

EU draft EU Constitution- Transport and Transeuropean Networks

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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 since 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**.

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

II) TRANSPORT

Basically, the legislators have a certain amount of discretion while implementing a common transport policy. However, according to the EU Court of Justice, the co-legislators are to be active when legislation is needed in the area of transport to guarantee the free movement of goods, persons and services.

The section on transport remains mainly unchanged. Thus, as it stands, it is liable to be in conflict with the EU's overall objectives of sustainable development and improvement of the environment.

As in the past, decisions are taken by qualified majority with the EU Parliament's co-decision. The present Art. 71.2 TEC, which required unanimity for "provisions concerning the principles of the regulatory system for transport would be liable to have a serious effect on the standard of living and on employment in certain areas and on the operation of transport facilities..." has been dropped.

1. Area of shared competence

The Member States lose their right to legislate as soon as the EU regulates the issue.

Article I-13

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

Non-exhaustive list of shared competences (where an EU law suppresses national competence to legislate)

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:

internal market,
area of freedom, security and justice,
agriculture and fisheries, excluding the conservation of marine biological resources,
transport and trans-European networks,
energy,
social policy, for aspects defined in Part III,
economic, social and territorial cohesion,
environment,
consumer protection,
common safety concerns in public health matters.

Article III-31

Transport

1. **Freedom to provide services in the field of transport shall be governed by the Section relating to transport.**

Bank and insurance

2. The liberalisation of banking and insurance services connected with

movements of capital shall be effected in step with the liberalisation of movement of capital.

2. Common transport policy

Article III-133

The objectives of the Constitution shall, in matters governed by this Title, be pursued within the framework of a common transport policy.

Article III-134

Codecision and consultation of CoR and EcoSoc

1. European laws or framework laws shall implement Article III-133, taking into account the distinctive features of transport. It shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

Such European laws or framework laws shall contain:

- international transport

(a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States;

- transport services

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

- transport safety

(c) measures to improve transport safety;

- any other measure

(d) any other appropriate measure.

Article III-135

Transition article
Unanimity required if access for carriers of another Member States is to be restricted

Until the European laws or framework laws referred to in the first paragraph of Article III-134 have been adopted, no Member State may, unless the Council of Ministers has unanimously adopted a European decision granting a derogation, make the various provisions governing the subject on 1 January 1958 or, for acceding States, the date of their accession less favourable in their direct or indirect effect on carriers of other Member States as compared with carriers who are nationals of that State.

Article III-136

Aid allowed up to a certain limit

Aids shall be compatible with the Constitution if they meet the needs of coordination of transport or if they represent reimbursement for the discharge of certain obligations inherent in the concept of a public service.

Article III-137

Economic circumstances of carriers are to be considered | Any measures adopted within the framework of the Constitution in respect of transport rates and conditions shall take account of the economic circumstances of carriers.

Article III-138

Ban on discrimination | 1. In the case of transport within the Union, discrimination which takes the form of carriers charging different rates and imposing different conditions for the carriage of the same goods over the same transport links on grounds of the Member State of origin or of destination of the goods in question shall be prohibited.

2. Paragraph 1 shall not prevent the adoption of other European laws or framework laws in pursuance of Article III-134.

Detailed rules adopted by Council | 3. The Council of Ministers, on a proposal from the Commission, shall adopt European regulations or decisions for implementing paragraph 1. It shall act after consulting the European Parliament and the Economic and Social Committee.

The Council of Ministers may in particular adopt the European regulations and decisions needed to enable the institutions to secure compliance with the rule laid down in paragraph 1 and to ensure that users benefit from it to the full.

Commission may intervene against discrimination | 4. The Commission shall, acting on its own initiative or on application by a Member State, investigate any cases of discrimination falling within paragraph 1 and, after consulting any Member State concerned, shall adopt the necessary European decisions within the framework of the European regulations and decisions referred to in paragraph 3.

Article III-139

No national support of particular undertakings, unless authorised by the Commission | 1. The imposition by a Member State, in respect of transport operations carried out within the Union, of rates and conditions involving any element of support or protection in the interest of one or more particular undertakings or industries shall be prohibited, unless authorised by a European decision of the Commission.

