity required  
where internal rules  
require it*

By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.

The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.

This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations insofar as such agreements comply with Community law and other relevant international agreements.

*Agreement may not  
exceed internal powers*

6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.

*Cultural, audio-visual,  
educational, social,  
health services require  
"common accord" =  
unanimity*

In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.

*Transport*

The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.

*The Council, acting  
unanimously, can extend  
the application of this  
article to agreements on  
intellectual property*

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property insofar as they are not covered by paragraphs 5.

*Consultation of EP  
required*

## ARTICLE 134 (ex Article 115) TEC

*Protective measures  
The Commission can give  
dispensation*

In order to ensure that the execution of measures of commercial policy taken in accordance with this Treaty by any Member State is not obstructed by deflection of trade, or where differences between such measures lead to economic difficulties in one or more Member States, the Commission shall recommend the methods for the requisite cooperation between Member States. Failing this, the Commission may authorise Member States to take the necessary protective measures, the conditions and details of which it shall determine.

*Cases of urgency  
The Commission decides*

In case of urgency, Member States shall request authorisation to take the necessary measures themselves from the Commission, which shall take a decision as soon as possible; the Member States concerned shall then notify the measures to the other Member States. The Commission may decide at any time that the Member States concerned shall amend or abolish the measures in question.

In the selection of such measures, priority shall be given to those which cause the least disturbance of the functioning of the common market.

## ***2. External trade according to the provisions of the draft Constitution***

### ***2.1 Competence***

*The draft Constitution clearly states that the entire common commercial policy is to be considered as an exclusive competence. This is also underlined by the fact that Article III-217.4 2nd subparagraph does not consider the trade in cultural and audiovisual services as an area of shared competence anymore, although it still requires decisions by unanimity in the Council.*

*Currently, Article 133.6 TEC states that agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, the negotiation of such agreements shall require the common accord of the Member States and shall be negotiated and concluded jointly by the Community and the Member States.*

*The same goes for agreements relating to educational services, and social and human health services, which*

- would be subject to the Union's exclusive competence,*
- and which could be concluded by qualified majority in the Council (see below).*

### ***2.2 Structure and legal bases***

*The draft constitution correctly attributes the chapter on common commercial policy to Title V, the "Unions External Action". Accordingly, Article III-217.1 stipulates that "the common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action".*

*Furthermore, the current articles 131.2, 132 and 134 TEC have been deleted from the Chapter on external trade for being either superfluous or incompatible with the fact that the draft Constitution considers the common commercial policy as an area of exclusive EU competence.*

#### ***2.2.1 Scope of Article III-217:***

*The scope of article 217 has been extended: According to its paragraph 1, the foreign direct investment is proposed to be part of the common commercial policy, area which until now is subject to the Member States' competence. Furthermore and in accordance with the opinion 1/94 of the Court of Justice, the proposed Article III-217 makes it clear that the trade in services belongs to the area of common commercial policy when it involves the movement of persons (Article III-217.4 subparagraph 1).*

#### ***2.2.2 Decision-making:***

*Some important changes as to the decision-making in the field of the common commercial policy are being proposed.*

*They concern the participation of the European Parliament and the decision making in the Council.*



### **2.2.2.1 The involvement of the European Parliament**

*The present Article 133 TEC does not foresee any formal participation of the EU Parliament, except for the extension of the scope of article 133 TEC to the negotiation and conclusion of agreements for which the EP needs to be consulted (see above). According to the Article III-217 the following changes are proposed:*

- the implementation of the common commercial policy: At present, the Council acts by qualified majority without any formal participation of the EU Parliament (with the above-mentioned exceptions). According to the draft Constitution, the implementation of the common commercial policy shall be established by European laws and frameworks laws adopted through the ordinary legislative procedure (qualified majority and co-decision of the European Parliament)*
- the decision of the Council to authorise the Commission to negotiate an agreement: The European Parliament must be informed (Article III-217.3 with III-227.11*
- The decision of the Council to conclude an agreement: The European Parliament must be consulted (Articles III-217.3 with Article III-227.7)*

### **2.2.2.2. Decision making in the Council**

*As a general rule, the Council shall act by qualified majority*

- for the implementation of the common commercial policy (III-217.2, III-302, I-22.3),*
- for authorising the Commission to negotiate (III-217.3, II-227.3, I-22.3) and*
- for the conclusion of an agreement (III-217.3, II-227.3, I-22.3).*

*Exceptions:*

*Unanimity is required for*

- trade in cultural and audiovisual services (III-217.4, 3rd subparagraph),  
(Note: for the adoption of internal rules concerning cultural and audiovisual services, only qualified majority is needed (for instance the directive "television without frontiers" based on the provision of the internal market (currently Article 95 TEC))).*
- agreements for which unanimity is required for the adoption of internal rules (III-217.4, 2nd subparagraph).*

## 2.3 The articles in the draft constitution

### **Exclusive competence**

- commercial policy

- international agreements when they affect internal competence

### **Article I-12: Exclusive competence**

1. The Union shall have exclusive competence to establish competition rules within the internal market, and in the following areas:
  - monetary policy, for the Member States which have adopted the euro,
  - common commercial policy**,
  - customs union,
  - the conservation of marine biological resources under the common fisheries policy.
2. The Union shall have **exclusive competence for the conclusion of an international agreement** when its conclusion is provided for in a legislative act of the Union, is necessary to enable the Union to exercise its competence internally, or affects an internal Union act.

### **Common Commercial Policy**

Aims:

- harmonious development of world trade
- progressive abolition of restrictions
- remove barriers

## **CHAPTER III**

### **COMMON COMMERCIAL POLICY**

#### **Article III-216**

By establishing a customs union between themselves, Member States aim to contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers.

#### **Article III-217**

1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.

Uniform principles

2. European laws or framework laws shall establish the measures required to implement the common commercial policy.

Legislative procedure

3. Where agreements with one or more States or international organisations need to be negotiated, the relevant provisions of Article I-227 shall apply. The Commission shall make recommendations to the Council of Ministers, which shall authorise the Commission to open the necessary negotiations. The Council of Ministers and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

Council mandates  
Commission to negotiate

The Commission consult with a Council appointed special committee

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council of Ministers to assist the Commission in this task and within the framework of such directives as the Council of Ministers may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

*Trade agreements need unanimity for services, movement of persons, commercial aspects of intellectual property*

*Unanimity when culture and audiovisual services involved*

*Transport  
External Trade cannot undermine delimitation of competence between the Union and Member States*

4. For the negotiation and conclusion of agreements in the fields of trade in services involving the movement of persons and the commercial aspects of intellectual property, the Council of Ministers shall act unanimously where such agreements include provisions for which unanimity is required for the adoption of internal rules.

The Council of Ministers shall also act unanimously for the negotiation and conclusion of agreements in the field of trade in cultural and audiovisual services, where these risk prejudicing the Union's cultural and linguistic diversity.

The negotiation and conclusion of international agreements in the field of transport shall be subject to the provisions of Section 7 of Chapter III of this Title and Article III-227.

5. The exercise of the competences conferred by this Article in the field of commercial policy shall not affect the delimitation of internal competences between the Union and the Member States, and shall not lead to harmonisation of legislative or regulatory provisions of Member States insofar as the Constitution excludes such harmonisation.

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

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

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

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

*Direct elections every 5 years, max. 736, min. 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 a ‘passerelle’) is planned. This means that***

*European Council will be able 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 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 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:**  
*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 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/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.]