2. The Commission shall, acting on its own initiative or on application by a Member State, examine the rates and conditions referred to in paragraph 1, taking account in particular of the requirements of an appropriate regional economic policy, the needs of underdeveloped areas and the problems of areas seriously affected by political circumstances on the one hand, and of the effects of such rates and conditions on competition between the different modes of transport on the other.

After consulting each Member State concerned, the Commission shall adopt the necessary European decisions.

Commission adopts decisions
Exception | 3. The prohibition provided for in paragraph 1 shall not apply to tariffs fixed to meet competition.

Article III-140

Charges for crossing | Charges or dues in respect of the crossing of frontiers which are charged by a carrier in

frontiers

addition to the transport rates shall not exceed a reasonable level after taking the costs actually incurred thereby into account.

Member States shall endeavour to reduce these costs

The Commission may make recommendations to Member States for the application of this Article.

Article III-141

Derogation for the division of Germany

The provisions of this Section shall not form an obstacle to the application of measures taken in the Federal Republic of Germany to the extent that such measures are required in order to compensate for the economic disadvantages caused by the division of Germany to the economy of certain areas of the Federal Republic affected by that division.

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Article III-142

Advisory Committee

An Advisory Committee consisting of experts designated by the governments of Member States shall be attached to the Commission. The Commission, whenever it considers it desirable, shall consult the Committee on transport matters.

Article III-143

Title applies to railway, road, and waterway transport...

...and also to sea and air transport

1. This Title shall apply to transport by rail, road and inland waterway.
2. European laws or framework laws may lay down appropriate measures for sea and air transport. It shall be adopted after consultation of the Committee of the Regions and the Economic and Social Committee.

3. Conclusion of international agreements in the area of transport

Article III-217

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

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.

Unanimity when culture involved

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.

Transport

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.

Article III-227

Procedure for conclusion of agreements:

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

Council authorises and concludes

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

Commission and Foreign Minister shall submit recommendations

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

Council nominates a negotiator...

4. In connection with the decision authorising negotiations, depending on the subject of the future agreement, the Council of Ministers shall nominate the negotiator or leader of the Union's negotiating team.

and give negotiating directives

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

Special committee designated

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

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

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

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

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

The European Parliament's consent shall be required for:

(a) association agreements;

- Agreements establishing a specific institutional framework
- Agreements with

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

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

important budgetary implications
- Areas where the legislative procedure apply

Delegation of powers to amend agreements

General rule: qualified majority in Council

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

Suspension by qualified majority

EP to be informed at all stages

Opinion of the Court may be requested

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

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

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

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

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

10. The Council of Ministers, on a proposal from the Union Minister for Foreign Affairs or the Commission, shall adopt a European decision to suspend the application of an agreement and shall establish the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt decisions having legal effects, with the exception of decisions supplementing or amending the institutional framework of the agreement.

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

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

III) Transeuropean Networks

1. Definition of transeuropean networks as shared competence

Article III-144

Establishment of
- transport
- telecommunications
- energy
infrastructures

Interconnection

Means:

- guidelines

- measures to ensure
interoperability

- projects

All means must be enacted
by European law or
framework law -
legislative procedure and
consultation of CoR and
EcoSoc

Approval
Coordination among the
Member States

International cooperation

1. To help achieve the objectives referred to in Articles III-14 and III-116 and to enable citizens of the Union, economic operators and regional and local communities to derive full benefit from the setting-up of an area without internal frontiers, the Union shall contribute to the establishment and development of trans-European networks in the areas of transport, telecommunications and energy infrastructures.

2. Within the framework of a system of open and competitive markets, action by the Union shall aim at promoting the interconnection and interoperability of national networks as well as access to such networks. It shall take account in particular of the need to link island, landlocked and peripheral regions with the central regions of the Union.

1. In order to achieve the objectives referred to in Article III-144, the Union:

(a) shall establish a series of guidelines covering the objectives, priorities and broad lines of measures envisaged in the sphere of trans-European networks; these guidelines shall identify projects of common interest;

(b) shall implement any measures that may prove necessary to ensure the interoperability of the networks, in particular in the field of technical standardisation;

(c) may support projects of common interest supported by Member States, which are identified in the framework of the guidelines referred to in point (a), particularly through feasibility studies, loan guarantees or interest-rate subsidies; the Union may also contribute, through the Cohesion Fund, to the financing of specific projects in Member States in the area of transport infrastructure.

The Union's activities shall take into account the potential economic viability of the projects.

2. The guidelines and other measures referred to in paragraph 1 shall be enacted by European laws or framework laws. It shall be adopted after consulting the Committee of the Regions and the Economic and Social Committee.

Guidelines and projects of common interest which relate to the territory of a Member State shall require the approval of the Member State concerned.

3. Member States shall, in liaison with the Commission, coordinate among themselves the policies pursued at national level which may have a significant impact on the achievement of the objectives referred to in Article III-144. The Commission may, in close cooperation with the Member State, take any useful initiative to promote such coordination.

4. The Union may cooperate with third countries to promote projects of mutual interest and to ensure the interoperability of networks.

2. Financial contribution through the Cohesion Fund

Article III-119

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

Cohesion Fund

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

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

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

V) GENERAL LEGISLATIVE PROCEDURE

The draft Constitution distinguishes between

- *legally binding acts (laws, framework laws, regulations and decisions) and*
- *non-binding acts (opinions and recommendations);*

In terms of legally binding acts, it distinguishes between legislative acts (laws and framework laws) and non-legislative acts (regulations and decisions). In order to adopt legislative acts, the co-decision procedure is the general rule.

1. CO-DECISION PROCEDURE - GENERAL RULE

Article I- 33

General rule:

1. *Commission proposes*
2. *EP and Council decides:*
 - a. *qualified majority in Council*
 - b. *Simple EP majority*

In special cases a group of Member States can take initiative - but still the EP and Council decides

Sometimes only the Council or the EP adopts laws - but the other institution participates

1. European laws and European framework laws shall be adopted, on the basis of proposals from the Commission, jointly by the European Parliament and the Council of Ministers under the ordinary legislative procedure as set out in Article III-302. If the two institutions cannot reach agreement on an act, it shall not be adopted.

In the cases specifically provided for in Article III-165, laws and framework laws may be adopted at the initiative of a group of Member States in accordance with Article III-302.

2. In the specific cases provided for by the Constitution, European laws and European framework laws shall be adopted by the European Parliament with the participation of the Council, or by the latter with the participation of the European Parliament, in accordance with special legislative procedures.

2. CO-DECISION PROCEDURE

Article III-302

General legislative procedure

1) Commission submits a proposal to EP and Council

2) EP adopts a position,

1. Where, pursuant to the Constitution, European laws or framework laws are adopted under the ordinary legislative procedure the following provisions shall apply.

2. The Commission shall submit a proposal to the European Parliament and the Council of Ministers.

First reading

3. The European Parliament shall adopt its position at first reading and

then sends to Council

3.a) Council approve = proposal is adopted

3.b) Council does not approve = makes own position, send it to EP

Commission inform EP of its position

If, within three months, the EP:

4.a) approves Council position = proposal is adopted

4.b) reject Council position by an absolute majority of members = proposal is rejected

4.c) amends Council position by absolute majority = send it back to Council

Commission gives opinion on amendments

If, within three months, Council by qualified majority:

5.a) approves EP's position = proposal adopted

5.b) rejects EP's position = Conciliation committee is convened

Unanimity is required for Council to amend if the Commission has given a negative opinion

6. Conciliation

communicate it to the Council of Ministers.

4. If the Council of Ministers approves the European Parliament's position, the proposed act shall be adopted.

5. If the Council of Ministers does not approve the European Parliament's position, it shall adopt its position at first reading and communicate it to the European Parliament.

6. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position at first reading. The Commission shall inform the European Parliament fully of its position.

Second reading

7. If, within three months of such communication, the European Parliament

(a) approves the position of the Council position at first reading or has not taken a decision, the proposed act shall be deemed to have been adopted;

(b) rejects, by an absolute majority of its component members, the position of the Council of Ministers at first reading, the proposed act shall be deemed not to have been adopted;

(c) proposes, by an absolute majority of its component members, amendments to the position of the Council of Ministers at first reading, the text thus amended shall be forwarded to the Council of Ministers and to the Commission, which shall deliver an opinion on those amendments.

8. If, within three months of receiving the European Parliament's amendments, the Council of Ministers, acting by a qualified majority,

(a) approves all those amendments, the act in question shall be deemed to have been adopted;

(b) does not approve all the amendments, the President of the Council of Ministers, in agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

9. The Council of Ministers shall act unanimously on the amendments on which the Commission has delivered a negative opinion.

Conciliation

Committee

Composed of equal numbers from Council and EP

*Agrees on joint text: Council with a qualified majority, EP with a majority of members
Time-limit: six weeks*

Commission observe conciliation meetings

If no approval of either Council or EP within six weeks after joint text is adopted the proposal is rejected

7. Joint text to Council and EP

Council approves by qualified majority, EP by majority of votes

Deadline: six weeks or else rejected

Deadlines can be extended

Special rules when a group of States are proposing

Commission shall be informed and give opinion on its own initiative or on request

10. The Conciliation Committee, which shall be composed of the members of the Council of Ministers or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council of Ministers or their representatives and by a majority of the representatives of the European Parliament within six weeks of its being convened, on the basis of the positions of the Parliament and the Council of Ministers at second reading.

11. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council of Ministers.

12. If, within six weeks of its being convened, Conciliation Committee does not approve the joint text, the proposed act shall be deemed not to have been adopted.

Third reading

13. If, within that period, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council of Ministers, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text. If either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.

14. The period of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council of Ministers.

Special provisions

15. Where, in the case specifically provided for in the Constitution, a law or framework law is submitted to the ordinary legislative procedure on the initiative of a group of Member States or of the European Central Bank, paragraphs 2, 6 in fine and 9 shall not apply.

The European Parliament and the Council of Ministers shall communicate to the Commission the proposal of the group of Member States or of the European Central Bank and their positions at first and second readings.

The European Parliament or the Council of Ministers may request the opinion of the Commission throughout the procedure. The Commission may deliver an opinion on its own initiative. It may, if it deems it necessary, take part in the Conciliation Committee on the terms laid down in paragraph 11.

THE UNION'S BUDGET

1. OWN RESOURCES

2. THE UNION'S ANNUAL BUDGET

3. IMPLEMENTATION OF THE BUDGET

4. COMMON PROVISIONS

1) OWN RESOURCES

Only the Council, acting unanimously after consultation of the EP, will decide on the Union's own resources. This law will not enter into force until approved by the Member States in accordance with their respective constitutional requirements. However, more detailed rules will be determined by a law, adopted by a qualified majority in the Council after having obtained the consent of the EP.

Article I-53

Provide itself with enough resources to attain its objectives

Financed from own resources

A law shall establish the limits of the Union's resources and the categories of the budget. The law shall be approved by all Member States

Detailed rules by qualified majority in Council and EP consent

1. The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

2. Without prejudice to other revenue, the Union's budget shall be financed wholly from its own resources.

3. A European law of the Council shall lay down the limit of the Union's resources and may establish new categories of resources or abolish an existing category. That law shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. The Council of Ministers shall act unanimously after consulting the European Parliament.

4. A European law of the Council shall lay down the modalities relating to the Union's resources. The Council of Ministers shall act after obtaining the consent of the Parliament.

2) THE UNION'S ANNUAL BUDGET

The law determining the annual budget will be adopted jointly by the EP and the Council, with the European Parliament having the final word on all expenditure in the event of disagreement. Thus there will no longer be a distinction between compulsory and non-compulsory expenditure.

The budgetary procedure will have only one reading in each institution.

2.1 BUDGETARY AND FINANCIAL PRINCIPLES

Article I-52

Union budget shall include all revenue and expenditure

1. All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget, in accordance with the provisions of Part III.

Balanced budget

2. The revenue and expenditure shown in the budget shall be in balance.

Rules on adopting expenditure to be defined in Part III

3. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the European law referred to in Article III-318.

Expenditure requires both money in the budget and a legal act

4. The implementation of expenditure shown in the budget shall require the prior adoption of a binding legal act providing a legal basis for Union action and for the implementation of the expenditure in accordance with the European law referred to in Article III-314. This act must take the form of a European law, a European framework law, a European regulation or a European decision.

The Union has to be sure that it can finance the acts it adopts within the limits of its own resources

5. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the proposal or measure in question is capable of being financed within the limit of the Union's own resources and the multiannual financial framework referred to in Article I-54.

Principle of sound financial management

6. The Union's budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with the principles of sound financial management.

Rules on countering fraud

7. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union in accordance with the provisions of Article III-321.

2.2. THE ANNUAL BUDGET

Article I-55

EP and Council shall determine the Union's budget

The European Parliament and the Council of Ministers shall, on a proposal from the Commission and in accordance with the arrangements laid down in Article III-310, adopt the European law determining the Union's annual budget.

2.3 THE FINANCIAL YEAR

Article III-309

Financial year

| The financial year shall run from 1 January to 31 December.

2.4 THE NEW BUDGET PROCEDURE

Article 310

The new budget procedure

Budget established by law = co-decision

Difference between compulsory and non-compulsory expenditures ceases to exist:

The EP can thus co-decide on ALL expenditures

1. Each institution draws up an estimate

2. Commission makes a draft budget

3. Commission submits the draft budget before 1st September to Council and EP

4. Council sends an opinion to Parliament before 1st October

5.a If EP approves = budget adopted

5.b If EP amends by majority of its members = Conciliation Committee is convened, unless Council approves all EP amendments

6. Council and EP agree on a joint text within 21 days

A European law shall establish the Union's annual budget in accordance with the following provisions:

1. Each Institution shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a draft budget. It shall attach thereto an opinion which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5 below, is convened.

2. **The Commission shall submit the draft budget** to the European Parliament and the Council of Ministers not later than 1 September of the year preceding that in which the budget is to be implemented.

3. The **Council of Ministers shall adopt its position** on the draft budget law and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council of Ministers shall inform the European Parliament fully of the reasons which led it to adopt its position.

4. If, within 40 days of such communication, **the European Parliament:**
(a) **approves** the Council of Ministers position or has not taken a decision, the budget law shall be deemed to have been adopted;

(b) **proposes amendments** to the Council of Ministers position by a majority of its component members, the amended text shall be forwarded to the Council of Ministers and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the **Conciliation Committee**.

If, within ten days, the **Council of Ministers** informs the European Parliament that it has **approved** all its amendments, the **Conciliation Committee shall not meet**.

5. The Conciliation Committee, which shall be composed of the members of the Council of Ministers or their representatives and an equal number of representatives of

Commission takes part in Conciliation committee meetings

7.a) Joint text approved within 21 days
Council: qualified majority
EP: majority of votes cast

7.b) If Conciliation committee does not approve joint text within 21 days or Council rejects the text = EP may confirm, by absolute majority and 60% of the votes cast, its amendments

If EP does not confirm, Council's position is adopted

If EP rejects the joint text by absolute majority and 60% of the votes cast the Commission submit a new proposal

8. When the procedure is finalised EP president declares it law

the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council of Ministers or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council of Ministers.

6. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council of Ministers.

7. If, within twenty-one days of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by a majority of the votes cast, and the Council of Ministers, acting by a qualified majority, shall each have a period of fourteen days from that approval in which to adopt the joint text.

8. If, within twenty-one days, the Conciliation Committee does not approve a joint text or if the Council of Ministers rejects the joint text, the Parliament may, within fourteen days, acting by a majority of its component members and three fifths of the votes cast, confirm its amendments.

Where the Parliament amendment is not confirmed, the Council of Ministers position on the budget item which is the subject of the amendment shall be deemed to be adopted.

However, if the Parliament, acting by a majority of its component members and three fifths of the votes cast, rejects the joint text, it may ask for a new draft to be submitted.

9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget law has been finally adopted.

Article III-311

If no budget adopted 1/12 of last years budget may be spent each month, but this cannot be more than the amount under consideration

Expenditure can go above 1/12 if Council adopts a decision on a proposal from Commission and EP does not decide, by majority of its members, to reduce expenditure

1. If no European budget law has been adopted at the beginning of a financial year, a sum equivalent to not more than one twelfth of the budget appropriations entered in the budget law for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the European law referred to in Article III-318; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget under consideration.

2. The Council of Ministers, on a proposal by the Commission and in compliance with the other conditions laid down in the first paragraph, may adopt a European decision authorising expenditure in excess of one twelfth. The Council of Ministers shall forward the decision immediately to the European Parliament.

The European decision shall lay down the necessary measures relating to resources to ensure application of this Article.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component members, has not decided to reduce this expenditure within that time-limit.

Article III-312

Carry forward expenditures

In accordance with conditions laid down by the European law referred to in Article III-318, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the European law referred to in Article III-318.

EP, Council, Commission and Court in separate parts of the budget

The expenditure of the European Parliament, the Council of Ministers, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

VI) THE INSTITUTIONS OF THE UNION

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

1) EUROPEAN PARLIAMENT

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

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

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

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

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

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

Article I-19

The European Parliament

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

Direct elections every 5 years, max. 736, min. of 4 members per Member State, the remaining seats

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

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

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

EP President

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

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

1.1) COMPOSITION OF THE EUROPEAN PARLIAMENT AT PRESENT:

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

Absolute Majority of Members= 314votes

1.2 COMPOSITION OF THE EUROPEAN PARLIAMENT 2004-2009

Belgium	24
Czech Republic	24
Denmark	14
Germany	99
Estonia	6
Greece	24
Spain	54
France	78
Ireland	13
Italy	78
Cyprus	6
Latvia	9
Lithuania	13

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

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

1.3 COMPOSITION OF THE EUROPEAN PARLIAMENT FROM 2009 ONWARDS

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

Article I-19

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

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

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

2) EUROPEAN COUNCIL

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

Article I-20

European Council

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

*The European Council
meets quarterly*

*President may convene
additional meetings*

Decisions by consensus

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

THE EUROPEAN COUNCIL CHAIR/ EU PRESIDENT

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

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

Article I-22

Council of Ministers:

- legislates with EP
- carries out policy making
- coordinates

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

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

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

3.1 WEIGHTING OF VOTES IN THE COUNCIL AT PRESENT:

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

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

3.2 WEIGHTING OF VOTES IN THE COUNCIL 2004-2009

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

*Qualified majority: 1. 232 out of 321, 2. majority of Member States, 3. 62% of the population
Weighting of votes of Romania: 14, of Bulgaria: 10*

3.3 VOTING IN THE COUNCIL FROM 2009 ON

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

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

Article I-24

1. Majority of Member States

2. 60 % of the EU population

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

Enlarged qualified majority

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

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

NB: New deepening clause

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

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

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

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

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

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

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

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

4) The EU Commission

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

Article I-25

EU-Commission

Role:

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

Monopoly of initiative:
No one else can propose new laws

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

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

Non-voting Commissioners from the other states

Effect from 2009

Independence
May not take instructions from any one

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

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

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

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

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

These arrangements will take effect on 1 November 2009.

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

Censure

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

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

COMMISSION PRESIDENT

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

Commission President

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

Commission members

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

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

Article I-26

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

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

3. The President of the Commission shall:

lay down guidelines within which the Commission is to work;

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

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

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

5) EU FOREIGN MINISTER

The Minister for Foreign Affairs will be appointed by the European Council by qualified majority with the agreement of the President of the Commission. He will conduct the Union's common foreign and security policy, chair the Foreign Affairs Council and will also serve as Vice-President of the Commission. As such his nomination will be subject to the EP's approval of the Commission as a whole, and eventually to a vote of censure.

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

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

Article I-27

EU Foreign Minister

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

Tasks of Foreign Minister

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

*External service
established in part III*

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

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

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

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